

As Passed
by the Senate
Conferees

June 15, 2010

****Senate Counteroffer Offer****

Title: Title III

Matter: Transfer of Powers to the Comptroller of the Currency, the Corporation, and the Board of Governors

The Senate accepts the following House proposals for amendments to the Base text:

1. Add House provision requiring adoption of procedures and standards to ensure employee transfer requirements are met and to study implementation of such transfer requirements.
2. With modifications, add House provision requiring an implementation plan and reporting requirements to ensure an orderly transfer of personnel and property from OTS.
3. With modifications, add House provision enhancing Federal Deposit Insurance: elimination of pro-cyclical assessments; enhanced access to information for deposit insurance purposes; and transition reserve ratio requirement to reflect new assessment base.
4. With modifications, add provision to insure noninterest bearing transaction accounts above standard FDIC limit, similar to current FDIC Transaction Account Guarantee Program.
5. With modifications, add provision to increase permanently FDIC and NCUSIF standard maximum deposit insurance amount to \$250,000 and make the increase retroactive to January 1, 2008.
6. With modifications, amend base text provision establishing the Office of Women and Minority Inclusion to: require the Director of the Office be a Senior Executive Service position; require the Director to coordinate technical assistance to minority-owned and women-owned businesses; require the assessment of the impact of the policies and regulations of each agency on minority-owned and women-owned businesses; and establish an Office of Women and Minority Inclusion in the Office of National Insurance.

The Senate does not accept the following House proposals for amendments to the Base text:

1. Offering alternative language to strike Senate provision exempting the Office of the Comptroller of the Currency from the Federal Property and Administrative Services Act.
2. Amend Senate provision protection employees from involuntary separation by increasing the protection period from 2 years to 3 years, extending the protection to OCC employees, and clarifying pay-protection provisions.
3. Add Mutual National Bank and Federal Mutual Bank Holding Company Charters.

HOUSE PROPOSED AMENDMENTS TO TITLE III

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

insert
Rider
A

~~Page 357, strike line 10 and all that follows through
line 23.~~

Page 365, strike line 5 and all that follows through
line 22, and insert the following new paragraphs:

- 1 (1) 3-YEAR PROTECTION.—
- 2 (A) IN GENERAL.—Except as provided in
- 3 paragraph (2), each affected employee shall not,
- 4 during the 3-year period beginning on the
- 5 transfer date, be involuntarily separated, or in-
- 6 voluntarily reassigned outside his or her locality
- 7 pay area.
- 8 (B) AFFECTED EMPLOYEES.—For pur-
- 9 poses of this paragraph, the term “affected em-
- 10 ployee” means—
- 11 (i) an employee transferred from the
- 12 Office of Thrift Supervision holding a per-
- 13 manent position on the day before the
- 14 transfer date; and
- 15 (ii) an employee of the Office of the
- 16 Comptroller of the Currency holding a per-

RIDER A

Page 357, line 13, after "law" insert "(except the full and open competition requirements of the Competition in Contracting Act)

Page 357, line 16, delete ", in any lawful manner, such goods and services, or personal or".

1 manent position on the day before the
2 transfer date.

3 (2) EXCEPTIONS.—Paragraph (1) does not
4 limit the right of the Office of the Comptroller of the
5 Currency or the Corporation to—

6 (A) separate an employee for cause or for
7 unacceptable performance; or

8 (B) terminate an appointment to a position
9 excepted from the competitive service because of
10 its confidential policy-making, policy-deter-
11 mining, or policy-advocating character.

Page 366, line 7, after the period add the following new sentence: "Notwithstanding the preceding sentence, if the employee was receiving a higher rate of basic pay on a temporary basis (because of a temporary assignment, temporary promotion, or other temporary action) immediately before the transfer, the Agency may reduce the rate of basic pay on the date the rate would have been reduced but for the transfer, and the protected rate for the remainder of the 2-year period will be the reduced rate that would have applied but for the transfer."

Page 375, line 11, strike "and".

Page 375, line 19, strike the period and insert a semicolon.

Page 375, after line 19, insert the following new paragraphs:

- 1 (3) shall, jointly with the Director of the Office
- 2 of Thrift Supervision, develop and adopt procedures
- 3 and safeguards designed to ensure that the require-
- 4 ments of this subsection are met; and
- 5 (4) shall conduct a study detailing the position
- 6 assignments of all employees transferred pursuant to
- 7 subsection (a), describing the procedures and safe-
- 8 guards adopted pursuant to paragraph (3), and
- 9 demonstrating that the requirements of this sub-
- 10 section have been met; and shall, not later than 365
- 11 days after the transfer date, submit a copy of such
- 12 study to Congress.

Page 381, after line 5, insert the following new section:

13 SEC. 327. IMPLEMENTATION PLAN AND REPORTS

180

14 (a) PLAN SUBMISSION.—Within 90 days of the enact-

15 ment of the Restoring American Financial Stability Act

16 of 2010, ~~the Secretary and the Corporation, in consulta-~~

17 ~~tion with the Office of the Comptroller of the Currency~~

18 and the Office of Thrift Supervision, shall jointly submit

19 a plan to the ~~Congress~~ and the Inspectors General of the

20 Department of the Treasury ~~and of the Corporation~~ detail-

the Board of Governor

and the Board of Governors

the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Financial Services

Board of Governors,

1 ing the steps the ~~Secretary~~, the Corporation, the Office
2 of the Comptroller of the Currency, and the Office of
3 Thrift Supervision will take to implement the provisions
4 of sections 301 through 326, and the provisions of the
5 amendments made by such sections.

6 (b) INSPECTORS GENERAL REVIEW OF THE PLAN.—

7 Within 60 days of the date on which the ~~Congress~~ receives
8 the plan required under subsection (a), the Inspectors
9 General of the Department of the Treasury ~~and of the~~
10 Corporation shall jointly provide a written report to the
11 ~~Secretary and the Corporation~~ and shall submit a copy
12 to the ~~Congress~~ detailing whether the plan conforms with

Board of Governors,

and the Board of Governors

13 the intent of the provisions of sections 301 through 326,
14 and the provisions of the amendments made by such sec-
15 tions, including—

the Office of the Comptroller of the Currency and the Office of Thrift Supervision

Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Financial Services

16 (1) whether the plan sufficiently takes into con-
17 sideration the orderly transfer of personnel;

18 (2) whether the plan describes procedures and
19 safeguards to ensure that the Office of Thrift Super-
20 vision employees are not unfairly disadvantaged rel-
21 ative to employees of the Office of the Comptroller
22 of the Currency and the Corporation;

23 (3) whether the plan sufficiently takes into con-
24 sideration the orderly transfer of authority and re-
25 sponsibilities;

1 (4) whether the plan sufficiently takes into con-
2 sideration the effective transfer of funds;

3 (5) whether the plan sufficiently takes in con-
4 sideration the orderly transfer of property; and

5 (6) any additional recommendations for an or-
6 derly and effective process.

7 (a) IMPLEMENTATION REPORTS.—Not later than 6

8 months after the date on which the Congress receives the

9 report required under subsection (b), and every 6 months

10 thereafter until all aspects of the plan have been imple-

11 mented, the Inspectors General of the Department of the

12 Treasury and the Corporation shall jointly provide a writ-

13 ten report on the status of the implementation of the plan

14 to the Secretary and the Corporation and shall submit a

15 copy to the Congress.

Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Financial Services

Board of Governors,

and the Board of Governors

the Office of the Comptroller of the Currency and the Office of Thrift Supervision

Page 382, after line 16, insert the following new sections (and redesignate the subsequent section accordingly):

16 SEC. 332. ELIMINATION OF PROCYCLICAL ASSESSMENTS.

17 Section 7(e) of the Federal Deposit Insurance Act is
18 amended—

19 (1) in paragraph (2)—

20 (A) by amending subparagraph (B) to read

21 as follows:

1 (b) Section 7(b)(1)(E) of the Federal Deposit Insur-
 2 ance Act is amended—

3 (1) in clause (i), by striking “such as” and in-
 4 serting “including”; and

5 (2) ⁱⁿ by striking clause (iii), by striking “Corporation.”

6 *and inserting “Corporation, except as provided in section 7(a)(2)(B)”*
 SEC. 334. TRANSITION RESERVE RATIO REQUIREMENTS TO

7 REFLECT NEW ASSESSMENT BASE.

8 (a) Section 7(b)(3)(B) of the Federal Deposit Insur-
 9 ance Act is amended to read as follows:

10 “(B) MINIMUM RESERVE RATIO.—The re-
 11 serve ratio designated by the Board of Direc-
 12 tors for any year may not be less than 1.15 per-
 13 cent of estimated insured deposits, or the com-
 14 parable percentage of the assessment base set
 15 forth in paragraph (2)(C).”

16 (b) Section 3(y)(3) of the Federal Deposit Insurance
 17 Act is amended by inserting “, or such comparable per-
 18 centage of the assessment base set forth in section
 19 7(b)(2)(C)” before the period.

20 (c) For a period of not less than 5 years after the
 21 date of the enactment of this title, the Federal Deposit
 22 Insurance Corporation shall make available to the public
 23 the reserve ratio and the designated reserve ratio using
 24 both estimated insured deposits and the assessment base

RIDER B

Rider **A/B**

- (a) Section 7(a)(2)(B) of the Federal Deposit Insurance Act is amended by striking "agreement" and inserting "consultation".

1 under section 7(b)(2)(C) of the Federal Deposit Insurance
2 Act.

3 **SEC. 335. PERMANENT INCREASE IN DEPOSIT AND SHARE**
4 **INSURANCE.**

5 (a) **PERMANENT INCREASE IN DEPOSIT INSUR-**
6 **ANCE.**—Section 11(a)(1)(E) of the Federal Deposit Insur-
7 ance Act (12 U.S.C. 1821(a)(1)(E)) is amended—

8 (1) by striking “\$100,000” and inserting
9 “\$250,000”; and

10 (2) by adding at the end the following new sen-
11 tences: “Notwithstanding any other provision of law,
12 the increase in the standard maximum deposit insur-
13 ance amount to \$250,000 shall apply to depositors
14 in any institution for which the Corporation was ap-
15 pointed as receiver or conservator on or after Janu-
16 ary 1, 2008, and before October 3, 2008. The Cor-
17 poration shall take such actions as are necessary to
18 carry out the requirements of this section with re-
19 spect to such depositors, without regard to any time
20 limitations under this Act. In implementing this and
21 the preceding 2 sentences, any payment on a deposit
22 claim made by the Corporation as receiver or conser-
23 vator to a depositor above the standard maximum
24 deposit insurance amount in effect at the time of the
25 appointment of the Corporation as receiver or con-

1 servator shall be deemed to be part of the net
 2 amount due to the depositor under subparagraph
 3 (B).”

4 (b) PERMANENT INCREASE IN SHARE INSURANCE.—
 5 Section 207(k)(5) of the Federal Credit Union Act (12
 6 U.S.C. 1787(k)(5)) is amended by striking “\$100,000”
 7 and inserting “\$250,000”.

8 ~~(c) TECHNICAL AND CONFORMING AMENDMENT.—~~
 9 ~~Section 11(a)(1)(F)(i)(I) of the Federal Deposit Insurance~~
 10 ~~Act (12 U.S.C. 1821 (a)(1)(F)(i)(I)) is amended striking~~
 11 ~~“\$100,000” and inserting “\$250,000”.~~

12 ~~SEC. 336. PERMANENT EXTENSION OF THE TRANSACTION~~
 13 ~~ACCOUNT GUARANTY PROGRAM.~~

TEMPORARY

14 (a) TAGP EXTENSION.—Section 11(a)(1) of the
 15 Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)) is
 16 amended—

17 (1) in subparagraph (B)—

18 (A) by striking “The net amount” and in-
 19 serting the following:

20 “(i) IN GENERAL.—Subject to clause

21 (ii), the net amount”; and

22 (B) by adding at the end the following new
 23 clauses:

24 “(ii) INSURANCE FOR NONINTEREST-
 25 BEARING TRANSACTION ACCOUNTS.—Not-

1 withstanding clause (i), the Corporation
2 shall fully insure the net amount that any
3 depositor at an insured depository institu-
4 tion maintains in a noninterest-bearing
5 transaction account. Such amount shall
6 not be taken into account when computing
7 the net amount due to such depositor
8 under clause (i).

9 “(iii) NONINTEREST-BEARING TRANS-
10 ACTION ACCOUNT DEFINED.—For purposes
11 of this subparagraph, the term ‘non-
12 interest-bearing transaction account’
13 means a deposit or account maintained at
14 an insured depository institution—

15 “(I) with respect to which inter-
16 est is neither accrued nor paid;

17 “(II) on which the depositor or
18 account holder is permitted to make
19 withdrawals by negotiable or transfer-
20 able instrument, payment orders of
21 withdrawal, telephone or other elec-
22 tronic media transfers, or other simi-
23 lar items for the purpose of making
24 payments or transfers to third parties
25 or others; and

1 " (III) on which the insured de-
 2 pository institution does not reserve
 3 the right to require advance notice of
 4 an intended withdrawal."; and

5 (2) in subparagraph (C), by striking "subpara-
 6 graph (B)" and inserting "subparagraph (B)(i)".

7 (b) EFFECTIVE DATE.—The amendments made by
 8 subsection (a) shall take effect on December 31, 2010.

Page 388, after line 16, insert the following new sec-
 tion (and redesignate subsequent sections accordingly):

← INSERT
 RIDER (C)

9 ~~SEC. 341. MUTUAL NATIONAL BANKS AND FEDERAL MU-
 10 TUAL BANK HOLDING COMPANIES AUTHOR-
 11 IZED.~~

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

16 ~~"SEC. 5133A. MUTUAL NATIONAL BANKS.~~

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

Rider ~~B~~ C

RIDER C

(c) PROSPECTIVE REPEAL.—Effective January 1, 2013, section 11(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)), as amended by subsection (a), is amended—

(1) in subparagraph (B)—

(A) by striking “DEPOSIT.—” and all that follows through “clause (ii), the net amount” and inserting “DEPOSIT.—The net amount”; and

(B) by striking clauses (ii) and (iii); and

(2) in subparagraph (C), by striking “subparagraph (B)(i)” and inserting “subparagraph (B)”.

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

7 “(b) REGULATIONS.—

8 “(1) REGULATIONS OF THE COMPTROLLER.—

9 The Comptroller of the Currency is authorized to
10 prescribe appropriate regulations for the organiza-
11 tion, incorporation, examination, operation, and reg-
12 ulation of mutual national banks. Except to the ex-
13 tent that such existing regulations conflict with sec-
14 tions 5133A and 5133B, mutual national banks
15 shall be subject to the regulations of the Director of
16 the Office of Thrift Supervision governing corporate
17 organization, governance, and conversion of mutual
18 institutions, as in effect on the date of the enact-
19 ment of the Restoring American Financial Stability
20 Act of 2010, including parts 543, 544, 546, 563b,
21 and 563c of chapter V of title 12, Code of Federal
22 Regulations (as in effect on that date), for up to 3
23 years beginning on the date of the enactment of the
24 Restoring American Financial Stability Act of 2010.

1 “(2) APPLICABILITY OF CAPITAL STOCK RE-
2 QUIREMENTS.—The Comptroller of the Currency
3 shall prescribe regulations regarding the manner in
4 which requirements of this title with respect to cap-
5 ital stock, and limitations imposed on national banks
6 under this title based on capital stock, shall apply to
7 mutual national banks.

8 “(c) CONVERSIONS.—

9 “(1) CONVERSION OF A MUTUAL DEPOSITORY
10 TO A MUTUAL NATIONAL BANK.—Subject to such
11 regulations as the Comptroller of the Currency may
12 prescribe for the protection of depositors' rights and
13 for any other purpose the Comptroller of the Cur-
14 rency may consider appropriate, any mutual depository
15 may convert to a mutual national bank by filing
16 with the Comptroller of the Currency a notice of its
17 election to convert on a specified date that is not
18 earlier than 30 days after the date on which the no-
19 tice is filed, and the mutual depository shall be con-
20 verted to a mutual national bank charter on the date
21 specified in the notice.

22 “(2) CONVERSION TO STOCK NATIONAL
23 BANK.—Subject to such regulations as the Comp-
24 troller of the Currency may prescribe for the protec-
25 tion of depositors' rights and for any other purpose

1 the Comptroller of the Currency may consider ap-
2 propriate, any national bank that is organized in the
3 mutual form under subsection (a) may reorganize as
4 a stock national bank.

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

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

13 “(1) liquidating; or

14 “(2) converting to a national banking associa-
15 tion operating in stock form.

16 “(e) STATUS AND RIGHTS OF MEMBERS.—

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

22 “(2) Each member of a mutual national bank
23 shall have the following rights:

1 “(A) Such rights as may be agreed upon,
2 by contract, between the member and the mu-
3 tual national bank.

4 “(B) The right to vote for members of the
5 board of directors of the mutual national bank.

6 “(C) The right to attend any meeting of
7 members properly called by the board of direc-
8 tors of a mutual national bank.

9 “(D) In the event the board of directors,
10 in its sole discretion, determines a conversion of
11 a mutual national bank to a national banking
12 association operating in stock form is in the
13 best interests of the community in which the
14 bank operates and the members approve the
15 conversion through a special proxy, then the
16 members as of a record date set by the board
17 of directors shall have the first right to sub-
18 scribe for and purchase stock in the converted
19 bank.

20 “(E) In the event the board of directors, in
21 its sole discretion, determines a liquidation of
22 the mutual national bank is in the best inter-
23 ests of the community in which the bank oper-
24 ates and the members approve the liquidation,
25 or if for any other reason the bank is liquidated

1 by operation of law, then the members as of the
2 date of liquidation shall have the right to have
3 credited to their accounts, on a pro rata basis,
4 any residual assets left after the liquidation of
5 the mutual national bank.

6 “(3) In the consideration of all questions re-
7 quiring action by the members of a mutual national
8 bank, the bank may provide in its charter that each
9 member shall be permitted (i) one vote per member,
10 or (ii) to cast one vote for each \$100, or fraction
11 thereof, of the withdrawal value of the member’s ac-
12 count, but not more than 1,000 votes per member.

13 “(f) PROXIES.—

14 “(1) A member may give, in writing or elec-
15 tronically, a perpetual proxy to a committee of the
16 board of directors of a mutual depository, provided
17 that the member may revoke such a proxy in writing
18 or electronically, with such revocation to take effect
19 after 6 business days.

20 “(2) Such proxies may be used to vote on any
21 issue requiring approval of the members, including
22 the conversion of a mutual depository into a mutual
23 national bank and the reorganization of a mutual
24 national bank into a Federal mutual bank holding
25 company, except that, without a prior finding by the

1 regulator of the mutual national bank that such ac-
2 tion is needed to avoid loss to the Federal Deposit
3 Insurance Corporation's deposit insurance fund or to
4 protect the stability of the United States financial
5 system, such proxies may not be used to vote in
6 favor of—

7 “(A) terminating mutuality for a mutual
8 national bank or a Federal mutual bank holding
9 company;

10 “(B) permitting the modification of a Fed-
11 eral mutual bank holding company; or

12 “(C) issuing mutual capital certificates
13 (except when used to found a mutual national
14 bank or a Federal mutual bank holding com-
15 pany de novo).

16 “(3) Proxies given by a member, in writing or
17 electronically, to management of, or to a committee
18 of the board of directors of, a mutual depository
19 shall not be deemed to have been revoked solely be-
20 cause of, and shall continue to exist following a con-
21 version to a mutual national bank and any concu-
22 rent or subsequent reorganization to a Federal mu-
23 tual bank holding company.

24 “(g) DEFINITIONS.—For purposes of this section, the
25 following definitions shall apply:

1 “(1) INSURED DEPOSITORY INSTITUTION.—The
2 term ‘insured depository institution’ has the same
3 meaning as in section 3 of the Federal Deposit In-
4 surance Act.

5 “(2) MUTUAL NATIONAL BANK.—The term
6 ‘mutual national bank’ means a national banking as-
7 sociation that operates in mutual form and is char-
8 tered by the Comptroller of the Currency under this
9 section.

10 “(3) MUTUAL DEPOSITORY.—The term ‘mutual
11 depository’ means a depository institution that is or-
12 ganized in non-stock form, including a Federal non-
13 stock depository and any form of non-stock deposi-
14 tory provided for under State law, the deposits of
15 which are insured by an instrumentality of the Fed-
16 eral Government.

17 “(4) MUTUALITY.—The term ‘mutuality’ means
18 the quality of being an insured depository institution
19 organized under a Federal or State law providing for
20 the organization of non-stock depository institutions,
21 or a holding company organized under a Federal or
22 State law providing for the organization of non-stock
23 entities that control one or more depository institu-
24 tions.

1 “(5) MEMBER.—The term ‘member’ means
2 each tax-liable depositor in a mutual depository’s
3 savings, demand, or other authorized depository ac-
4 counts and each tax-liable depositor in such an ac-
5 count in a depository subsidiary of a Federal mutual
6 bank holding company.

7 “(6) TAX LIABLE DEPOSITOR.—The term ‘tax
8 liable depositor’ means the single person responsible
9 for paying any Federal taxes due on any interest
10 paid on any deposits held within any savings, de-
11 mand, or other authorized depository account or ac-
12 counts with any mutual depository.

13 “(7) MEMBERSHIP RIGHTS.—The term ‘mem-
14 bership rights’ means the rights of each member
15 under this section.

16 “(h) CONFORMING REFERENCES.—Unless otherwise
17 provided by the Comptroller of the Currency—

18 “(1) any reference in any Federal law to a na-
19 tional bank operating in stock form, including a ref-
20 erence to the term ‘national banking association’,
21 ‘member bank’, ‘national bank’, ‘national associa-
22 tion’, ‘bank’, ‘insured bank’, ‘insured depository in-
23 stitution’, or ‘depository institution’, shall be deemed
24 to refer also to a mutual national bank;

1 “(2) any reference in any Federal law to the
2 term ‘board of directors’, ‘director’, or ‘directors’ of
3 a national bank operating in stock form shall be
4 deemed to refer also to the board of a mutual na-
5 tional bank; and

6 “(3) any terms in Federal law that may apply
7 only to a national bank operating in stock form, in-
8 cluding the terms ‘stock’, ‘shares’, ‘shares of stock’,
9 ‘capital stock’, ‘common stock’, ‘stock certificate’,
10 ‘stock certificates’, ‘certificates representing shares
11 of stock’, ‘stock dividend’, ‘transferable stock’, ‘each
12 class of stock’, ‘cumulate such shares’, ‘par value’;
13 ‘preferred stock’ shall not apply to a mutual national
14 bank, unless the Comptroller of the Currency deter-
15 mines that the context requires otherwise.

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

18 **“(a) REORGANIZATION OF MUTUAL NATIONAL BANK**
19 **AS A HOLDING COMPANY.—**

20 “(1) **IN GENERAL.—**Subject to approval under
21 the Bank Holding Company Act of 1956, a mutual
22 national bank may reorganize so as to become a
23 Federal mutual bank holding company by submitting
24 a reorganization plan to the appropriate bank hold-
25 ing company regulator.

1 “(2) PLAN APPROVAL.—Upon the approval of
2 the reorganization plan by the appropriate bank
3 holding company regulator and the issuance of the
4 appropriate charters—

5 “(A) the substantial part of the mutual na-
6 tional bank’s assets and liabilities, including all
7 of the bank’s insured liabilities, shall be trans-
8 ferred to a national banking association, a ma-
9 jority of the shares of voting stock of which is
10 owned, directly or indirectly, by the mutual na-
11 tional bank that is to become a Federal mutual
12 bank holding company; and

13 “(B) the mutual national bank shall be-
14 come a Federal mutual bank holding company.

15 “(b) DIRECTORS AND CERTAIN ACCOUNT HOLDERS’
16 APPROVAL OF PLAN REQUIRED.—This subsection does
17 not authorize a reorganization unless—

18 “(1) a majority of the mutual national bank’s
19 board of directors has approved the plan providing
20 for such reorganization; and

21 “(2) a majority of members has approved the
22 plan at a meeting held at the call of the directors
23 under the procedures prescribed by the bank’s char-
24 ter and bylaws.

1 “(c) OWNERSHIP OF DEPOSITORY SUBSIDIARIES.—

2 To avoid terminating mutuality, a Federal mutual bank
3 holding company must own, directly or indirectly, a major-
4 ity of the shares of voting stock of each of its depository
5 subsidiaries.

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

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

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

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

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

7 “(a) REGULATION.—A Federal mutual bank holding
8 company shall be—

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

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

17 “(i) CAPITAL IMPROVEMENT.—

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

1 “(2) ISSUANCE OF NONVOTING SHARES.—This
2 section shall not prohibit a national banking associa-
3 tion chartered as part of a transaction described in
4 subsection (a) from issuing any nonvoting shares or
5 less than 50 percent of the voting shares of such
6 bank to any person other than the Federal mutual
7 bank holding company.

8 “(j) INSOLVENCY AND LIQUIDATION.—

9 “(1) IN GENERAL.—Notwithstanding any other
10 provision of law, the appropriate bank holding com-
11 pany regulator may file a petition under chapter 7
12 of title 11, United States Code, with respect to a
13 Federal mutual bank holding company upon—

14 “(A) the default of any national bank—

15 “(i) the stock of which is owned by
16 the Federal mutual bank holding company;
17 and

18 “(ii) that was chartered in a trans-
19 action described in subsection (a); or

20 “(B) a foreclosure on a pledge by the Fed-
21 eral mutual bank holding company described in
22 subsection (i)(1).

23 “(2) DISTRIBUTION OF NET PROCEEDS.—Ex-
24 cept as provided in paragraph (3), the net proceeds
25 of any liquidation of any Federal mutual bank hold-

1 ing company under paragraph (1) shall be trans-
2 ferred to persons who hold membership interests in
3 such Federal mutual bank holding company.

4 “(3) RECOVERY BY FDIC.—If the Federal De-
5 posit Insurance Corporation incurs a loss as a result
6 of the default of any insured bank subsidiary of a
7 Federal mutual bank holding company that is liq-
8 uidated under paragraph (1), the Federal Deposit
9 Insurance Corporation shall succeed to the interests
10 of the depositors of the bank as members in the
11 Federal mutual bank holding company, to the extent
12 of the Federal Deposit Insurance Corporation’s loss.

13 “(k) DEFINITIONS.—

14 “(1) FEDERAL MUTUAL BANK HOLDING COM-
15 PANY.—The term ‘Federal mutual bank holding
16 company’ means a holding company that is orga-
17 nized in mutual form and owns, directly or indi-
18 rectly, a majority of the shares of voting stock of
19 one or more depository subsidiaries of a Federal mu-
20 tual bank holding company.

21 “(2) DEPOSITORY SUBSIDIARY OF A FEDERAL
22 MUTUAL BANK HOLDING COMPANY.—The term ‘de-
23 pository subsidiary of a Federal mutual bank hold-
24 ing company’ means a depository institution orga-
25 nized in stock form that is insured by the Federal

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

7 “(3) REORGANIZATION OF A MUTUAL DEPOSITORY.—The term ‘reorganization of a mutual depository’ means the conversion of a mutual depository into a depository subsidiary of a Federal mutual bank holding company.

8 “(4) MODIFICATION OF A FEDERAL MUTUAL BANK HOLDING COMPANY.—The term ‘modification of a Federal mutual bank holding company’ means either: (A) the sale of shares of common or preferred stock in a depository subsidiary of a Federal mutual bank holding company to any party other than the subsidiary’s parent Federal mutual bank holding company or a wholly owned subsidiary of that parent; or (B) the voluntary grant of a lien on shares of common or preferred stock in a depository subsidiary of a Federal mutual bank holding company.

9 “(5) DEFAULT.—With respect to a national bank, the term ‘default’ means an adjudication or other official determination by any court of com-

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

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

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

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

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

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

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

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

“5133A. Mutual national banks.

“5133B. Federal mutual bank holding companies.”.

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

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

1 appropriate bank holding company regulator under
2 section 5133B of the Revised Statutes of the
3 United States.”.

4 (e) **MUTUAL HOLDING COMPANY CONVERSION.**—

5 (1) **IN GENERAL.**—Any mutual holding com-
6 pany, including any form of mutual depository hold-
7 ing company provided for under State law, may con-
8 vert to a Federal mutual bank holding company by
9 filing with the appropriate bank holding company
10 regulator a notice of its election to convert on a
11 specified date that is not earlier than 30 days after
12 the date on which the notice is filed, and the mutual
13 holding company shall be converted to a Federal mu-
14 tual holding company charter on the date specified
15 in the notice.

16 (2) **DEFINITIONS.**—For purposes of this sub-
17 section, the following definitions shall apply:

18 (A) **FEDERAL MUTUAL BANK HOLDING**
19 **COMPANY.**—The term “Federal mutual bank
20 holding company” has the same meaning as in
21 section 5133B of the Revised Statutes of the
22 United States (as added by this section); and

23 (B) **MUTUAL HOLDING COMPANY.**—The
24 term “mutual holding company” has the same
25 meaning as in section 10(o)(10)(A) of the

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

Page 385, line 10, after the period insert the following new sentence: "The position of Director shall be a career reserved position in the Senior Executive Service, as that position is defined in section 3132 of title 5, United States Code."

or an equivalent designation standards for

coordinating Page 385, line 18, insert ", including the ~~coordinating~~ *coordinating* of technical assistance to such businesses" before the period.

Page 385, after line 20, insert the following new paragraph:

5 (3) OTHER DUTIES.—Each Director shall advise the agency administrator on the impact of the
 6 policies and regulations of the agency on minority-
 7 owned and women-owned businesses.
 8

~~Page 390, line 15, strike "and" after the semicolon.~~

~~Page 390, line 16, strike the period and insert "; and".~~

~~Page 390, after line 16, insert the following new subparagraph:~~

1

~~(J) the Office of National Insurance.~~



Additional technical amendment for Technical/Manager's Amendment to Title III

On page 3, line 16 of the Technical/Manager's Amendment to Title III

On page 383, strike lines 3-10 and insert --

' "(2) ACTING OFFICIALS MAY SERVE. – In the event of a vacancy in the office of the Comptroller of the Currency or the office of Director of the Consumer Financial Protection Bureau and pending the appointment of a successor, or during the absence or disability of the Comptroller of the Currency or the Director of the Consumer Financial Protection Bureau, the acting Comptroller of the Currency or the acting Director of the Consumer Financial Protection Bureau, as the case may be, shall be a member of the Board of Directors in the place of the Comptroller or Director." ; and'

On page 383, line 12, strike the period and insert "or of the Consumer Financial Protection Bureau."

**RESTORING AMERICAN FINANCIAL STABILITY
CONFERENCE AMENDMENT**

On page 385 of the Conference Base Text, between lines 20 and 21, insert the following:

- 1 (3) **RULE OF CONSTRUCTION.**—Nothing in
- 2 paragraph (2)(C) may be construed to mandate any
- 3 requirement on or otherwise affect the lending poli-
- 4 cies and practices of any regulated entity, or to
- 5 imply or require any specific action based on the
- 6 findings of the assessment.



As Passed
by the Senate Conference

June 15, 2010

**** Draft Senate Counteroffer ****

Title: Title IV

Matter: Regulation of Advisers to Private Funds and Others

1. Add House provision that requires registration with the SEC of Commodity Trading Advisers (CTAs) who advise private funds (House Bill § 5003, page 1204, lines 1-7)

Reject.

2. Add House provision which requires disclosure of certain private fund information to investors, prospective investors, counterparties and creditors. (House bill § 5004, page 1209, lines 1-10)

Reject.

3. Add new provision which provides a savings clause to ensure that the new registration requirements for advisers to private funds under the Act does not absolve these advisers of their existing registration requirements, as applicable, under the Commodity Exchange Act. (Add new language to Senate bill § 406, page 463)

Accept

4. Strike Senate exemption of investment advisers to private equity firms from registration with the SEC (Senate bill § 408, page 464)

Counterproposal to exempt private equity fund advisers with more than \$1 billion in assets under management

5. Add House provision to exempt investment advisers of private funds with less than \$150 million in assets under management (House bill § 5007, page 1212)

Accept

6. Amend Senate exemption for the investment advisers of venture capital firms . Though exempt from registration with the SEC, require the advisers of venture capital firms to keep records and provide reports to the SEC (House bill § 5006, page 1212, lines 3-8)

Accept

7. Strike and replace Senate provision defining state and federal responsibilities for investment advisers. Replace with House provision that requires investment advisers who qualify to register with their home state (i.e. less than \$100 million in assets under management) to register

with the SEC should their home state not perform examinations. (Strike Senate bill § 410 page 466 and replace with House bill § 7418, page 1377)

Counterproposal – Reed amendment 4078 from Senate Floor

8. Strike and replace Senate provision for custodial assets. Replace with House provision that prohibits an investment adviser from providing custodial services for customer accounts. The SEC may provide an exception from this prohibition if the customer assets are verified by an entity that has a fiduciary duty to the client. (Strike Senate bill § 411, page 466 and replace with House bill § 7419, page 1378)

Reject

9. Add House provision which requires the SEC to index for inflation the dollar amount measures to determine who is a qualified client for purposing of paying a performance fee to a registered investment adviser. It also calls for a rounding to the nearest \$100,000 when making the determination. (House bill § 5011, page 1216)

Accept

HOUSE PROPOSED AMENDMENTS TO TITLE IV

Page 454, strike lines 10 and 11 and insert the following:

CFTC registrants

#1 REJECT

- 1 (4) in paragraph (6)—
- 2 (A) in subparagraph (A), by striking “or”;
- 3 (B) in subparagraph (B), by striking the
- 4 period at the end and adding “; or”; and
- 5 (C) by adding at the end the following new
- 6 subparagraph:
- 7 “(C) a private fund; or”; and

Page 459, insert after line 22 the following (and redesignate succeeding paragraphs accordingly):

#2 REJECT

- 8 (8) DISCLOSURE OF PRIVATE FUND INFORMA-
- 9 TION.—An investment adviser registered under this
- 10 Act shall provide such reports, records, and other
- 11 documents to investors, prospective investors,
- 12 counterparties, and creditors, of any private fund
- 13 advised by the investment adviser as the Commis-
- 14 sion, by rule or regulation, may prescribe as nec-
- 15 essary or appropriate in the public interest and for

- 1 the protection of investors or for the assessment of
- 2 systemic risk.

Page 463, line 6, strike "The" and insert "(1) The".

Page 463, line 16, strike the closed quotation marks and following period and after such line insert the following (and redesignate succeeding sections and conform the table of contents accordingly):

#3
ACCEPT

- 3 "(2) Nothing in this Act shall relieve any per-
- 4 son of any obligation or duty, or affect the avail-
- 5 ability of any right or remedy available to the Com-
- 6 modity Futures Trading Commission or any private
- 7 party, arising under the Commodity Exchange Act
- 8 (7 U.S.C. 1 et seq.) governing commodity pools,
- 9 commodity pool operators, or commodity trading ad-
- 10 visors."

11 SEC. 407. EXEMPTION OF AND REPORTING BY CERTAIN
12 PRIVATE FUND ADVISERS.

#5
ACCEPT

13 Section 203 of the Investment Advisers Act of 1940
14 (15 U.S.C. 80b-3), as amended by section 5006, is further
15 amended by adding at the end the following new sub-
16 sections:

17 "(m) EXEMPTION OF AND REPORTING BY CERTAIN
18 PRIVATE FUND ADVISERS.—

#5
Accept

1 “(1) IN GENERAL.—The Commission shall pro-
2 vide an exemption from the registration require-
3 ments under this section to any investment adviser
4 of private funds, if each of such investment adviser
5 acts solely as an adviser to private funds and has as-
6 sets under management in the United States of less
7 than \$150,000,000.

8 “(2) REPORTING.—The Commission shall re-
9 quire investment advisers exempted by reason of this
10 subsection to maintain such records and provide to
11 the Commission such annual or other reports as the
12 Commission determines necessary or appropriate in
13 the public interest or for the protection of investors.

REJECT #7

14 “(n) REGISTRATION AND EXAMINATION OF MID-
15 SIZED PRIVATE FUND ADVISERS.—In prescribing regula-
16 tions to carry out the requirements of this section with
17 respect to investment advisers acting as investment advis-
18 ers to mid-sized private funds, the Commission shall take
19 into account the size, governance, and investment strategy
20 of such funds to determine whether they pose systemic
21 risk, and shall provide for registration and examination
22 procedures with respect to the investment advisers of such
23 funds which reflect the level of systemic risk posed by such
24 funds.”.

#6
ACCEPT

(VENTURE
CAPITAL
FUNDS)

Page 463, line 17, insert "AND REPORTING BY"
after "EXEMPTION OF".

Page 464, line 4, insert before the closed quotation
mark the following: "The Commission shall require such
advisers to maintain such records and provide to the
Commission such annual or other reports as the Commis-
sion determines necessary or appropriate in the public in-
terest or for the protection of investors."

#4
ACCEPT

Beginning on page 464, strike line 5 through page
465, line 6.

#7
REJECT

Page 466, strike lines 1 through 17 and insert the
following:

1 SEC. 410. INVESTMENT ADVISERS SUBJECT TO STATE AU-
2 THORITIES.

3 Section 203A(a) of the Investment Advisers Act of
4 1940 (15 U.S.C. 80b-3a(a)) is amended—

5 (1) by redesignating paragraph (2) as para-
6 graph (3); and

7 (2) by inserting after paragraph (1) the fol-
8 lowing new paragraph:

9 "(2) TREATMENT OF CERTAIN MID-SIZED IN-
10 VESTMENT ADVISERS.—Notwithstanding paragraph
11 (1), an investment adviser that is not exempt from
12 registration under section 203 and—

1 “(A) is regulated and examined, or re-
2 quired to be regulated and examined, in the
3 State where it maintains its principal office and
4 place of business; and

5 “(B) has assets under management be-
6 tween—

7 “(i) the amount specified under sub-
8 paragraph (A) of paragraph (1), as such
9 amount may have been adjusted by the
10 Commission pursuant to that subpara-
11 graph; and

12 “(ii) \$100,000,000, or such higher
13 amount as the Commission may, by rule,
14 deem appropriate in accordance with the
15 purposes of this title,

16 shall register with, and be subject to examina-
17 tion by, such State. The Commission shall pub-
18 lish a list of the States that regulate and exam-
19 ine, or require regulation and examination of,
20 investment advisers to which the requirements
21 of this paragraph apply. If no State in which an
22 investment adviser described in subparagraph
23 (B) is registered conducts such an examination,
24 the investment adviser must register with the
25 Commission. If, pursuant to this paragraph, an

#8
REJECT

1 investment adviser would be required to register
2 with 5 or more States, then the adviser may
3 maintain its registration with the Commis-
4 sion.”.

Page 466, strike lines 18 through 21 and insert the following (and conform the table of contents accordingly):

#8
REJECT

(KEEP
SENATE)

5 **SEC. 411. CUSTODIAL REQUIREMENTS.**

6 (a) **IN GENERAL.**—Not later than 180 days after the
7 date of the enactment of this title, the Securities and Ex-
8 change Commission shall adopt a rule pursuant to its au-
9 thority under section 211(a) of the Investment Advisers
10 Act of 1940 making it unlawful under section 206(4) of
11 that Act for an investment adviser registered under such
12 Act to have custody of funds or securities of a client, un-
13 less—

14 (1) the funds and securities are maintained
15 with a qualified custodian either in a separate ac-
16 count for each client under the client’s name, or in
17 accounts that contain only client funds and securi-
18 ties under the name of the investment adviser as
19 agent or trustee for the client; and

20 (2) the qualified custodian does not directly or
21 indirectly provide investment advice with respect to
22 such funds or securities.

1 (b) EXCEPTIONS.—The rule adopted under sub-
2 section (a) shall include such exceptions as the Commis-
3 sion determines in the public interest and consistent with
4 the protection of investors. Any exemption granted under
5 this subsection shall ensure that at least once per year,
6 a client described in subsection (a) shall receive a report
7 from an independent entity with a fiduciary responsibility
8 to the client to verify that the assets in the client's account
9 are in accord with those stated on the client's account
10 statement.

#8
REJECT

11 (c) NO LIMITS ON OTHER ACTIONS.—Nothing in this
12 section shall be construed to limit other actions the Securi-
13 ties and Exchange Commission may take under this Act
14 to require the protection of client assets.

Page 472, after line 3, insert the following new sec-
tion (and redesignate the succeeding section and conform
the table of contents accordingly):

15 **SEC. 416. QUALIFIED CLIENT STANDARD.**

16 Section 205(e) of the Investment Advisers Act of
17 1940 (15 U.S.C. 80b-5(e)) is amended by adding at the
18 end the following: "With respect to any factor used in any
19 rule or regulation by the Commission in making a deter-
20 mination under this subsection, if the Commission uses
21 a dollar amount test in connection with such factor, such
22 as a net asset threshold, the Commission shall, by order,

#9
ACCEPT

#9
ACCEPT

1 not later than 1 year after the date of the enactment of
2 the Private Fund Investment Advisers Registration Act of
3 2009, and every 5 years thereafter, adjust for the effects
4 of inflation on such test. Any such adjustment that is not
5 a multiple of \$100,000 shall be rounded to the nearest
6 multiple of \$100,000.”



**Restoring American Financial Stability
Conference Amendment (Senate
Counteroffer)**

- 1 On page 464, line 16, insert before the period the
- 2 following: “, unless the value of the assets under manage-
- 3 ment by such fund or funds exceeds \$1,000,000,000”.

Restoring American Financial Stability Conference Amendment (Counteroffer)

1 Strike section 410 and insert the following:

2 **SEC. 410. STATE AND FEDERAL RESPONSIBILITIES; ASSET**
3 **THRESHOLD FOR FEDERAL REGISTRATION**
4 **OF INVESTMENT ADVISERS.**

5 Section 203A(a) of the of the Investment Advisers
6 Act of 1940 (15 U.S.C. 80b-3a(a)) is amended—

7 (1) by redesignating paragraph (2) as para-
8 graph (3); and

9 (2) by inserting after paragraph (1) the fol-
10 lowing:

11 “(2) **TREATMENT OF MID-SIZED INVESTMENT**
12 **ADVISERS.—**

13 “(A) **IN GENERAL.—**No investment adviser
14 described in subparagraph (B) shall register
15 under section 203, unless the investment ad-
16 viser is an adviser to an investment company
17 registered under the Investment Company Act
18 of 1940, or a company which has elected to be
19 a business development company pursuant to
20 section 54 of the Investment Company Act of
21 1940, and has not withdrawn the election, ex-

1 cept that, if by effect of this paragraph an in-
2 vestment adviser would be required to register
3 with 15 or more States, then the adviser may
4 register under section 203.

5 “(B) COVERED PERSONS.—An investment
6 adviser described in this subparagraph is an in-
7 vestment adviser that—

8 “(i) is required to be registered as an
9 investment adviser with the securities com-
10 missioner (or any agency or office per-
11 forming like functions) of the State in
12 which it maintains its principal office and
13 place of business and, if registered, would
14 be subject to examination as an investment
15 adviser by any such commissioner, agency,
16 or office; and

17 “(ii) has assets under management
18 of—

19 “(I) not less than the amount
20 specified under subparagraph (A) of
21 paragraph (1), as such amount may
22 have been adjusted by the Commission
23 pursuant to that subparagraph; and

24 “(II) not more than
25 \$100,000,000, or such higher amount

1 as the Commission may, by rule, deem
2 appropriate in accordance with the
3 purposes of this title.”

*As Passed
by the Senate
Conferees*

**** Senate Counteroffer ****

Title: Title V
Matter: Federal Insurance Office

The Senate accepts the following House proposals for amendments to the Base text:

1. Change the office name from "National Insurance Office" to "Federal Insurance Office".
2. Add House requirement that Treasury coordinate with the Secretary of Health & Human Services in determining which lines of insurance are health insurance & therefore excluded from FIO authority.
3. Add House provisions to include United States Trade Representative and the relevant congressional committees (FSC, W&M, SBC, SFC) in process by which Treasury negotiates, finalizes and enforces international insurance agreements. This package of related changes includes:
 - Requirement that Treasury and USTR jointly negotiate international insurance agreements;
 - Requirement for Congressional "consultation and lay over" before international insurance agreements can take effect.
4. Add House provision requiring FIO to make Paperwork Reduction Act showing before requiring insurers to produce information. Senate base text requires FIO to "coordinate" with State & Federal agencies/regulators to determine if desired information is available through sources other than directly from insurers, but Senate version does not require FIO to get information from alternate source if available.
5. Add study on U.S. and Global Reinsurance Markets.

The Senate does not accept the following House proposals for amendments to the Base text:

1. Requirement for de novo judicial review of FIO administrative finding.
2. Replacement of Senate definition of "International Insurance Agreement on Prudential Measures" with House "covered agreement" definition.

Senate Counteroffer

FINANCIAL REFORM CONFERENCE:

HOUSE OFFER FOR TITLE V

{Page and line numbers refer to Conference Base Text}

Page 472, strike line 13 and 14 and insert the following:

1 **Subtitle A—Federal Insurance**
2 **Office**

Page 472, lines 16 and 17, strike "Office of National Insurance" and insert "Federal Insurance Office".

Page 472, strike lines 18 and 19, and insert the following:

3 **SEC. 502. FEDERAL INSURANCE OFFICE.**

Page 473, strike line 3 and insert the following:

4 **"SEC. 313. FEDERAL INSURANCE OFFICE."**

Page 473, lines 5 and 6, strike "Office of National Insurance" and insert "Federal Insurance Office".

Page 474, lines 24 and 25, strike "International Insurance Agreements on Prudential Matters" and insert "covered agreements (as such term is defined in subsection (r))".

Page 475, lines 3 and 4, strike "~~International Insurance Agreements on Prudential Matters~~" and insert "~~covered agreements~~".

Page 475, after line 15 insert the following:

1 “(3) ADVISORY CAPACITY ON COUNCIL.—The
2 Director shall serve in an advisory capacity on the
3 Financial Stability Oversight Council established
4 under the Financial Stability Act of 2010.”.

Page 475, lines 17 and 18, strike “as such insurance is determined by the Secretary” and insert “as determined by the Secretary in coordination with the Secretary of Health and Human Services”.

Page 477, strike lines 4 through 18 and insert the following:

5 “(4) ADVANCE COORDINATION.—Before col-
6 lecting any data or information under paragraph (2)
7 from an insurer, or affiliate of an insurer, the Office
8 shall coordinate with each relevant Federal agency
9 and State insurance regulator (or other relevant
10 Federal or State regulatory agency, if any, in the
11 case of an affiliate of an insurer) and any publicly
12 available sources to determine if the information to
13 be collected is available from, and may be obtained
14 in a timely manner by, such Federal agency or State

1 insurance regulator, individually or collectively, other
2 regulatory agency, or publicly available sources. If
3 the Director determines that such data or informa-
4 tion is available, and may be obtained in a timely
5 manner, from such an agency, regulator, regulatory
6 agency, or source, the Director shall obtain the data
7 or information from such agency, regulator, regu-
8 latory agency, or source. If the Director determines
9 that such data or information is not so available, the
10 Director may collect such data or information from
11 an insurer (or affiliate) only if the Director complies
12 with the requirements of subchapter I of chapter 35
13 of title 44, United States Code (relating to Federal
14 information policy; commonly known as the Paper-
15 work Reduction Act) in collecting such data or infor-
16 mation. Notwithstanding any other provision of law,
17 each such relevant Federal agency and State insur-
18 ance regulator or other Federal or State regulatory
19 agency is authorized to provide to the Office such
20 data or information.”.

Page 480, line 7, after “preempted” insert “pursu-
ant to this section or section 314”.

Page 480, lines 12 through 14, strike “an inter-
national insurance agreement on prudential measures”
and insert “a covered agreement”.

Page 480, lines 17 and 18, strike “International Insurance Agreements on Prudential Matters” and insert “covered agreements”.

Page 480, after line 25, insert the following new clause (and redesignate succeeding clauses accordingly):

1 “(ii) notify and consult with the
2 United States Trade Representative re-
3 garding any potential inconsistency or pre-
4 emption;”.

Page 481, lines 6 and 7, strike “International Insurance Agreements on Prudential Matters” and insert “covered agreements”.

Page 482, strike lines 3 through 7 and insert the following:

5 “(iii) notify the Committees on Finan-
6 cial Services and Ways and Means of the
7 House of Representatives and the Commit-
8 tees on Banking, Housing, and Urban Af-
9 fairs and Finance of the Senate.”.

Page 482, line 25, before the period insert the following: “, except that in any action for judicial review of a determination of inconsistency, the court shall determine the matter de novo”.

Page 484, strike lines 12 through 22 and insert the following new subsections (and redesignate succeeding subsections accordingly):

1 “(l) RETENTION OF AUTHORITY OF FEDERAL FI-
2 NANCIAL REGULATORY AGENCIES.—Nothing in this sec-
3 tion or section 314 shall be construed to limit the author-
4 ity of any Federal financial regulatory agency, including
5 the authority to develop and coordinate policy, negotiate,
6 and enter into agreements with foreign governments, au-
7 thorities, regulators, and multi-national regulatory com-
8 mittees and to preempt State measures to affect uni-
9 formity with international regulatory agreements.

10 “(m) RETENTION OF AUTHORITY OF UNITED
11 STATES TRADE REPRESENTATIVE.—Nothing in this sec-
12 tion or section 314 shall be construed to affect the author-
13 ity of the Office of the United States Trade Representative
14 pursuant to section 141 of the Trade Act of 1974 (19
15 U.S.C. 2171) or any other provision of law, including au-
16 thority over the development and coordination of United
17 States international trade policy and the administration
18 of the United States trade agreements program.

19 “(n) ANNUAL REPORTS TO CONGRESS.—

20 “(1) SECTION 313(f) REPORTS.—Beginning
21 September 30, 2011, the Director shall submit a re-
22 port on or before September 30 of each calendar

1 year to the President and to the Committees on Fi-
2 nancial Services and Ways and Means of the House
3 of Representatives and the Committees on Banking,
4 Housing, and Urban Affairs and Finance of the
5 Senate on any actions taken by the Office pursuant
6 to subsection (f) (regarding preemption of incon-
7 sistent State insurance measures).

8 “(2) INSURANCE INDUSTRY.—Beginning Sep-
9 tember 30, 2011, the Director shall submit a report
10 on or before September 30 of each calendar year to
11 the President and to the Committee on Financial
12 Services of the House of Representatives and the
13 Committee on Banking, Housing, and Urban Affairs
14 of the Senate on the insurance industry and any
15 other information as deemed relevant by the Direc-
16 tor or requested by such Committees.

17 “(o) REPORTS ON U.S. AND GLOBAL REINSURANCE
18 MARKET.—The Director shall submit to the Committee
19 on Financial Services of the House of Representatives and
20 the Committee on Banking, Housing, and Urban Affairs
21 of the Senate—

22 “(1) a report received not later than September
23 30, 2012, describing the breadth and scope of the
24 global reinsurance market and the critical role such

1 market plays in supporting insurance in the United
2 States; and

3 “(2) a report received not later than January 1,
4 2013, and updated not later than January 1, 2015,
5 describing the impact of Subtitle B of the Non-Ad-
6 mitted and Reinsurance Reform Act of 2010 on the
7 ability of State regulators to access reinsurance in-
8 formation for regulated companies in their jurisdic-
9 tions.”.

Page 488, lines 3 and 4, strike “National Associa-
tion of Insurance Commissioners” and insert “State in-
surance regulators”.

Page 488, line 11, before the period insert “and the
Secretary shall dedicate specific personnel to the Office”.

Page 488, after line 17, insert the following new
paragraph (and redesignate succeeding paragraphs ac-
cordingly):

10 “(2) COVERED AGREEMENT.—The term ‘cov-
11 ered agreement’ means a written bilateral or multi-
12 lateral recognition agreement that—
13 (A) is entered into between the United
14 States and one or more foreign governments,
15 authorities, or regulatory entities; and

1 “(B) provides for recognition of prudential
 2 measures with respect to the business of insur-
 3 ance or reinsurance that achieves a level of pro-
 4 tection for insurance or reinsurance consumers
 5 that is substantially equivalent to the level of
 6 protection achieved under State insurance or re-
 insurance regulation.”

Strike line 21 on page 488 and all that follows
 through page 489, line 3, and insert the following new
 paragraph:

Page 488,
 after line 17,

and
 redesignate
 succeeding
 paragraphs
 accordingly

8 “(4) FEDERAL FINANCIAL REGULATORY AGEN-
 9 CY.—The term ‘Federal financial regulatory agency’
 10 means the Department of the Treasury, the Board
 11 of Governors of the Federal Reserve System, the Of-
 12 fice of the Comptroller of the Currency, the Office
 13 of Thrift Supervision, the Securities and Exchange
 14 Commission, the Commodity Futures Trading Com-
 15 mission, the Federal Deposit Insurance Corporation,
 16 the Federal Housing Finance Agency, or the Na-
 17 tional Credit Union Administration.”

Page 489, lines 9 and 10, strike “Office of National
 Insurance” and insert “Federal Insurance Office”.

Page 490, strike lines 6 through 24 and insert the
 following:

1 "SEC. 314. ~~COVERED AGREEMENTS.~~

2 "(a) AUTHORITY.—The Secretary and the United
3 States Trade Representative are authorized, jointly, to ne-
4 gotiate and enter into ~~covered agreements~~ on behalf of the
5 United States.

international / insurance agreement

6 "(b) REQUIREMENTS FOR CONSULTATION WITH
7 CONGRESS.—

on prudential measures

8 "(1) IN GENERAL.—Before initiating negotia-
9 tions to enter into ~~a covered agreement~~ under sub-
10 section (a), during such negotiations, and before en-
11 tering into any such agreement, the Secretary and
12 the United States Trade Representative shall jointly
13 consult with the Committee on Financial Services
14 and the Committee on Ways and Means of the
15 House of Representatives and the Committee on
16 Banking, Housing, and Urban Affairs and the Com-
17 mittee on Finance of the Senate.

an international insurance agreement on prudential measures

18 "(2) SCOPE.—The consultation described in
19 paragraph (1) shall include consultation with respect
20 to—

21 "(A) the nature of the agreement;

22 "(B) how and to what extent the agree-
23 ment will achieve the applicable purposes, poli-
24 cies, priorities, and objectives of section 313
25 and this section; and

1 “(C) the implementation of the agreement,
2 including the general effect of the agreement on
3 existing State laws.

4 “(c) SUBMISSION AND LAYOVER PROVISIONS.—
5 ~~covered agreement~~ under subsection (a) may enter into
6 force with respect to the United States only if—

An
International
insurance
agreement
on
prudential
measures

7 “(1) the Secretary and the United States Trade
8 Representative jointly submit to the congressional
9 committees specified in subsection (b)(1), on a day
10 on which both Houses of Congress are in session, a
11 copy of the final legal text of the agreement; and

12 “(2) a period of 90 calendar days beginning on
13 the date on which the copy of the final legal text of
14 the agreement is submitted to the congressional
15 committees under paragraph (1) has expired.”.

Page 491, after line 16, in the item relating to section 313, strike “Office of National Insurance” and insert “Federal Insurance Office”.

Page 507, after line 8, insert the following:

16 (15) STATE.—The term “State” includes any
17 State of the United States, the District of Columbia,
18 the Commonwealth of Puerto Rico, Guam, the
19 Northern Mariana Islands, the Virgin Islands, and
20 American Samoa.

Page 510, after line 19, insert the following:

1 (5) STATE.—The term “State” includes any
2 State of the United States, the District of Columbia,
3 the Commonwealth of Puerto Rico, Guam, the
4 Northern Mariana Islands, the Virgin Islands, and
5 American Samoa.



**AMENDMENT TO HOUSE OFFER FOR TITLE V
OFFERED BY MR. WAXMAN OF CALIFORNIA**

On page 2 of the House Offer, strike the instruction relating to page 475, lines 17 and 18 of the Conference Base Text, and insert the following:

Page 475, strike lines 16 through 21 and insert the following:

1 “(d) SCOPE.—The authority of the Office shall ex-
2 tend to all lines of insurance except—

3 “(1) health insurance, as determined by the
4 Secretary in coordination with the Secretary of
5 Health and Human Services based on section 2791
6 of the Public Health Service Act (42 U.S.C. 300gg-
7 91);

8 “(2) long-term care insurance, except long-term
9 care insurance that ~~includes~~ life or annuity insur-
10 ance components, as determined by the Secretary in
11 coordination with the Secretary of Health and
12 Human Services, and in the case of long-term care
13 insurance that ~~includes~~ such components the Sec-
14 retary shall coordinate with the Secretary of Health

*is included
with*

1 and Human Services in performing the functions of
2 the Office; and
3 “(3) crop insurance, as established by the Fed-
4 eral Crop Insurance Act (7 U.S.C. 1501 et seq.).”



As Passed
by the Senate
Conferees

**** Draft Senate Counteroffer ****

Title: Title IX, Subtitle C

Matter: Improvements to the Regulation of Credit Rating Agencies

1. Add House provision to strike references to 'furnish' and replace with 'file' (and their derivations) in existing statute. Information that is "furnished" to the SEC is subject to a lower standard of accuracy and liability than information that is "filed" with the SEC (e.g. liability for misleading statements only attaches to those who 'file' documents with the SEC. (House bill § 6002, page 1219, lines 3-10, etc.)

Accept

2. Add House provisions concerning conflicts of interest. Provisions include an explicit prohibition of an NRSRO advising the issuer and rating that issuer's securities, a look-back requirement at the ratings of an analyst that switches jobs, and public notification of a job change by an analyst. (House bill pages 1231-1234 and page 1251)

2A (conflicts on consulting) *Counteroffer – Sense of the Senate that SEC should use its authority in Title 15E of the Exchange Act "to prohibit, or require the management and disclosure of, any conflicts of interest relating to the issuance of credit ratings by a nationally recognized statistical rating organization, including, without limitation, conflicts of interest relating to . . . the provision of consulting, advisory, or other services by a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, to the obligor, or any affiliate of the obligor."*

2B (Look back)

Accept

2C (SEC Employee Notification)

Accept

3. **Strike and replace Senate provision** for state of mind in private actions of 'knowing and reckless'. **Replace with House provision** that states a gross negligence requirement for cases brought against NRSROs in violating the anti-fraud provisions of the securities laws and that standard is to be applied to NRSROs in the same manner as it is applied to other defendants in the same lawsuits under the securities laws. Statements made by NRSROs shall not be deemed forward-looking statements. An investor in a rated security can recover damages if the process of determining ratings is deemed grossly negligent and a substantial factor in the economic loss of the investor. (Strike Senate bill § 933, page 1171 and replace with House bill § 6003, page 1252).

Reject.

4. **Strike and replace Senate provision** that creates an SRO under the SEC that would assign responsibility for initial ratings of structured securities to a "qualified" NRSRO. **Replace with House provision** that commissions an SEC study to evaluate conflicts of interest, the metrics applied to determine the 'accuracy' of ratings, the use of an independent utility that assigns ratings for structured finance, and ability of an SRO-type entity to set appropriate fees to

compensate and provide incentives for accurate ratings. The SEC will have 1 year to conduct the study. The SEC will present to Congress recommendations for either regulatory or statutory changes that the SEC believes should be made to implement the findings. (Senate bill § 939D, page 1184 and replace with House bill § 6003, page 1252)

Counteroffer – study plus directing the SEC to set up a mechanism that would have credit rating assignments made without inappropriate influence arising from conflicts of interest present in the issuer pay model

5. Add House provision that eliminates the credit rating agency exemption from the Fair Disclosure rule when working with issuers. Reg FD mandates the full disclosure of material non-public information. (House bill § 6007, page 1254)

Reject.

7. Add House provision that eliminates the NRSRO exemption from expert liability under Section 11 of the securities laws (Rule 436(g)). (House bill § 6012, page 1264)

Reject.

HOUSE PROPOSED AMENDMENTS TO SUBTITLE C
OF TITLE IX

Page 1145, after line 11, insert the following (and redesignate succeeding paragraphs accordingly):

- 1 (1) in subsection (b)—
2 (A) in paragraph (1)(A), by striking “fur-
3 nished” and inserting “filed” and by striking
4 “furnishing” and inserting “filing”;
5 (B) in paragraph (1)(B), by striking “fur-
6 nishing” and inserting “filing”; and
7 (C) in the first sentence of paragraph (2),
8 by striking “furnish to” and inserting “file
9 with”;

Page 1147, after line 23, insert the following new subparagraph (and redesignate succeeding subparagraphs accordingly);

- 10 (C) in paragraph (2), by striking “fur-
11 nished to” and inserting “filed with”;

Page 1148, beginning on line 11, strike “redesignated,” and all that follows through line 12, and insert “redesignated—

#1 ACCEPT

#1
ACCEPT

- 1 (i) by striking "furnish" and inserting
- 2 "file"; and
- 3 (ii) by striking "or" at the end.

Page 1151, line 3, strike the closed quotation mark and following period and after such line insert the following:

4 "(4) LOOK-BACK REQUIREMENT.—

5 "(A) REVIEW BY THE NATIONALLY RECOG-

6 NIZED STATISTICAL RATING ORGANIZATION.—

7 Each nationally recognized statistical rating or-

8 ganization shall establish, maintain, and enforce

9 policies and procedures reasonably designed to

10 ensure that, in any case in which an employee

11 of a person subject to a credit rating of the na-

12 tionally recognized statistical rating organiza-

13 tion or the issuer, underwriter, or sponsor of a

14 security or money market instrument subject to

15 a credit rating of the nationally recognized sta-

16 tistical rating organization was employed by the

17 nationally recognized statistical rating organiza-

18 tion and participated in any capacity in deter-

19 mining credit ratings for the person or the se-

20 curities or money market instruments during

21 the 1-year period preceding the date an action

22 was taken with respect to the credit rating, the

#2a
ACCEPT

1 nationally recognized statistical rating organiza-
2 tion shall—

3 “(i) conduct a review to determine
4 whether any conflicts of interest of the em-
5 ployee influenced the credit rating; and

6 “(ii) take action to revise the rating if
7 appropriate, in accordance with such rules
8 as the Commission shall prescribe.

9 “(B) REVIEW BY COMMISSION.—

10 “(i) IN GENERAL.—The Commission
11 shall conduct periodic reviews of the poli-
12 cies described in subparagraph (A) and the
13 implementation of the policies at each na-
14 tionally recognized statistical rating orga-
15 nization to ensure they are reasonably de-
16 signed and implemented to most effectively
17 eliminate conflicts of interest.

18 “(ii) TIMING OF REVIEWS.—The Com-
19 mission shall review the code of ethics and
20 conflict of interest policy of each nationally
21 recognized statistical rating organization—

22 “(I) not less frequently than an-
23 nually; and

24 “(II) whenever such policies are
25 materially modified or amended.

1 “(5) REPORT TO COMMISSION ON CERTAIN EM-
2 PLOYMENT TRANSITIONS.—

3 “(A) REPORT REQUIRED.—Each nationally
4 recognized statistical rating organization shall
5 report to the Commission any case such organi-
6 zation knows or can reasonably be expected to
7 know where a person associated with such orga-
8 nization within the previous 5 years obtains em-
9 ployment with any obligor, issuer, underwriter,
10 or sponsor of a security or money market in-
11 strument for which the organization issued a
12 credit rating during the 12-month period prior
13 to such employment, if such employee—

14 “(i) was a senior officer of such orga-
15 nization;

16 “(ii) participated in any capacity in
17 determining credit ratings for such obligor,
18 issuer, underwriter, or sponsor; or

19 “(iii) supervised an employee de-
20 scribed in clause (ii).

21 “(B) PUBLIC DISCLOSURE.—Upon receiv-
22 ing such a report, the Commission shall make
23 such information publicly available.”

Page 1153, line 11, strike “and” and insert the fol-
lowing:

#2
ACCEPT

1 (5) in subsection (k), by striking "furnish to"
2 and inserting "file with";

3 (6) in subsection (l)(2)(A)(i), by striking "fur-
4 nished" and inserting "filed"; and

Page 1153, line 12, strike "(5)" and insert "(7)".

Page 1171, line 9, strike the closed quotation mark
and following period and insert after such line the fol-
lowing:

#2
REJECT
OFFER
ANNEX A

5 "(u) PROHIBITED ACTIVITIES.—Beginning 180 days
6 from the date of enactment of the Investor Protection and
7 Securities Reform Act of 2010, it shall be unlawful for
8 a nationally recognized statistical rating organization, or
9 an affiliate of a nationally recognized statistical rating or-
10 ganization, or any person associated with a nationally rec-
11 ognized statistical rating organization, that provides a
12 credit rating for an issuer, underwriter, or placement
13 agent of a security to provide any non-rating service to
14 that issuer, underwriter, or placement agent in deter-
15 mining a credit rating, including—

16 "(1) risk management advisory services;

17 "(2) advice or consultation relating to any
18 merger, sales, or disposition of assets of the issuer;

ANNEX A
(House #2)

**FINANCIAL REFORM CONFERENCE:
SENATE COUNTEROFFER FOR SUBTITLE C OF
TITLE IX**

[Page and line numbers refer to Conference Base Text]

Page 1203, after line 17 insert the following:

1 SEC. 939E. SENSE OF CONGRESS.

2 It is the sense of Congress that the Commission
3 should exercise the rulemaking authority of the Commis-
4 sion under section 15E(h)(2)(B) of the Securities Ex-
5 change Act of 1934 (15 U.S.C. 78o-7(h)(2)(B)) to pre-
6 vent improper conflicts of interest arising from employees
7 of nationally recognized statistical rating organizations
8 providing services to issuers of securities that are unre-
9 lated to the issuance of credit ratings, including con-
10 sulting, advisory, and other services.

☒

#2
REJECT

1 “(3) ancillary assistance, advice, or consulting
 2 services unrelated to any specific credit rating
 3 issuance; and
 4 “(4) such further activities or services as the
 5 Commission may determine as necessary or appro-
 6 priate in the public interest or for the protection of
 7 investors.”.

Page 1171, strike line 10 through page 1173, line 4, and insert the following:

#3
REJECT

(KEEP
SENATE
SECTION,
FROM SEN.
REED)

8 **SEC. 933. STANDARDS FOR PRIVATE ACTIONS.**

9 (a) **IN GENERAL.**—Section 21D(b)(2) of the Securi-
 10 ties Exchange Act of 1934 (15 U.S.C. 78u-4(b)(2)) is
 11 amended by inserting before the period at the end of the
 12 following: “), and in the case of an action brought under
 13 this title for money damages against a credit rating agen-
 14 cy, it shall be sufficient for purposes of pleading any re-
 15 quired state of mind for purposes of such action that the
 16 complaint shall state with particularity facts giving rise
 17 to a strong inference that the credit rating agency was
 18 grossly negligent in violating the securities laws”.

19 (b) **PLEADING STANDARD.**—Section 15E(m) of the
 20 Securities Exchange Act of 1934 (15 U.S.C. 78o-7(m))
 21 amended to read as follows:

22 “(m) **APPLICATION OF ENFORCEMENT PROVISIONS;**
 23 **PLEADING STANDARD IN PRIVATE RIGHTS OF ACTION.**—

1 Statements made by credit rating agencies shall not be
2 deemed forward looking statements for purposes of section
3 21E. In any private right of action commenced against
4 a credit rating agency under the securities laws, the same
5 pleading standards with respect to gross negligence shall
6 apply to the credit rating agency as would apply to any
7 other person in the same private right of action against
8 such person.”.

9 (c) REQUIREMENTS FOR LIABILITY.—Section 21D of
10 the Securities Exchange Act of 1934 (15 U.S.C. 78u-4)
11 is amended—

#3
REJECT

12 (1) by redesignating subsections (c) through (f)
13 as subsections (d) through (g), respectively; and

14 (2) by inserting after subsection (b) the fol-
15 lowing:

16 “(c) REQUIREMENTS FOR LIABILITY.—A purchaser
17 of a security given a rating by a credit rating agency shall
18 have the right to recover for damages if the process of
19 determining the credit rating was—

20 “(1) grossly negligent, based on the facts and
21 circumstances at the time the rating was issued; and

22 “(2) a substantial factor in the economic loss
23 suffered by the investor.

24 No action shall be maintained to enforce any liability cre-
25 ated under this subsection unless brought within 2 years

~~1 after the discovery of the facts constituting the violation
2 and within 3 years after the initial issuance of the rat-
3 ing."~~

Page 1181, after line 17, insert the following new sections (and redesignate succeeding sections and conform the table of contents accordingly):

#5
REJECT

~~22 SEC. 939B. ELIMINATION OF EXEMPTION FROM FAIR DIS-
23 CLOSURE RULE.
24 Not later than 90 days after the date of enactment
25 of this subtitle, the Securities Exchange Commission shall~~

#5
REJECT

- 1 revise Regulation FD (17 C.F.R. 243.100) to remove from
- 2 such regulation the exemption for entities whose primary
- 3 business is the issuance of credit ratings (17 C.F.R.
- 4 243.100(b)(2)(iii)).

Page 1184, strike line 20 through page 1203, line 17, and insert the following (and conform the table of contents accordingly):

#4
REJECT

5 SEC. 939D. STUDY ON ASSIGNED CREDIT RATINGS.

FRANKEN

6 (a) STUDY.—The Securities and Exchange Commis-
7 sion shall undertake a study of the—

8 (1) ratings process for structured products and
9 the associated conflicts of interest in both the issuer-
10 pay and subscriber-pay models;

11 (2) feasibility of establishing a public or private
12 utility or self-regulatory agency that assigns nation-
13 ally recognized statistical ratings organizations to
14 determine the ratings of issuers and obligors of
15 structured products including—

16 (A) an assessment of potential mechanisms
17 for determining fees for the nationally recog-
18 nized statistical ratings organizations, if so as-
19 signed;

20 (B) appropriate methods for paying fees to
21 the assigned rating agencies;

FRANKEN

1 (C) the extent to which the creation of
 2 such a system would be viewed as creating
 3 moral hazard on the part of the government;
 4 and

5 (D) any constitutional and other issues
 6 concerning the establishment of such a system;

7 (3) range of metrics by which to determine the
 8 accuracy of ratings; and

9 (4) alternative means for compensating credit
 10 rating agencies that would create incentives for ac-
 11 curate credit ratings.

#4
 REJECT

12 (b) REPORT AND RECOMMENDATION.—Not later
 13 than 12 months after the date of enactment of this title,
 14 the Securities and Exchange Commission shall submit to
 15 Committee on Financial Services of the House of Rep-
 16 resentatives and Committee on Banking, Housing and
 17 Urban Development of the Senate, a report containing the
 18 findings under the study required by subsection (a) and
 19 any recommendations for either regulatory or statutory
 20 changes that the Commission believes should be made to
 21 implement the findings.

Page 1203, after line 17, insert the following new
 section (and conform the table of contents accordingly):

#7
REJECT

1 SEC. 6012. EFFECT OF RULE 436(G).

2 Rule 436(g), promulgated by the Securities and Ex-

3 change Commission under the Securities Act of 1933,

4 shall have no force or effect.



**FINANCIAL REFORM CONFERENCE:
SENATE COUNTEROFFER FOR SUBTITLE C OF
TITLE IX**

[Page and line numbers refer to Conference Base Text]

Strike section 989D and insert the following:

1 **SEC. 939D. STUDY AND RULEMAKING ON ASSIGNED CREDIT**

2 **RATINGS.**

3 (a) **DEFINITION.**—In this section, the term “struc-
4 tured finance product” means an asset-backed security, as
5 defined in section 3(a)(77) of the Securities Exchange Act
6 of 1934, as added by section 941, a structured product
7 based on an asset-backed security, and any other security,
8 as determined by the Commission, by rule.

9 (b) **STUDY.**—The Commission shall carry out a study
10 of—

11 (1) the credit rating process for structured fi-
12 nance products and the conflicts of interest associ-
13 ated with the issuer-pay and the subscriber-pay
14 models;

15 (2) the feasibility of establishing a system in
16 which a public or private utility or a self-regulatory
17 organization assigns nationally recognized statistical

1 rating organizations to determine the credit ratings
2 of structured finance products, including—

3 (A) an assessment of potential mechanisms
4 for determining fees for the nationally recog-
5 nized statistical rating organizations;

6 (B) appropriate methods for paying fees to
7 the nationally recognized statistical rating orga-
8 nizations;

9 (C) the extent to which the creation of
10 such a system would be viewed as the creation
11 of moral hazard by the Federal Government;
12 and

13 (D) any constitutional or other issues con-
14 cerning the establishment of such a system;

15 (3) the range of metrics that could be used to
16 determine the accuracy of credit ratings; and

17 (4) alternative means for compensating nation-
18 ally recognized statistical rating organizations that
19 would create incentives for accurate credit ratings.

20 (c) REPORT AND RECOMMENDATION.—Not later
21 than 12 months after the date of enactment of this Act,
22 the Commission shall submit to the Committee on Bank-
23 ing, Housing, and Urban Affairs of the Senate and the
24 Committee on Financial Services of the House of Rep-
25 resentatives a report that contains—

1 (1) the findings of the study required under
2 subsection (b); and

3 (2) any recommendations for regulatory or stat-
4 utory changes that the Commission determines
5 should be made to implement the findings of the
6 study required under subsection (b).

7 (d) RULEMAKING.—

8 (1) RULEMAKING AUTHORIZED.—After submis-
9 sion of the report under subsection (c), the Commis-
10 sion may, by rule, as the Commission determines is
11 necessary or appropriate in the public interest or for
12 the protection of investors, establish a system for the
13 assignment of nationally recognized statistical rating
14 organizations to determine the credit ratings of
15 structured finance products, in a manner that pre-
16 vents the issuer, sponsor, or underwriter of the
17 structured finance product from selecting the nation-
18 ally recognized statistical rating organization that
19 will determine the credit ratings and monitor the
20 credit ratings.

21 (2) RULE OF CONSTRUCTION.—Nothing in this
22 subsection may be construed to limit or suspend any
23 other rulemaking authority of the Commission.



**FINANCIAL REFORM CONFERENCE:
SENATE COUNTEROFFER FOR SUBTITLE C OF
TITLE IX**

[Page and line numbers refer to Conference Base Text]

Page 1203, after line 17 insert the following:

1 **SEC. 939E. SENSE OF CONGRESS.**

2 It is the sense of Congress that the Commission
3 should exercise the rulemaking authority of the Commis-
4 sion under section 15E(h)(2)(B) of the Securities Ex-
5 change Act of 1934 (15 U.S.C. 78o-7(h)(2)(B)) to pre-
6 vent improper conflicts of interest arising from employees
7 of nationally recognized statistical rating organizations
8 providing services to issuers of securities that are unre-
9 lated to the issuance of credit ratings, including con-
10 sulting, advisory, and other services.

☒

**FINANCIAL REFORM CONFERENCE:
SENATE COUNTEROFFER FOR SUBTITLE C OF
TITLE IX**

[Page and line numbers refer to Conference Base Text]

Strike section 989D and insert the following:

1 **SEC. 939D. STUDY AND RULEMAKING ON ASSIGNED CREDIT**
2 **RATINGS.**

3 (a) DEFINITION.—In this section, the term “struc-
4 tured finance product” means an asset-backed security, as
5 defined in section 3(a)(77) of the Securities Exchange Act
6 of 1934, as added by section 941, a structured product
7 based on an asset-backed security, and any other security,
8 as determined by the Commission, by rule.

9 (b) STUDY.—The Commission shall carry out a study
10 of—

11 (1) the credit rating process for structured fi-
12 nance products and the conflicts of interest associ-
13 ated with the issuer-pay and the subscriber-pay
14 models;

15 (2) the feasibility of establishing a system in
16 which a public or private utility or a self-regulatory
17 organization assigns nationally recognized statistical

1 rating organizations to determine the credit ratings
2 of structured finance products, including—

3 (A) an assessment of potential mechanisms
4 for determining fees for the nationally recog-
5 nized statistical rating organizations;

6 (B) appropriate methods for paying fees to
7 the nationally recognized statistical rating orga-
8 nizations;

9 (C) the extent to which the creation of
10 such a system would be viewed as the creation
11 of moral hazard by the Federal Government;
12 and

13 (D) any constitutional or other issues con-
14 cerning the establishment of such a system;

15 (3) the range of metrics that could be used to
16 determine the accuracy of credit ratings; and

17 (4) alternative means for compensating nation-
18 ally recognized statistical rating organizations that
19 would create incentives for accurate credit ratings.

20 (c) REPORT AND RECOMMENDATION.—Not later
21 than 12 months after the date of enactment of this Act,
22 the Commission shall submit to the Committee on Bank-
23 ing, Housing, and Urban Affairs of the Senate and the
24 Committee on Financial Services of the House of Rep-
25 resentatives a report that contains—

1 (1) the findings of the study required under
2 subsection (b); and

3 (2) any recommendations for regulatory or stat-
4 utory changes that the Commission determines
5 should be made to implement the findings of the
6 study required under subsection (b).

7 (d) RULEMAKING.—

8 (1) RULEMAKING AUTHORIZED.—After submis-
9 sion of the report under subsection (c), the Commis-
10 sion may, by rule, as the Commission determines is
11 necessary or appropriate in the public interest or for
12 the protection of investors, establish a system for the
13 assignment of nationally recognized statistical rating
14 organizations to determine the credit ratings of
15 structured finance products, in a manner that pre-
16 vents the issuer, sponsor, or underwriter of the
17 structured finance product from selecting the nation-
18 ally recognized statistical rating organization that
19 will determine the credit ratings and monitor the
20 credit ratings. In issuing any rule under this para-
21 graph, the Commission shall give thorough consider-
22 ation to the provisions of section 15E(w) of the Se-
23 curities Exchange Act of 1934, as that provision
24 would have been amended by section 939D of H.R.

1 4173 (111th Congress), as passed by the Senate on
2 May 20, 2010.

3 (2) RULE OF CONSTRUCTION.—Nothing in this
4 subsection may be construed to limit or suspend any
5 other rulemaking authority of the Commission.



SENATE COUNTER-OFFER
TITLE IX – INVESTOR PROTECTION
WEDNESDAY, JUNE 16, 2010

1. Fiduciary Duty – **Under Discussion**
2. Add the House provision requiring the SEC to study the need for enhanced examination and enforcement resources for investment advisers. (House § 7107, p. 1289) **Accept**
3. Amend the Senate provision on the Investor Advocate’s compensation so that it is comparable to other senior executive positions, rather than equal to the highest rate of pay for the Senior Executive Service (Senate § 914, p. 1061) **Counter - Change the House clarification so that the Investor Advocate’s compensation is relative to “a senior executive that reports to the Chairman.”** **Reject** – Reject lowering the Investor Advocate’s salary from the base text.
4. Amend the Senate provisions on streamlining of SRO rule filing procedures so that the SEC has the option to *disapprove* proposed rules within the applicable deadline, not just approve the rules or institute hearings on them. (Senate § 915, p. 1070 *et seq.*) **Accept in Part – Accept providing the SEC has the ability to disapprove proposed rules. Reject- Reject changing the starting date for the period for a hearing to “after the date of receipt of a proper filing”.**
5. Amend the Senate provision on whistleblower incentives so that –
 - a. the type of original information supporting an award must have “significantly contributed” to a successful enforcement action (Senate § 922, p. 1090) and may not be “based on” allegations in judicial proceedings or news media; **Reject**
 - b. mandatory minimum awards apply only to SEC enforcement actions, not to amounts obtained in related actions brought by other enforcement agencies (Senate § 922, p. 1091); **Reject**
 - c. the standard applicable to a whistleblower appeal of an award is review for gross abuse of discretion by the SEC (Senate § 922, p. 1095); **Counter – Allow for whistleblowers to appeal an agency’s final decision but not the reward amount.**
 - d. the confidentiality provision is more narrow, covering just information that could reasonably be expected to reveal the identity of the whistleblower, not *all* information provided to the SEC by the whistleblower (Senate § 922, p. 1102). **Accept**
6. Amend the Senate provision on production of documents by foreign auditing firms to broaden and clarify the type of work that triggers the obligation to produce work papers, and to ensure that foreign firms appoint an agent not only for service of process, but also for SEC document requests. (Senate § 929J, p. 1135-1137) **Accept**
7. Amend the Senate provisions to make clear that recklessness satisfies the intent standard for aiding and abetting liability in SEC enforcement actions under the Securities Act of 1933 and the Investment Company Act. (Senate § 929M, p. 1142). **Accept**

8. Add the House provision clarifying that recklessness satisfies the intent standard for aiding and abetting liability in SEC enforcement actions under the Securities Exchange Act of 1934. (House § 7215, p. 1332) **Accept**
9. Amend the Senate provisions to make clear that recklessness satisfies the intent standard for aiding and abetting liability in SEC enforcement actions seeking penalties under the Investment Advisers Act. (Senate § 929N, p. 1142) **Accept**
10. Add the House provision, as drafted in the Reed amendment, authorizing the SEC to seek civil penalties in cease and desist proceedings against any person, not only registrants. (House § 7211, p. 1317; Reed § 922(b)) **Accept**
11. Add the House provision, as drafted in the Reed amendment, extending the SEC's enforcement jurisdiction to cover significant steps in furtherance of a violation, even if the securities transactions occur outside the U.S., and to cover foreign conduct that has a foreseeable substantial effect with the U.S. (House § 7216, p. 1332; Reed § 922(d)) **Accept**
12. Add the House provision, as drafted in the Reed amendment, clarifying that control person liability under the Section 20(a) of the Securities Exchange Act applies in SEC enforcement actions, not only in private actions. (House § 7220, p. 7220; Reed § 922(e)) **Accept**
13. Add the House provision, as drafted in the Reed amendment, expanding recordkeeping and examination requirements for custodians who hold property of clients of investment companies or investment advisers. (House § 7106, p. 1287; Reed 993(a)) **Accept**
14. Add the House provision, as drafted in the Reed amendment, giving the SEC authority to examine all records of investment companies. (House § 7219, p. 1338; Reed § 994(a)) **Reject**
15. Add the House provision, as drafted in the Reed amendment, clarifying that the SEC has authority under the Securities Exchange Act, the Investment Company Act, and the Investment Advisers Act to conduct surveillance and risk assessment of the securities markets. (House § 7218, p. 1336; Reed § 994(c)) **Reject**
16. Add the House provision, as drafted in the Reed amendment, giving the SEC authority to adopt rules that would require more timely reporting when a person acquires more than 5% ownership interest in an issuer. (House § 7105, p. 1285; Reed § 995(a)) **Accept**
17. Add the House provision, as drafted in the Reed amendment, enabling the SEC to clarify the types of relationships that compromise a person's independence for purposes of serving as a mutual fund director. (House § 7412, p. 1369; Reed § 995(c)) **Reject**
18. Add the House provision, as drafted in the Reed amendment, extending the fingerprinting requirement to personnel of national securities exchanges and national securities associations. (House § 7403, p. 1350; Reed 995(e)) **Accept**
19. Add the House provision that invalidates any contractual provision requiring persons to waive compliance with any self-regulatory organization rules. (House § 7404, p. 1351) **Accept**

20. Add the House provision requiring the SEC to complete investigations and examinations within certain time frames, subject to exceptions for complex cases. (House § 7209, p. 1313) **Accept**
21. Add the House provision increasing the assessments on SIPC members from \$150 annually to .02% of the member's gross revenues derived from the securities business. (House § 7501, p. 1388) **Accept**
22. Add the House provision increasing penalties for fraud under SIPA from \$50,000 to \$250,000. (House § 7507, p. 1393) **Accept**
23. Add the House provision establishing civil and criminal penalties against any person who misrepresents membership in SIPC or who falsely claims that an account is protected under SIPA. (House § 7508, p. 1393) **Accept**
24. Add the House provision enhancing notice to missing security holders. (House § 7421, p. 1381) **Accept**
25. Add the House provision requiring daily reporting on short sales, prohibiting manipulative short sales, and requiring notification to customers that they may elect not to allow their securities to be used in connection with short sales and that the broker may receive compensation if the shares are so used. (House § 7422, p. 1383) **Accept in Part – Accept all of the House's offer on short sale reforms except for Page 39 Line 20 through Page 40 Line 13 (SEC.929X. (a) "(2)(A)") of the House offer. – Reject – Reject daily short sale reporting by every institutional investment manager (SEC.929X. (a) "(2)(A)").**
26. Add the House provision requiring the SEC to hire a consultant to study the SEC's operations and the possible need for comprehensive reform of the agency. (House § 7304, p. 1344) **Accept**
27. Add the House provision requiring GAO to study issues surrounding employees who leave the SEC and become employed in the securities industry. (House § 7414, p. 1370) **Accept**
28. Strike and replace the Senate's provisions in Subtitle H establishing MSRB registration and oversight of municipal advisers. Replace them with the House provisions, which (a) establish SEC registration and oversight of municipal advisers, (b) impose a fiduciary duty on municipal advisers, and (c) establish greater independence of the MSRB. (House § 7801, § 7802, § 7803, p. 1429 *et seq.*, and § 7411, p. 1366) **Reject**
29. Strike the Senate provision deferring by 180 days the effective date of the PCAOB's right to assess fees on broker-dealers, to reflect the PCAOB's calendar fiscal year. (Senate § 982, p. 1295, 1293) **Accept**
30. Add a provision requiring agency heads, including the Chair of the SEC, to address deficiencies identified in any Inspector General report, or certify to both Houses of Congress that no action is necessary. (House § 3303) **Accept**
31. Amend the Senate provision on material loss reports by increasing the dollar thresholds that trigger the reporting obligation. (Senate § 987, p. 1311) **Reject**

32. Add the House provisions that exempt small issuers (less than \$75 million in market capitalization) from the requirements of Sarbanes-Oxley Section 404(b) (House § 7606, p. 1417), and require the following studies: **Reject**
- a. An SEC study of ways to reduce the burdens of compliance with Section 404(b) on companies with \$75 million to \$250,000 million in market capitalization (House § 7606, p. 1417);
 - b. An SEC study on the use of revenue as a test for defining smaller reporting companies (House § 7416, p. 1374); and
 - c. A GAO study on reducing the Sarbanes-Oxley compliance burdens and whether reducing those burdens would encourage listings on exchanges (House § 7415, 1372).

EXEC COMP

- 1. Add Shareholder Vote on Golden Parachutes. House and Senate agree on annual, non-binding, shareholder vote on executive compensation, but Senate does not include House shareholder vote on golden parachutes. **Reject**
- 2. Add House provision on Enhanced Compensation Oversight for Financial Industry. House requires all Federal financial regulators to issue and enforce joint compensation rules specifically applicable to all financial institutions with a Federal regulator. Senate bill requires only that Fed to consult with the FDIC & OCC to set safety and soundness standards for BHCs prohibiting excessive compensation plans. **Reject**
- 3. Add House mandate that SEC require that independence standards applied to compensation committee consultants are competitively neutral and treat large and small consultants equally. **Accept**
- 4. Add House mandate that SEC require institutional investor to disclose their voting in compensation-related voting. **Accept**

ADDITIONS

- 5. ADDITION: Amends Section 972 Proxy Access of the base text so that only shareholders that have owned not less than 5% of outstanding shares for not less than 2 years have access to the proxy.
- 6. ADDITION: Strike Section 971 of the Chairman's base text
- 7. ADDITION: Substitute for Sec. 978 of base text, a study on GASB funding, with a certain mechanism for annual funding of GASB
- 8. ADDITION: Amendments to add considerations in the Sec.919B Study on Financial Planners and the Use of Financial Designations

9. ADDITION: Add Section 929O – Restoration of Congressional Intent that Prospectus Is Not Restricted to Public Offerings.
10. ADDITION: Make Leahy changes to whistleblower provisions.

House Conference Amendments

1. PCAOB distinction of broker-dealers. **ACCEPT with conforming changes**
2. Stoneridge. **REJECT / offer a GAO study on the costs and benefits of creating a private right of action against aiders and abettors of securities fraud (New section 929P).**
3. SEC Ombudsman – **ACCEPT with changes to place this with the Investor Advocate**
4. Whistleblower Office. **ACCEPT**

As passed by
the Senate Conference
6/17/10

**** Senate Counteroffer ****
Revised 6/16

Title: Title XI
Matter: Federal Reserve and Emergency Liquidity Provisions

The Senate response to the proposed House amendments to the Base text is as follows:

1. House Offer: **Amend Senate provision** regarding Federal Reserve 13(3) lending to insert requirement from House-passed bill that the Federal Reserve Board and Secretary of Treasury have reasonable cause to believe that the security or other collateral policies for any emergency lending program or facility provide 99% confidence that funds disbursed under the facility or program and interest will be fully repaid. (Senate bill §1101, Page 1724, lines 16-19).

Senate response: REJECT.

2. House Offer: **Amend Senate Provision** regarding ongoing Federal Reserve audit requirements to add discount window and open market transactions to items to be reviewed by GAO. (Senate bill § 1102, Page 1730 line 7 – Page 1733, line 23).

Senate response: ACCEPT.

3. House Offer: **Amend Senate Provisions** requiring public disclosure of emergency credit facilities information to also require public disclosure of Federal Reserve open market operations and discount window transactions two years after the transactions have been entered into. (Senate bill § 1103, Page 1735, after line 17).

Senate response: ACCEPT, but change paragraph (s)(6), on page 7, which provides a broad FOIA exemption for covered transactions, to provide a narrower exemption that applies until the relevant mandatory release date.

4. House Offer: **Strike Senate Provision** on appointment of Federal Reserve Bank of New York President and limiting eligibility to vote for or serve as a Federal Reserve Bank director, and replace with provision removing the authority of the member banks' representatives on each regional board of directors (Class A directors) from appointing/voting for the President of the Reserve Bank (Senate bill § 1107, Page 1751, line 20 – 1752, line 6).

Senate response: ACCEPT.

5. House Offer: **Add House Provision** on no financial stability authority in the bill being delegated to Federal Reserve Bank Presidents to Senate Provision on no delegation of supervisory policymaking to reserve banks. (House bill § 1114, Page 132, line 3-14; Senate bill § 1108, Page 1754, line 17).

Senate response: ACCEPT.

6. House Offer: **Add House Provision** adding new restrictions to the Federal Reserve's foreign currency swap authority (House Bill, §1702, Page 517, line 1-15).

Senate response: REJECT.

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.

earlier

*until the
relevant
mandatory
release date
described in
paragraph (2)*

Revised paragraph (s)(b)

Restoring American Financial Stability Conference Amendment

Second Degree Amendment

Offered by Senator Leahy

1 At the end of the proposed Senate amendment to add
2 section 1110 to the conference base text of H.R. 4173,
3 add the following:

4 “(7) STUDY OF FOIA EXEMPTION IMPACT.—

5 “(A) STUDY.—The Inspector General of
6 the Board of Governors of the Federal Reserve
7 System shall—

8 “(i) conduct a study on the impact
9 that the exemption from section 552(b)(3)
10 of title 5 (known as the Freedom of Infor-
11 mation Act) established under paragraph
12 (5) has had on the ability of the public to
13 access information about the administra-
14 tion by the Board of Governors of emer-
15 gency credit facilities, discount window
16 lending programs, and open market oper-
17 ations; and

18 “(ii) make any recommendations on
19 whether the exemption described in clause
20 (i) should remain in effect.

