Summary of the
Dodd-Frank Wall Street Reform and Consumer Protection Act

October 12, 2010

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") was signed into law on July 21, 2010.

The Act covers almost every aspect of financial regulation and implementation requires an extraordinary amount of rulemaking. Because regulators are given significant discretion, the practical impact of the Act is in many respects still to be determined. Bingham attorneys continue to monitor developments on behalf of our clients as the process unfolds.

Following is our Summary of the Act, which is intended to outline the basic structure of the Act and to highlight selected provisions.[1] The Summary is broken into categories, with reference in each category to the relevant title(s) of the Act. Certain parts of the Act impact more than one category; in some of those cases (such as with the Volcker Rule), we have included summaries of the relevant provisions in more than one category.

As we continue to review and analyze the Act and its practical implications for the financial markets, we will be publishing specialized Alerts covering areas of interest and importance to our clients.

[1] This Summary was prepared by attorneys at Bingham McCutchen LLP under the direction of the Firm's Financial Legislative Reform Task Force. The Task Force is a multi-disciplinary team of Bingham lawyers that coordinates the Firm's work in advising financial institutions and other clients regarding the implications of Dodd-Frank and global financial reform. For further information regarding the Task Force, in addition to legal alerts, practice news, and events related to the Dodd-Frank Act, please visit Bingham McCutchen LLP's online Financial Legislative Reform Resource Center, available at *http://www.bingham.com/PracticeDetails.aspx?PracticeID=348*.

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1. Regulation of Advisers to Hedge Funds, Private Equity Funds and Others

Title IV of the Act repeals the "private adviser" exemption from registration with the U.S. Securities and Exchange Commission (the "SEC") formerly contained in Section 203(b)(3) of the Investment Advisers Act of 1940, as amended (the "Advisers Act"). As a result, many previously exempt U.S. and non-U.S. advisers of hedge funds, private equity funds and other private investment vehicles will be required to register under the Advisers Act. The "private adviser" exemption was available to an adviser if, during the preceding twelve months, the adviser advised fewer than 15 clients and neither held itself out generally to the public as an investment adviser, nor acted as an investment adviser to any investment company registered under the Investment Company Act of 1940, as amended (the "1940 Act"), or any entity electing to be treated as a business development company under the 1940 Act. The Act also provides that an adviser that (a) is required to be registered in the state in which it maintains its principal office and place of business, (b) if registered, would be subject to examination by such state and (c) has assets under management between $25 million and $100 million, **may not** register with the SEC, unless it otherwise would be required to register with 15 or more states or is an adviser to an investment company registered under the 1940 Act, or any entity electing to be treated as a business development company under the 1940 Act. As a result, many mid-size advisers will be required to switch registration from the SEC to one or more U.S. states unless they are otherwise qualified to register with the SEC.

The Act imposes new disclosure and recordkeeping requirements on many investment advisers, including some that are not required to register with the SEC under the Act. Many of these disclosure and recordkeeping requirements have yet to be identified by the SEC, but must be established within the year following the Act's enactment.

INVESTMENT ADVISERS - TITLE IV	

SEC Registration	• An adviser that is currently relying on the "private adviser" exemption and is ineligible for another exemption from Advisers Act registration, and is not prohibited from registering under the Advisers Act (see "State v. SEC Registration" below), **must** register as an investment adviser with the SEC unless it:
	  • falls within an exemption to be promulgated by the SEC for advisers that advise only funds excluded from the definition of "investment company" by Section 3(c)(1) or 3(c)(7) of the 1940 Act ("Private Funds") and have less than $150 million in assets under management in the U.S.;
	  • advises only "venture capital funds" (to be defined by the SEC within a year after enactment);
	  • does not have a place of business in the U.S.; and
	  • does not have $25 million or more (or such higher amount as the SEC may specify by rule) of aggregate assets under management attributable to U.S. clients and to U.S. investors in the Private Funds it manages;
	  • has fewer than 15 clients and investors in the U.S. in Private Funds it advises; and
	  • does not hold itself out generally to the public in the U.S. as an investment adviser, nor acts as an investment adviser to any investment company registered under the 1940 Act or any entity

	electing to be treated as a business development company under the 1940 Act.
	• is not a business development company under the 1940 Act and only advises certain license holders under the Small Business Investment Act of 1958 and applicants for these licenses;
	• is a "family office" (which term is to be defined by the SEC in a manner consistent with existing exemptive orders taking into account the range of organization, management and employment structures and arrangements employed by family offices) or provides investment advice solely to certain persons related to a family office (and did so prior to January 1, 2010);
	• is not an adviser to a Private Fund, and
	  • advises only clients resident in the state in which it maintains its principal office and place of business; and
	  • it does not offer advice with respect to nationally-listed securities or securities admitted to unlisted trading privileges on any national securities exchange; or
	• advises a Private Fund, is registered with the Commodity Futures Trading Commission (the "CFTC") as a commodity trading advisor and is not engaged predominantly in the provision of securities advice subsequent to enactment.

State v. SEC Registration	• The Act maintains the current requirement that advisers have assets under management of at least $25 million in order to be eligible to register with the SEC, subject to certain exceptions. • The Act, however, provides that an adviser that (a) is required to be registered in the state in which it maintains its principal office and place of business, (b) if registered, would be subject to examination by such state and (c) has assets under management between $25 million and $100 million, **may not** register with the SEC, unless it otherwise would be required to register with 15 or more states or is an adviser to an investment company registered under the 1940 Act, or any entity electing to be treated as a business development company under the 1940 Act. • Investment advisers with $25 million or more in assets under management that are not subject to registration and examination in their home state must register (or remain registered) with the SEC if they are not eligible for an exemption from registration with the SEC under the Advisers Act.

Disclosure and Reporting Requirements	• SEC registered advisers to Private Funds must:
	  • maintain such records and file such reports with the SEC regarding Private Funds advised by the investment adviser as the SEC deems "necessary or appropriate in the public interest and for the protection of investors";
	  • provide the Financial Stability Oversight Council (the "Council") with the data necessary to monitor systemic risk issues;
	  • maintain the following records with respect to the Private Funds they advise:
	  • the amount of assets under management and use of leverage (including off-balance sheet leverage);
	  • counterparty credit risk exposure;
	  • trading and investment positions;
	  • valuation policies and practices of the fund;
	  • types of assets held;
	  • side arrangements or side letters providing favorable terms for certain investors;
	  • trading practices; and
	  • all other information that the SEC determines, in consultation with the Council, to be "necessary and appropriate in the public interest and for the protection of investors or for the assessment of systemic risk"; and
	  • be subject to SEC examinations to be determined by the SEC.
	• The following advisers exempt from SEC registration will be subject to SEC recordkeeping and reporting requirements to be determined by the SEC:
	  • Private Fund advisers with less than $150 million in assets under management; and
	  • Advisers solely to "venture capital funds."

Information Sharing and Confidentiality	• Information Sharing
	  • The SEC is required to share the information it obtains under the Act with the Council;
	  • Neither the Council nor the SEC is authorized to withhold such information from Congress; and
	  • The SEC must comply with requests for information from other U.S. federal departments, agencies or self-regulatory organizations or an order of a U.S. court in an action brought by the U.S. government or the SEC (collectively with the Council, "Other Recipients").
	• Confidentiality
	  • Other Recipients of SEC information obtained under the Act are subject to the same confidentiality requirements as imposed on the SEC.
	  • The SEC and Other Recipients are exempt from the Freedom of Information

	Act with respect to information obtained under the Act.
	• Proprietary information of investment advisers is to be kept confidential by the SEC. This information includes sensitive non-public information regarding:
	  • the adviser's investment or trading strategies;
	  • analytical or research methodologies of the adviser;
	  • the adviser's trading data;
	  • the adviser's computer hardware or software containing intellectual property; and
	  • any additional information deemed proprietary by the SEC.

Limitation of Banking Entities Investment in Certain Private Investment Funds	• "Banking entities" (including insured banks and thrifts and their affiliates) are generally prohibited from acquiring or retaining ownership interests in and from "sponsoring" (i.e., serving as a general partner or managing member of):
	  • hedge funds; and
	  • private equity funds.
	• A banking entity **may** organize, offer and sponsor private equity and hedge funds (and retain its "seed investments" in such funds) when:
	  • it provides bona fide trust, fiduciary or investment advisory services to such fund;
	  • the fund is organized and offered only in connection with the provision of such services;
	  • the fund is offered only to customers to which the banking entity provides such services;
	  • the banking entity does not guarantee the fund's obligations or performance;
	  • the banking entity observes certain trading restrictions with respect to the fund;
	  • the banking entity discloses in writing that the fund's investors (and not the banking entity) are responsible for the fund's losses;
	  • the banking entity does not use the same name as the fund (or a variant thereof);
	  • directors and employees of the banking entity are prohibited from owning ownership interests in the fund unless such persons provide investment advisory or other services to the fund; and
	  • the banking entity otherwise complies with the following restrictions relating to its ownership interest in the fund:
	  • it actively seeks unaffiliated investors to reduce or dilute its interest in the fund;
	  • it reduces its interest in the fund to 3% or less of the total ownership interests of the fund, within one year after the fund's establishment

	(with the possibility of a two-year extension); and • the investment is immaterial to the banking entity and the banking entity's aggregate investments in such fund does not exceed 3% of its "Tier I" capital. • Banking entities must divest themselves of their excess private equity and hedge fund holdings within two years after the effective date of the divestiture requirements (which may be up to two years after enactment). This conformance period may be extended by up to three one-year periods by the Board of Governors of the Federal Reserve System (the "Fed"), which may also grant a one time five-year extension for the divestiture of certain "illiquid funds" held by a banking entity. • Nonbank financial companies regulated by the Fed will be subject to quantitative limits on their investments in private equity and hedge funds and will be required to comply with any divestiture requirements within the earlier of: • two years after the effective date of the divestiture requirements (which may be up to two years after enactment); and • two years after the date on which an entity or company becomes a nonbank financial company supervised by the Fed. • A banking entity may act as investment manager to a hedge fund or private equity fund so long as it does not enter into "covered transactions" (as defined in Section 23A of the Federal Reserve Act) with such fund, and the banking entity acts (in accordance with Section 23B of the Federal Reserve Act) as if such entity was a member bank and such fund was an affiliate. • See Section 2(b) of this Summary for further information.
Changes to Definitions of "Qualified Client" and "Accredited Investor"	• Changes to the definition of "qualified client" under the Advisers Act rules: • $750,000 assets under management and $1.5 million net worth thresholds for determining a client's status as a "qualified client" to be adjusted for inflation by the SEC one year after enactment and every five years thereafter. • Changes to the definition of "accredited investor" under the rules promulgated under the Securities Act of 1933, as amended (the "Securities Act"), and for purposes of Section 4(5) of the Securities Act: • The definition of "accredited investor" in Regulation D includes, among others, individual investors with a net worth, or joint net worth with their spouse, that exceeds $1 million. • Effective upon enactment, individuals will not be permitted to include the value of their primary residence in determining whether they have sufficient net worth, or joint net worth with their spouse, to meet this test. • Any amount of indebtedness secured by an individual's primary residence, up to the fair market value of the residence, may be excluded from the calculation of such individual's net worth for purposes of the $1

	million accreditation threshold. • Any amount of indebtedness secured by an individual's primary residence that is in excess of the fair market value of the residence must be deducted from such person's net worth for purposes of the $1 million accreditation threshold. • SEC is authorized to revise the accreditation standards once every four years, starting four years after enactment. • See Section 6 of this Summary for further information.

2. Broker-Dealer/SEC/Volcker Rule

Broker-dealers are very likely to be subject to fiduciary duties when giving personalized investment advice to their retail clients, after an SEC study. The SEC is given six months to submit a report to Congress on the harmonization of broker-dealer and investment adviser regulation. Thereafter, the Act provides that the SEC "may" commence a rulemaking on these subjects, thereby likely forestalling any regulatory action on these subjects for at least another year. Concerning mandatory predispute arbitration agreements, the SEC will receive the authority to prohibit, limit or reaffirm such clauses in the securities context. The Act also gives similar authority to the Consumer Financial Protection Bureau in the non-securities context.

The Act includes the Volcker Rule, which restricts proprietary trading by U.S. banks and their affiliates (including broker-dealers) with only limited exceptions. The Volcker Rule also will limit covered institutions when sponsoring or investing in hedge funds or private equity funds. It will also authorize the Fed to impose additional capital requirements on nonbank financial companies that engage in proprietary trading or that retain equity, partnership or other ownership interest in or sponsor a hedge fund or a private equity fund, subject to certain exceptions (see Section 1 of this Summary).

The SEC will also receive an expanded set of enforcement tools, including the ability to seek civil penalties in administrative proceedings against anyone, including public companies and officers and directors. The SEC will remain subject to the appropriations process, but will be able to propose budgets directly to Congress based on its fees and assessments on registered entities. The Act also expands the incentives for whistleblowers to report evidence of securities law violations by increasing the size of the award and providing employees a private right of action against employers who retaliate against them for their whistleblowing activities.

Although an amendment offered in the conference committee proposed to overturn Stoneridge and reintroduce a private right of action for aiding and abetting securities fraud, that amendment was scuttled in favor of a study of the implications of such a decision.

BROKER-DEALER FIDUCIARY DUTY - TITLE IX	
Rulemaking	• The SEC is authorized to enact such rules as may be necessary to address the legal or regulatory standards of care for brokers, dealers, investment advisers and associated individuals for providing personalized investment advice and recommendations about securities to retail customers. • During the rulemaking process, the SEC is directed to consider the findings, conclusions and recommendations resulting from the study discussed below under "Study."

Statutory Amendments to the Securities Exchange Act	• The Act amends Section 15 of the Securities Exchange Act of 1934 (the "Exchange Act"). Significant additions include:
	  • Notwithstanding any other provisions of the Exchange Act or the Advisers Act, the SEC may promulgate rules to provide that, with respect to a broker or dealer, when providing personalized investment advice about securities to a retail customer (and such other customers as the SEC may by rule provide), the standard for conduct for such broker or dealer with respect to such customers (the "Standard of Care") will be the same standard of conduct applicable to an investment adviser under Section 211 of the Advisers Act.
	  • The Act specifically provides that the receipt of compensation based

	on commission or other standard compensation for the sale of securities will not, in and of itself, be considered a violation of the Standard of Care. • The Act also specifically limits the application of the Standard of Care to the particular instance of providing personalized advice, and specifies that a broker, dealer or registered representative will not have a continuing duty of care or loyalty to the customer after providing the personalized investment advice about securities. • Where a broker or dealer sells only proprietary or other limited range of products, as determined by the SEC, the SEC may by rule require such broker or dealer to provide notice to each retail customer and obtain the consent or acknowledgement of the customer. • The sale of only proprietary or other limited range of products will not, in and of itself, however, be considered a violation of the Standard of Care. • The SEC is directed to facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with brokers, dealers, and investment advisers, including any material conflicts of interest. • The SEC is directed to promulgate rules prohibiting or restricting certain sales practices, conflicts of interest and compensation schemes for brokers, dealers and investment advisers that the SEC deems contrary to the public interest and the protection of investors.
Statutory Amendment to the Investment Advisers Act	• The Act amends Section 211 of the Advisers Act. Significant additions include: • The SEC may promulgate rules to provide that the standard of conduct for all brokers, dealers and investment advisers, when providing personalized investment advice about securities to retail customers (and such other customers as the SEC may by rule provide), will be to act in the best interest of the customer without regard to the interests of the broker, dealer or investment adviser. • Except as limited by the provisions of the Act, the standard of conduct provided by such rules must be no less stringent than the standard applicable to investment advisers under Section 206(1) and (2) of the Advisers Act. • The receipt of compensation based on commission or fees is not, in and of itself, to be considered a violation of the Standard of Care applied to a broker, dealer or investment adviser.
Definition of "Retail Customer"	• The Act provides the following definition for "retail customer": • A "retail customer" includes a natural person, or the legal representative of such person, who receives personalized investment advice about securities from a broker, dealer or investment adviser and who uses such advice primarily for personal, family or household purposes.

Harmonization of Enforcement	• The Act amends Section 15 of the Exchange Act and Section 211 of the Advisers Act (together, the "Applicable Acts") to harmonize the enforcement authority provided to the SEC under each of the Applicable Acts with respect to violations of the standard of conduct applicable to a broker or dealer providing personalized investment advice.

Study	• The Act directs the SEC to conduct a study to evaluate:
	  • The effectiveness of existing legal or regulatory standards of care for brokers, dealers, investment advisers and associated individuals for providing personalized investment advice and recommendations about securities to retail customers imposed by the SEC, SROs and other federal and state legal or regulatory standards; and
	  • Whether there are legal or regulatory gaps, shortcomings or overlaps in legal or regulatory standards of care imposed on brokers, dealers, investment advisers and associated individuals for the protection of retail customers that should be addressed by rule or statute.
	• The SEC is directed to consider the following, in addition to the above, when conducting its study:
	  • Whether retail customers understand the differences in the standards of care applicable to brokers, dealers, investment advisers and associated individuals;
	  • Whether the differences are the source of confusion to retail customers;
	  • The regulatory, examination and enforcement resources devoted to the enforcement of the standards of care for brokers, dealers, investment advisers and associated individuals, including the effectiveness of the examinations, the frequency of the examinations and the length of time of the examinations;
	  • The substantive differences in the regulation of brokers, dealers, investment advisers and associated individuals;
	  • The existing legal and regulatory standards intended to protect retail customers;
	  • The specific instances in which regulation and oversight of investment advisers provide greater protection to retail customers than regulation and oversight of brokers and dealers, and such instances when the regulation and oversight of brokers and dealers provide greater protection than that of investment advisers;
	  • The potential impact of eliminating the broker and dealer exclusion from the definition of "investment adviser" under Section 202(a)(11)(C) of the Advisers Act on retail customers, brokers and dealers, and SEC and state resources, in terms of:
	  • Potential benefits and harm to retail customers that could result from such a change, including any impact on personalized investment advice and recommendations and the availability of such advice and

	recommendations; • The impact on the number of additional individuals and entities that would be subject to investment adviser registration requirements and the additional costs to such individuals and entities as a result of this increase; and • The impact on SEC and state resources to conduct examinations and enforce the Standard of Care and other applicable requirements under the Investment Advisers Act; • The varying levels of services provided by brokers, dealers, investment advisers and associated individuals, and the varying scope and terms of retail customer relationships with such persons and entities; • The potential impact on retail customers that could result from changes in regulatory requirements or legal standards of care relating to the obligations of brokers, dealers, investment advisers and associated individuals to retail customers regarding the provision of investment advice, including any potential impact on: • protection from fraud; • access to personalized investment advice and recommendations to retail customers; or • the availability of such services; • The potential additional costs and expenses to retail customers and the potential impact on the profitability of their investment decisions; • The potential additional costs and expenses to brokers, dealers and investment advisers resulting from potential changes in regulatory requirements or legal standards; and • Any other consideration that the SEC considers necessary and appropriate in determining whether to engage in rulemaking. • No later than 6 months after enactment, the SEC is directed to submit a report on the study to the following entities: • Committee on Banking, Housing, and Urban Affairs of the Senate; and • Committee on Financial Services of the House of Representatives.

VOLCKER RULE - TITLE VI	
Generally	• The Volcker Rule will amend the Bank Holding Company Act ("BHCA") to: • Prohibit "banking entities" from engaging in proprietary trading, except as permitted in the statute and subsequent rulemaking; • Prohibit "banking entities" from acquiring or retaining equity, partnership or other ownership interest in or sponsoring a hedge fund or a private equity fund, except as permitted in the statute and subsequent rulemaking;

	• Authorize the Fed to impose additional capital requirements on nonbank financial companies supervised by the Fed that engage in proprietary trading or that retain equity, partnership or other ownership interest in or sponsor a hedge fund or a private equity fund, subject to certain exceptions. • Nonbank financial companies supervised by the Fed are discussed in Title I (see Section 7(a) of this Summary). • The Volcker Rule will impact almost all subsidiaries of bank holding companies and also will impact the activities of nonbank financial companies supervised by the Fed, as well as companies treated as bank holding companies. • Following an extended period of mandated study and rulemaking summarized below, implementation of the Volcker Rule would occur.

Study	• Not later than 6 months after the date of enactment, the Council is required to have studied and made recommendations (the "Study") on implementing the provisions of the Volcker Rule so as to:
	  • Promote the safety and soundness of banking entities;
	  • Protect taxpayers and enhance financial stability by minimizing the risk that insured depository institutions and their affiliates will engage in unsafe and unsound activities;
	  • Limit inappropriate transfers of federal subsidies from deposit insurance and liquidity facilities to unregulated entities;
	  • Reduce conflicts of interest between banking entities and nonbank financial companies supervised by the Fed and the interests of their customers;
	  • Limit activities that have caused undue risk or loss, or that might reasonably be expected to create undue risk or loss, in banking entities and Fed supervised nonbank financial companies;
	  • Appropriately accommodate the business of insurance within an insurance company while protecting safety and soundness of banking entities with which such insurance companies are affiliated; and
	  • Appropriately time the divestiture of illiquid assets affected by the implementation of the prohibitions under the Volcker Rule.

Rulemaking	• Unless otherwise provided in the Volcker Rule, not later than 9 months after the completion of the Study, the appropriate federal banking agencies, the SEC and the CFTC (together, the "Regulators") must adopt rules to carry out the provisions of the Volcker Rule (the "Final Rules"). • These Final Rules must be developed and issued based on consultation and coordination among the Regulators, as appropriate, to assure, to the extent possible, comparable and consistent application and implementation of the provisions of the Volcker Rule. • No later than 6 months after the date of enactment, the Fed must issue rules to implement the provisions of the Volcker Rule regarding the applicable

	conformance period for divestiture and the extended transition periods for illiquid funds.

Proprietary Trading, Defined	• "Proprietary trading" is engaging as a principal for the trading account of a banking entity or nonbank financial company supervised by the Fed in any transaction to purchase or sell any of the following:
	  • any security;
	  • any derivative;
	  • any contract of sale of a commodity for future delivery;
	  • any option on any such security, derivative or contract; or
	  • any other security or financial instrument determined by rule following the Study.

Banking Entity, Defined	• "Banking entity" is:
	  • any insured depository institution;
	  • any company that controls an insured depository institution or that is treated as a bank holding company for purposes of Section 8 of the International Banking Act of 1978; and
	  • any affiliate or subsidiary of any such entity.
	• Excluded from the definition of "banking entity" is any institution that functions solely in a trust or fiduciary capacity; if all or most of the deposits of the institution are in trust funds and are received in a bona fide fiduciary capacity; the institution does not have an affiliate that offers or markets FDIC-insured deposits of the institution; the institution does not accept demand deposits or deposits that can be withdrawn by check or similar means for payment to third parties to make commercial loans; and the institution does not obtain payment or payment-related services from any Federal Reserve bank or exercise discount or borrowing privileges pursuant to the Federal Reserve Act.

Hedge Fund, Private Equity Fund, Defined	• "Hedge fund" and "private equity fund" means an issuer that would be an investment company, but for Section 3(c)(1) or 3(c)(7) of the Investment Company Act, or similar funds as determined by rule after the Study.

Effective Date, Generally	• Subject to the provisions of the Volcker Rule regarding the applicable conformance period for divestiture and the extended transition periods for illiquid funds, the Volcker Rule will take effect on the earlier of:
	  • 12 months after the date of the issuance of the Final Rules; or
	  • 2 years after the date of the enactment of the Act.

Conformance Period	• A banking entity or nonbank financial company supervised by the Fed must bring its activities and investments into compliance with the requirements of the Volcker Rule (the "Conformance Period") not later than:
	  • 2 years after the date on which the requirements become effective; or
	  • 2 years after the date on which the entity or company becomes a nonbank financial company supervised by the Fed.

	• The Fed may, by rule or order, extend the two-year Conformance Period for not more than 1 year at a time and for not longer than an aggregate of 3 years.

Permitted Proprietary Trading Activities	• Permitted trading activities, subject to limitations imposed by regulators, include:
	  • Trading in the securities of the United States and any agency thereof, specific Government-Sponsored Enterprises ("GSE"), and obligations of any state or other political subdivision thereof;
	  • Underwriting or market-making related activities designed not to exceed reasonably expected near term demands of clients, customers or counterparties;
	  • Risk mitigating hedging, designed to reduce specific risks in connection with individual or aggregated positions, contracts and holdings;
	  • Purchase, sale, acquisition or disposition of securities and other instruments on behalf of customers;
	  • Investment in small business investment companies and investments "designed primarily to promote the public welfare"; and
	  • Certain transactions in securities and other instruments by regulated insurance companies for their general accounts and by their affiliates, provided that the affiliates' transactions are for the general account of the regulated insurance company.
	• Those engaging in such permitted activities may be subject to additional capital requirements and quantitative limitations if determined necessary by rulemaking.

Permitted Hedge Fund and Private Equity Fund Activities	• Banking entities may organize and offer private equity or hedge funds, including serving as general partner, managing member or trustee of the fund, and selecting or controlling a majority of directors, trustees or management of the fund, subject to a long list of very specific limitations spelled out in the statute (see Section 1 of this Summary). One such limitation is that the banking entity may not acquire or retain an equity interest, partnership interest or other ownership interest in the funds, except for a de minimis investment per the conditions discussed below.

De Minimis Investment	• A banking entity may make or retain an investment in a hedge fund or private equity fund that the banking entity organizes and offers for purposes of establishing the fund and providing the fund with sufficient initial equity for investment to permit the fund to attract unaffiliated investors or as a de minimis investment.
	• Such investments are subject to certain limitations.
	  • Such investments must, not later than 1 year after the date of establishment of the fund, be reduced through redemption, sale or dilution to an amount that is not more than 3 percent of the total ownership interests of the fund.
	  • The Fed, in its discretion, may extend the period to meet this

	requirement for 2 additional years. • Such investments must be immaterial to the banking entity. Immateriality is to be defined by rule, but in no event may the aggregate of all of the interests of the banking entity in all such funds exceed 3 percent of the Tier 1 capital of the banking entity.
Interest in Hedge Fund and Private Equity	• Except as discussed above under "Permitted Hedge Fund and Private Equity Fund Activities," a banking entity may not acquire or retain equity, partnership or other ownership interest in, or sponsor a hedge fund or private equity fund after, the earlier of: • the date on which the contractual obligations to invest in the illiquid fund terminates; and • the date on which any extensions granted by the Fed under the Illiquid Fund Extension expire.
General Authority to Permit Otherwise Prohibited Activities	• Any other activity as the Federal banking agencies, the SEC and the CFTC determine, by rule, would promote and protect the safety and soundness of the banking entity and the financial stability of the United States will be permitted.
Limited Applicability to Offshore Banking Entities	• Otherwise prohibited proprietary trading and acquisition or ownership or sponsorship of certain hedge funds and private equity funds by banking entities that engage in the activities entirely outside the United States, and that are not directly or indirectly controlled by a banking entity organized under the laws of the United States or one or more of the States are permitted.
Limitations on Relationships with Hedge Funds and Private Equity Funds	• A banking entity that serves as the investment manager, investment adviser or sponsor to a hedge fund or private equity fund, or that organizes and offers a hedge fund or private equity fund as permitted by the Volcker Rule, and affiliates of such banking entity may not enter into a transaction with the fund that would be a covered transaction under Section 23A of the Federal Reserve Act. • Certain prime brokerage transactions are excluded. • A banking entity that serves as the investment manager or investment adviser to a hedge fund or private equity fund, or that organizes and offers a hedge fund or private equity fund as permitted by the Volcker Rule will be subject to Section 23B of the Federal Reserve Act. • Rules may be promulgated to impose similar restrictions on nonbank financial companies supervised by the Fed.

SEC ENFORCEMENT - TITLE IX	
Enforcement Tools	• The SEC is authorized to seek civil monetary penalties in administrative proceedings, instead of federal district court, not only against broker-dealers and investment advisers (as is currently the case), but against anyone, including public companies and officers and directors. • The SEC is permitted to prosecute for aiding and abetting under the

	Securities Act of 1933, the 1940 Act and the Advisers Act.
	• Clarifies that recklessness satisfies the intent standard for aiding and abetting liability in SEC enforcement actions under the Investment Advisers Act and the Exchange Act.
	  • Requires the SEC to conduct a study on whether private rights of action for securities fraud should be given greater extraterritorial reach, and to report to Congress with 18 months.
	  • Requires the General Accounting Office ("GAO") to conduct a study on the advisability of a private right of action for aiding and abetting, and to report to Congress within one year.
	• Clarifies that control person liability under Section 20(a) of the Exchange Act applies in SEC enforcement actions, not only in private actions.
	• Extends the SEC's enforcement jurisdiction to cover (1) conduct within the United States that constitutes significant steps in furtherance of a violation, even if the securities transactions occur outside the U.S., and (2) foreign conduct that has a foreseeable substantial effect within the U.S.
	• Grants the SEC its long-sought after authority for nationwide service of process.
	• Extends the agency's enforcement reach to regulated persons who are not presently, but were formerly, within its jurisdiction at the time of a securities law violation.
	• Expands the scope of collateral bars to prevent securities law violators from associating with any SEC-regulated firms. Current law bars offenders from associating only with those firms regulated under the specific provision violated.

Whistleblowers	• Directs SEC to pay whistleblowers—individual(s) providing to the SEC "original information" relating to a securities law violation—award of not less than 10 percent, but not more than 30 percent of monetary sanctions imposed upon a violator in SEC enforcement actions where monetary sanctions exceed $1,000,000.
	  • Whistleblowers may also receive awards for information provided to SEC that leads to monetary sanctions in actions brought by DOJ, other regulatory authorities, SROs or state attorney generals pursuing criminal investigations.
	  • Senate conferees rejected House proposals to require whistleblower information to "significantly contribute" to prosecution to qualify for an award; and to apply mandatory minimum awards only to SEC enforcement actions.
	• Gives whistleblowers a private right of action for retaliation against an employer for retaliation for any whistleblowing activities related to securities law violations.

SEC Management and Organizational Reform	• Provides Division of Trading and Markets and Division of Investment Management with staff of examiners to perform compliance inspections.

	• The SEC is treating this requirement as an addition to, not replacement of, its current Office of Compliance, Inspections and Examinations ("OCIE"). • Sets deadlines for the SEC to complete enforcement investigations and compliance examination and inspections. Requires Commission staff to file an action or provide notice of intent to not file an action within 180 days of providing a Wells notification to any person. Requires the SEC to provide notice of the results of an examination or investigation within 180 days of completing an onsite compliance examination or inspection. For both actions, allows extensions for certain complex investigations or examinations. • Requires the GAO to conduct a study of "revolving door" issues at the SEC and to report to Congress within one year. • Requires the SEC to hire within 90 days, an independent consultant to review the agency's organizational structure. The consultant is to review: • the possibility for elimination of unnecessary or redundant units; • improving communications between SEC offices and divisions; • the need for a clearer chain-of-command, particularly for enforcement examinations and compliance inspections; • the effect of high-frequency trading and other technological advances on the market and what the SEC requires to monitor the effect of such trading and advances on the market; • streamlined hiring authorities for staff who are not lawyers, accountants, compliance examiners or economists.

MANDATORY PREDISPUTE ARBITRATION - TITLE IX	
SEC Authority	• Grants SEC authority to reaffirm, prohibit or impose conditions or limitations on mandatory predispute arbitration agreements between brokers, dealers, municipal securities dealers or investment advisers and their customers or clients. • Does not set a timeframe for rulemaking or even require SEC to promulgate rules on these agreements. • Rulemaking on mandatory predispute arbitration is not contained in the SEC's schedule of anticipated rule proposals for the first year after passage of the Act.
Consumer Financial Protection Bureau Authority	• The Consumer Financial Protection Bureau is authorized to prohibit or impose conditions or limitations on mandatory predispute arbitration clauses between any person offering or providing a consumer financial product or service and a consumer in connection with the offering or providing of consumer financial products or services. • Bureau is also directed to conduct a study of, and to report to Congress concerning, the use of mandatory predispute arbitration agreements in offering or providing of consumer financial products or services.

	• Regulations prescribed by the Bureau under this authority would not take effect until 180 days after the effective date of the regulation.

STATE JURISDICTION OVER FIXED ANNUITIES - TITLE IX	

SEC Authority	• Treats as an exempted security, and thus grants states, and not the SEC, authority to regulate any insurance or annuity contract, the performance of which is not linked to the performance of an underlying separate account, if:
	  • The insurance contract satisfies state anti-forfeiture provisions.
	  • For annuities, the state adopts suitability standards that meet or exceed the NAIC model standards, or, for national insurance companies, the company adopts such standards and is subject to home state examination on those standards.
	• Expressly declines to address whether any other insurance or annuity product is exempt from SEC regulation.
	• Shortly before final passage of the Act, the D.C. Circuit vacated SEC Rule 151A, which had sought to treat equity indexed annuities as securities subject to SEC jurisdiction.

SEC FUNDING - TITLE IX	

Authorization of Appropriations	• The Act amends Section 35 of the Exchange Act to authorize, in addition to any other funds authorized to be appropriated to the SEC, the appropriation of funds in the following amounts:
	  • for fiscal year 2011, $1,300,000,000;
	  • for fiscal year 2012, $1,500,000,000;
	  • for fiscal year 2013, $1,750,000,000;
	  • for fiscal year 2014, $2,000,000,000; and
	  • for fiscal year 2015, $2,250,000,000.

Transaction Fees	• The Act amends Section 31 of the Exchange Act by requiring the Commission:
	  • To collect transaction fees and assessments designed to recover the costs to the government of the annual SEC Congressional appropriation.
	  • The SEC also is required for each fiscal year to adjust the rates applicable to a uniform adjusted rate that, when applied to a baseline estimate of aggregate dollar amounts of sales for the fiscal year, is reasonably likely to produce aggregate fee collections that are equal to Congress's regular appropriation to the SEC for the fiscal year.
	  • The SEC also must adjust the rate mid-year each year, based on an assessment of whether, based on the actual aggregate dollar volume of sales during the first 5 months of the fiscal year, the baseline estimate of the aggregate dollar volume of sales used to establish the

	uniform rates is reasonably likely to be 10 percent or more greater or less than the actual aggregate dollar volume of sales. This adjustment is to be made after consultation with the Congressional Budget Office and OMB. • The new method for establishing fees under Section 31 will be effective on the later of October 1, 2011 or the date of enactment of an Act making a regular appropriation to the SEC for fiscal year 2012.
Transmittal of Budget Requests	• For fiscal year 2012, and each fiscal year thereafter, the SEC must prepare and submit a budget to the President; and • The President shall submit each budget to Congress. • Whenever it has submitted a budget estimate or request to the President or the Office of Management and Budget, to concurrently transmit copies of the estimate or request to each of the entities listed below. • The Committee on Appropriations of the Senate; • The Committee on Appropriations of the House of Representatives; • The Committee on Banking, Housing, and Urban Affairs of the Senate; and • The Committee on Financial Services of the House of Representatives.
SEC Reserve Fund	• The Act amends Section 4 of the Exchange Act to create a "Securities and Exchange Commission Reserve Fund" (the "Reserve Fund"). Significant features of the Reserve Fund include: • Any registration fees collected by the SEC under Section 6(b) of the Exchange Act or Section 24(f) of the Investment Company Act of 1940 shall be deposited into the Reserve Fund. • For any one fiscal year, the amount deposited in the Reserve Fund may not exceed $50,000,000 and the balance of the Reserve Fund may not exceed $100,000,000. • Any amounts in excess of the deposit and balance caps will be deposited in the General Fund of the Treasury of the United States and will not be available for obligation by the Commission. • Any amounts in the Reserve Fund shall remain available until expended. • The SEC may obligate amounts in the Reserve Fund, not to exceed a total of $100,000,000 in any one fiscal year, as the Commission determines is necessary to carry out its functions. • No later than 10 days after the date on which the Commission obligates amounts in the Reserve Fund, it must notify Congress of the date, amount and purpose of the obligation. • The amounts collected and deposited in the Reserve Fund will not be construed as Government funds or apportioned monies.
Reserve Fund, Effective Date	• The amendment creating the Reserve Fund will take effect on October 1, 2011.

INCREASING INVESTOR PROTECTIONS - TITLE IX	

Investor Advisory Committee Established	• The Act establishes an Investor Advisory Committee to advise on:
	  • the SEC's regulatory priorities;
	  • the regulation of securities products, trading strategies and fee structures; and
	  • the effectiveness of disclosure.
	• The Committee includes representatives of state securities commissions, senior citizens and up to 20 individuals who represent individual investors and institutional investors.

SEC May Conduct Public Opinion Polls, Investor Surveys and Focus Groups	• The SEC is given an exemption from the Paperwork Reduction Act to "gather information from and communicate with" investors or other members of the public through surveys, focus groups and polling. • Previously, this activity was exceptionally difficult to carry out because of restrictions in the Paperwork Reduction Act. The Act makes clear that any such activities will no longer be construed to be a "collection of information" under that law.

Investor Advocate Created as Independent Authority Within SEC	• The Act establishes the Investor Advocate within the SEC as an additional direct report to the Chairman. The Investor Advocate is empowered to hire such staff, including an Ombudsman, as he or she "deems necessary to carry out the functions, powers, and duties of the Office."
	  • The Investor Advocate is authorized by statute to have access to all SEC internal documents, as well as all documents of self-regulatory organizations.
	  • The Investor Advocate is given a special responsibility for the protection of retail investors.
	  • The Investor Advocate will operate independently of the supervision of the Chairman of the SEC or of the Commissioners. It will report directly to Congress "without any prior review or comment from the Commission, any commissioner, any other officer or employee of the Commission, or the Office of Management and Budget."

Streamlined Procedures for Consideration of SRO Rule Changes	• The SEC's process for considering proposed rule changes from securities exchanges and other self-regulatory organizations is significantly streamlined. The SEC will now have not more than 45 days after publication of a proposed rule to approve or disapprove it. This period can be extended once, for an additional 45 days. Thereafter, the SEC must either approve, disapprove or institute proceedings to determine whether the proposed rule should be disapproved. • This whole process may not last longer than 180 days after publication of a proposed rule, unless the self-regulatory organization consents to an extension of not more than 60 days. If the SEC does not issue an order approving or

	disapproving the rule within 240 days, it is deemed approved.
Congressionally Mandated Studies	• The SEC is required to conduct a study of financial literacy among retail investors and submit a report to Congress within two years. • The GAO is required to conduct a study on mutual fund advertising and submit a report to Congress within 18 months. • The GAO is required to conduct a study on conflicts of interest between the staffs of the investment banking and equity and fixed income securities analyst functions within the same firm, and submit a report to Congress within 18 months. • The SEC is required to conduct a study of ways to improve the access of investors to disciplinary actions, regulatory, judicial and arbitration proceedings, and other information about investment advisers and brokers dealers. The study is to be completed in six months, and any recommendations are to be implemented within 18 months. • The GAO is required to conduct a study on the effectiveness of state and federal regulations to protect investors and other consumers from individuals who hold themselves out as financial planners through the use of misleading titles, designations or marketing materials. The GAO is to submit a report to Congress within 180 days.

PAYMENT, CLEARING AND SETTLEMENT SUPERVISION - TITLE VIII	

Council to Designate Systemically Important Clearing and Settlement Activities	• The Council is required to designate those financial market institutions whose payment, clearing or settlement activities are, ***or are likely to become***, systemically important. These designations require a two-thirds vote. The designations are based on:
	  • The aggregate monetary value of transactions processed by the financial institution or carried out through the payment, clearing or settlement activity;
	  • The aggregate exposure of the financial institution engaged in payment, clearing or settlement activities to its counterparties;
	  • The relationship, interdependencies or other interactions of the financial institution or payment, clearing or settlement activity with other financial institutions or payment, clearing or settlement activities; and
	  • The effect that the failure of or a disruption to the financial market institution or payment, clearing or settlement activity would have on critical markets, financial institutions or the broader financial system.

Fed to Provide Risk Management Standards for Systemically Important Clearing	• The Council's designation gives the Fed the power to prescribe risk management standards for payment, clearing and settlement activities, taking into consideration relevant international standards and existing prudential requirements, governing: • the operations related to the payment, clearing and settlement activities

and Settlement Activities	of designated financial market utilities; and • the conduct of designated activities by financial institutions.
SEC and CFTC Authority Over Regulated Firms	• In the case of clearing entities and financial institutions engaged in payment, clearing and settlement activities for which the CFTC or the SEC is the appropriate financial regulator, the CFTC or the SEC, as the case may be, is authorized to prescribe risk management regulations in consultation with the Council and the Fed. • The Fed can challenge these regulations as being insufficient to prevent or mitigate significant risks to the financial markets or to the financial stability of the United States.
Emergency Financial Support for Systemically Important Clearing and Settlement Activities	• A financial institution engaged in payment, clearing and settlement activities, and that has been designated by the Council as systemically important, will be eligible for the Fed's discount window and other borrowing privileges under the Federal Reserve Act. • In order to qualify, a financial institution has to establish that it is unable to secure adequate credit accommodations from other banking institutions. • This access to discount and borrowing privileges does not require a financial institution acting as a designated financial market utility to be or become a bank or bank holding company. • In addition, the institution may be exempted from the normal reserve requirements otherwise applicable to it.

Enhanced Examination and Enforcement Authority Over Systemically Important Clearing and Settlement Activities	• Financial institutions engaged in payment, clearing and settlement activities will be examined at least once annually by their primary supervisor (the Fed, the SEC or the CFTC, as the case may be).
	• These examinations will be focused on:
	  • the nature of the operations of, and the risks borne by, the designated financial market utility;
	  • the financial and operational risks presented by the designated financial market utility;
	  • market utility to financial institutions, critical markets, or the broader financial system;
	  • the resources and capabilities of the designated financial market utility to monitor and control such risks;
	  • the safety and soundness of the designated financial market utility; and
	  • the designated financial market utility's compliance with applicable laws and Fed regulations.
	• This examination authority extends to service providers, if the service is integral to the operation of a designated financial market utility.
	• In addition, in the case of financial institutions regulated by either the SEC or the CFTC, the Fed is given complementary enforcement authority over these entities.

MUNICIPAL ADVISORS - TITLE IX	

Registration	• Municipal advisors must register with the Commission and will be regulated by the Municipal Securities Rulemaking Board (the "MSRB").
	  • Municipal advisors include persons who advise or solicit municipal entities with respect to municipal financial products (including derivatives) or the issuance of municipal securities.
	  • The MSRB Board must be comprised of a majority of independent public members and include at least one broker-dealer, one bank-dealer and one municipal-advisor.
	• The registration requirement has been effective since October 1, 2010.
	• Municipal advisors must register using Form MA-T.

Conduct Requirements	• Municipal advisors are deemed to have a fiduciary duty to any entity for whom they act as a municipal advisor. • Municipal advisors will be subject to continuing education requirements and professional standards. • Small municipal advisors may be exempted from some regulatory burdens that are unnecessary or inappropriate in the public interest, provided there is robust protection of investors against fraud.

3. Orderly Liquidation Authority

The Act creates an "orderly liquidation authority" ("OLA"), which reflects Congress' attempt to deal with companies considered "too big to fail." The Act empowers the Federal Deposit Insurance Corporation (the "FDIC") to seize control of, and liquidate, a so-called "covered financial company" following a determination that it poses a systemic risk to the financial system. Importantly, this new regime will pre-empt any proceedings under the United States Bankruptcy Code. All stakeholders transacting business with such companies will need to consider the impact on creditors' rights of both the Bankruptcy Code and the OLA moving forward.

In August 2010, the FDIC Board of Directors approved the creation of the Office of Complex Financial Institutions ("OCFI") to perform continuous review and oversight of bank holding companies with more than $100 billion in assets and nonbank financial companies designated as systemically important by the Council. The OCFI will also be responsible for carrying out the FDIC's authority to implement orderly liquidations described below. The FDIC has commenced the rulemaking process and has hosted a roundtable forum to discuss implementation of the Act.

The OLA is solely a liquidation remedy. Rehabilitation or reorganization is not an option, and the ability of a debtor to remain in possession is eliminated. The costs of an OLA liquidation are to be borne by the financial sector. This summary is intended to outline the nature and scope of the new regime and highlight certain selected provisions.

ORDERLY LIQUIDATION AUTHORITY - TITLE II	
Introduction	• The Act creates a new OLA that allows the Federal Deposit Insurance Corporation to seize control of a "covered financial company" whose imminent collapse is determined to threaten the financial system as a whole. This measure represents Congress' attempt to address companies considered "too big to fail." • As the Act applies to corporations that are subject to the United States Bankruptcy Code ("Bankruptcy Code"), a determination that a company poses a systemic risk would enable the FDIC, as receiver, to seize the entity and liquidate it under the new OLA, preempting any proceedings under the Bankruptcy Code. Accordingly, all parties seeking to transact business with a company (or its affiliates), that could potentially be considered to present systemic risk will have to consider the impact on creditors' rights of both the Bankruptcy Code and the OLA moving forward. • The OLA is solely a liquidation remedy. Rehabilitation or reorganization is not an option. Furthermore, the ability of a debtor to stay in possession is eliminated. The FDIC, in nearly all cases, assumes full control. • Insurance companies, which remain subject to state regulation, are not covered by the OLA, but their holding companies and unregulated affiliates are covered. Insured depository institutions will continue to be subject to the Federal Deposit Insurance Act ("FDIA"). However, the ability of the FDIC to seize a bank holding company allows the FDIC to run coordinated proceedings for the bank and its affiliates. • If an insurance company is a covered financial company or a subsidiary or affiliate of a covered financial company, the liquidation or rehabilitation of such insurance company, and any subsidiary or affiliate of such company, shall be

	conducted as provided under state law.
	• Backup Authority
	  • After a determination is made to commence orderly liquidation, the appropriate regulatory agency has sixty days to file the appropriate judicial action in the appropriate state court to place such company into orderly liquidation under state law.
	  • If this action has not been taken, the FDIC shall have the authority to stand in the place of the appropriate regulatory agency and file the appropriate judicial action to place such company into orderly liquidation under the laws and requirements of the state.

Adopting the FDIC Model	• The proposed OLA is modeled after the FDIC's existing framework for failed insured depository institutions, although there are differences. Among other things, the OLA would maintain safe harbors for qualified financial contracts that mirror those of the FDIA, subject to certain modifications, such as a one business day stay period before counterparties can close out their contracts. In addition, the Act aims to preserve certain priorities of payment, rights to setoff and avoidance action protections that generally follow those established under the Bankruptcy Code. The receiver is required to resolve claims on a fast track (within 180 days). • The OLA provides some degree of adequate protection to secured creditors by allowing a secured creditor faced with diminution of the value of its collateral to request expedited resolution of its claim (within 90 days). • The Act provides a mechanism for recovering the cost of the OLA from other members of the financial industry. It also exposes officers and directors of seized financial companies to personal liability, including by subjecting to claw back their incentive and other compensation paid during the preceding two-year period. For more serious misconduct, a senior executive may be banned from serving any financial company for a minimum of two years. • For more information, see the section below entitled "Powers and Duties of the FDIC."
Eligibility	• The OLA potentially applies to U.S. companies that are bank holding companies, nonbank financial companies supervised by the Fed, companies predominantly engaged in activities that the Fed determines are financial in nature or incidental thereto, subsidiaries of such companies (other than insured depository institutions or insurance companies), and brokers or dealers registered with the SEC and a member of SIPC. • The liquidation of insured depository institutions will continue under existing FDIC rules and procedures. • The liquidation or rehabilitation of insurance companies shall continue to be conducted under state law, although the FDIC has authority to commence judicial action in state court if a state regulator fails to act within 60 days of a determination by the Treasury Secretary that a company presents a systemic risk.

	• While, under normal circumstances, the bankruptcy process will continue to apply to close and unwind failing financial companies, including large, complex ones, it is important to note that if a Bankruptcy Code debtor is determined to threaten the national economy, it can be removed from Bankruptcy Court jurisdiction anywhere in the U.S. and placed into FDIC receivership following a summary judicial process presided over by the D.C. District Court (the "Court").
Role of SIPA	• SIPC would continue to be responsible for the liquidation of a registered broker or dealer subjected to the OLA. The FDIC's involvement would be limited to providing funding and exercising certain powers, including through a newly created bridge financial company. In a covered broker or dealer liquidation, the FDIC would appoint SIPC (without court approval), to act as liquidation trustee under SIPA. SIPC would be obligated to dispense with customer claims on the same priority basis that they now enjoy under SIPA Section 8(c). • Non-customer claims (other than claims arising under qualified financial contracts) would be subject to the overall priority scheme of the OLA, subject to the elevation of certain administrative priority claims of SIPC. Qualified financial contracts to which a covered broker or dealer is a party would be governed exclusively by the OLA's safe harbor provisions. • SIPC would be entitled to exercise all of its powers under SIPA, but would not have jurisdiction over assets and liabilities transferred by the FDIC to any bridge financial company, and SIPA could not otherwise adversely impact the FDIC in exercising its powers and duties. Any claims against the FDIC arising from asset transfers to a bridge bank would be treated under the OLA and subject to federal district court review.

Initiation of Process	• The FDIC could invoke its OLA only upon a formal determination of systemic risk and a recommendation that the financial company be placed into receivership.
	• The process begins after either a request by the Secretary of the Treasury, or at the initiative of either the Fed or the FDIC (or, in the case of a broker or dealer, the SEC), for a formal recommendation that the FDIC be appointed as receiver. This requires approval by a two-thirds vote of each of the Fed and the board of the FDIC (or, in the case of a registered broker or dealer, the SEC).
	• A company must be in "default or danger of default," tested as follows:
	  • a pending or threatened commencement of a case under the Bankruptcy Code;
	  • the company has incurred or will likely incur losses that will deplete all (or substantially all) of a company's capital with no reasonable prospect for avoidance of such depletion;
	  • the company's assets are or likely will be less than the company's obligations; or
	  • the company is or likely will be unable to pay its obligations in the ordinary course of business.
	• If a financial company satisfies the first limb of the test ("default or in danger of default"), a formal determination of systemic risk must be established by

	various experts. Systemic risk would be apparent if: • the company is in default or danger of default; • the failure of the company would have serious effects on the financial stability of the U.S.; • no viable private sector alternative is available; • any effect on creditors, counterparties, shareholders and other market participants is appropriate given the impact actions would have on U.S. financial stability; • action taken would avoid or mitigate such adverse effects taking into account the mitigation of potential adverse effects on the financial system; • a federal regulatory agency has ordered the company to convert all its convertible debt instruments that are subject to regulatory order; and • the company satisfies the statutory definition of a financial company ((i) a bank holding company, (ii) a nonbank financial company supervised by the Fed, or (iii) any company that is predominately engaged in financial activities, the revenues from which constitute 85% or more of the company's consolidated revenues). • An additional issue for determination is why the Bankruptcy Code is inadequate to resolve the company's condition. • Upon a recommendation of receivership, the Treasury Secretary would ask the company's board of directors to consent or "acquiesce" to FDIC receivership. In the absence of consent or acquiescence, the Treasury Secretary would petition the Court for authority to appoint the FDIC as receiver and provide notice to the company. The company may oppose the petition, but the Court's role is limited to determining whether the company constitutes a "financial company", as defined by the statute, and accurately has been found to be in default or in danger of default. • The Court cannot reject the petition unless it finds the government's actions to be "arbitrary and capricious." If the Court disagrees with the Treasury's finding, the Treasury Secretary has the immediate opportunity to amend and re-file the petition. • If the Court fails to rule within 24 hours, the petition is deemed granted. Either the company or the Treasury Secretary may appeal a decision of the Court to the D.C. Circuit Court of Appeals within 30 days of the Court's decision; the decision of the Court of Appeals may be appealed to the Supreme Court within 30 days of the Circuit Court decision. In each case, the scope of appellate review is limited to the definition of the company as a "financial company" and whether the Treasury has acted arbitrarily and capriciously.
Powers and Duties of the FDIC	• The Act vests the FDIC with broad power to act as receiver by virtue of its experience in unwinding insured depository institutions. Upon the FDIC's appointment as receiver, all existing bankruptcy or other insolvency cases are dismissed and no further cases can be filed while the orderly liquidation is

	pending. Company assets that have vested in another entity will re-vest in the company. However, any order entered by a bankruptcy court prior to the appointment of the receiver will remain in effect.
	• The FDIC's powers under the OLA mirror its existing receivership powers under the FDIA, with certain modifications intended to address perceived differences between the mandatory liquidation of a company that implicates systemic risk, as opposed to a failed insured depository institution.
	• Upon appointment of the FDIC as receiver of a covered financial company pursuant to Sections 202 and 203, the FDIC has the following powers, authority and duties:
	• Powers and Authorities
	  • Generally
	  • Take over the assets and operations of the covered financial company;
	  • Organize bridge financial company to hold valuable assets until they can be liquidated (unless the transfer would materially interfere with the FDIC's ability to avoid or mitigate serious adverse effects on financial stability or economic conditions);
	  • Merge or transfer assets and liabilities without any approval or consent;
	  • Pay obligations; and
	  • Retain professionals.
	  • Claims
	  • Establish bar date;
	  • Accept or object to filed claims (claimants have 60 days following an objection to file suit);
	  • Establish expedited claims determination process for secured claims to which irreparable injury will occur;
	  • Pay claims (at least as much as a claimant would have received under a Chapter 7 bankruptcy proceeding, a state insurance receivership proceeding or a SIPA proceeding); and
	  • Automatic 90-day stay with respect to any judicial proceeding upon FDIC request.
	  • Avoidable Transfers
	  • Fraudulent Transfers - avoidance powers track those provided in Section 548(a) of the Bankruptcy Code;
	  • Preferential Transfers - avoidance powers track those provided in Section 547(b) of the Bankruptcy Code;
	  • Post-Receivership Transactions - avoidance powers track those provided in Section 549(a) of the Bankruptcy Code;
	  • Right of Recovery - recovery rights track those provided in Section

	550(a) of the Bankruptcy Code; • Rights of Transferee or Obligee - transferee rights track those provided in Section 550(b) of the Bankruptcy Code; • Defenses - the Bankruptcy Code's provisions in Sections 546(b) and (c), 547(c) and 548(c) (setting forth transferee defenses to avoidance or recovery actions) are incorporated by reference; and • Receiver's Rights - superior to those of a trustee or any party (other than federal agency) under the Bankruptcy Code. • Setoff • A counterparty's setoff rights track those provided in Section 553(a) of the Bankruptcy Code. • The receiver may transfer assets free and clear of setoff rights, except counterparties shall have a priority unsecured claim equal to the value of its setoff rights. • Priority of Expenses and Claims • The Act sets forth the following claim priority scheme: (i) Administrative expenses; (ii) amounts owed to the U.S.; (iii) wages (subject to a cap similar to the Bankruptcy Code); (iv) contributions to employee benefit plans; (v) unsecured claims (maintaining contractual seniority or subordination); (vi) wage claims for senior executives and directors; and (vii) equity. • Receiver may incur debt on a priority basis, similar to a trustee's rights, pursuant to the Bankruptcy Code. • Pre-receivership contracts • Receiver may repudiate contracts; damages limited to "actual direct compensatory damages." • Qualified Financial Contracts • Means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement or similar agreement. The definitions of each of the preceding terms track the definitions set forth in the Bankruptcy Code. • Language preserving the rights of counterparties tracks the language contained in Sections 555, 556, 559, 560 and 561 of the Bankruptcy Code, subject to a one business day stay. • Walk-away clauses are ineffective. • Receiver may transfer or repudiate a Qualified Financial Contract (on an all-or-none basis vis-à-vis a counterparty). • Maximum liability of the receiver is the amount a claimant would have received under a Chapter 7 bankruptcy proceeding, a state insurance receivership proceeding or a SIPA proceeding. • Directors and officers may be held personally liable for gross negligence (or

	greater disregard of a duty of care). Appeals will be expedited. The receiver may also recover 2 or more years worth of compensation from senior executives and directors. • Orderly Liquidation Fund is established and funded by assessments, issuing debt securities to the Treasury, and repayments by covered financial companies. Amounts are available to the receiver upon the development of an acceptable orderly liquidation plan and, with respect to issuing debt securities to the Treasury, upon agreement on a repayment plan and schedule. • Eligible financial companies with $50,000,000,000 or more in assets shall be charged a risk-based assessment if necessary to repay receivership-issued debt obligations.
Taxpayer Funds	• The Act expressly prohibits the use of taxpayer monies to prevent the liquidation of a covered financial company and mandates that all expenses of liquidation be borne by the financial sector.

Studies	• The Act mandates one-time or ongoing studies on a number of areas, including:
	  • the effectiveness of the Bankruptcy Code in facilitating the orderly liquidation or reorganization of financial companies;
	  • the effectiveness of prompt corrective action by federal banking agencies;
	  • how secured creditor haircuts could improve market discipline and protect taxpayers;
	  • whether a new chapter or subchapter should be added to the Bankruptcy Code to deal with financial companies; and
	  • how to improve international cooperation of the resolution of financial companies.

4. Derivatives

The Act effects a complete overhaul of the regulation of the derivatives market. It will radically change how mutual funds, hedge funds, banks, broker-dealers and end-users trade derivatives. Derivatives trading will be regulated through the imposition of clearing, trading and reporting requirements. Significant market participants will be subject to registration (in some cases multiple registrations) and to capital, margin and conduct requirements. Significant and cooperative interagency rulemaking will be required by, among others, the CFTC and the SEC, relating to most critical portions of the Act that relate to derivatives. The CFTC and SEC have already commenced the rulemaking process and have held a series of joint roundtable discussions among staff, industry experts, market participants and academics in order to assist in rulemaking.

The derivatives provisions are among the most complex and detailed in the Act. This summary is intended to outline the basic architecture of the title and highlight certain selected provisions.

DERIVATIVES - TITLE VII	

Jurisdiction	• The SEC is given jurisdiction over security-based swaps and the CFTC is given jurisdiction over most every other swap and related product.
	  • The SEC and CFTC are to consult and coordinate to the extent possible in their rulemaking.
	  • The provisions relating to regulation of products, markets and market participants by each of the SEC and CFTC work in substantially similar ways for most, but not all, matters.
	  • For ease of reference, terms such as swap, swap dealer and derivatives clearing organization are used in this summary to describe products, markets and market participants coming under both SEC and CFTC jurisdiction, unless the context otherwise requires.
	• Definitions
	  • "Swap" is broadly defined to include most swaps, options and similar products, the value of which relates to, among other things, rates, currencies, commodities, indices and other financial or economic interests. Swaps are subject to CFTC jurisdiction.
	  • Excludes futures, non-financial physically settled forwards, securities options, single-name securities, security-based swaps and other products involving securities that are subject to SEC jurisdiction.
	  • Foreign exchange swaps and related products are regulated as "swaps" and subject to CFTC jurisdiction; the Treasury Secretary may make a written determination that foreign exchange swaps and forwards, as narrowly defined, should not be so regulated.
	  • A swap may not be regulated as an insurance contract under any state law.
	  • "Security-based swap" is a swap based on a narrow-based security index, a single security or certain events relating to a single issuer or narrow group of issuers. A security-based swap is regulated by the same rules

	that regulate securities under the Exchange Act. • "Mixed swap" is a product that has elements of both a swap and a security-based swap. The SEC and CFTC, after consultation with the Fed, will jointly prescribe regulations for mixed swaps. • The SEC and CFTC are given the authority to adopt rules to define any term included in the Act. • The Act provides a process for determining jurisdiction for novel derivative products having elements of both SEC and CFTC jurisdiction. The SEC and CFTC will individually determine, or request the other to determine, the appropriate jurisdiction. The Court of Appeals for the D.C. Circuit will resolve any disagreement. • The Act addresses the Federal Energy Regulatory Commission's jurisdiction and attempts to draw clearer jurisdictional lines among the regulators. • Activities Outside of the United States: • CFTC: The Act will not apply to activities outside of the U.S. unless those activities: • have a "direct and significant" connection with activities in, or effect on, U.S. commerce or • contravene rules to prevent evasion pursuant to the Act. • SEC: The Act will not apply to security-based swaps outside of U.S. jurisdiction, unless such transactions were in contravention of rules prescribed to prevent evasion of the Act.
Effective Dates	• Unless otherwise provided, the Act takes effect on the later of: • 360 days after enactment or • not later than 60 days after publication of a final rule if rulemaking is required. • Required rulemaking will be issued in final form not later than 360 days after enactment.
Legal Certainty for Swaps	• Pre-enactment swaps are deemed by the Act not to be subject to termination due to any requirement or amendment made by the Act, except as specifically provided in the applicable swap. • A swap between eligible contract participants will not be unenforceable under federal or state law based solely on the failure of the swap to be cleared or to meet the statutory definition of a swap. • A hybrid instrument sold to an investor will not be unenforceable under federal or state law based solely on the instrument's failure to meet CFTC requirements for such instruments.
Section 716 and the Volcker Rule	• Section 716 prohibits federal assistance, such as access to the discount window, for swaps entities, and requires swap activities to be done out of a nonbank affiliate effective two years following the date of enactment. • For insured depository institutions (and perhaps other banking entities)

	• Some swap activities are permitted to remain in the bank:
	  • hedging risks directly related to the bank's permitted activities; and
	  • swaps involving interest rates, foreign exchange and other underlying assets permitted as investments for a national bank.
	• Acting as a dealer in certain non-cleared credit default swaps is not a permitted activity.
	• The applicable banking regulator will permit a transition period before a bank is required to divest itself of positions not permitted under Section 716.
	• Interplay with the Volcker Rule: The Volcker Rule's prohibition on proprietary trading includes derivatives. However, application of the Volcker Rule should be unaffected by Section 716. The Volcker Rule applies to activities of banks and their affiliates, without regard to the specific type of entity, while Section 716 restricts certain derivatives activities from being conducted in specific entities within a group.

Swap Dealers and Major Swap Participants	• Definitions
	  • "Swap dealer"
	  • A swap dealer is any entity that:
	  • holds itself out as a swap dealer;
	  • makes a market in swaps;
	  • engages in swap transactions in the ordinary course of business; or
	  • engages in activity causing the entity to be commonly known as a swap dealer or market maker.
	  • Exceptions apply for an entity that:
	  • buys or sells swaps for its own account, but not as a part of a regular business or
	  • engages in a de minimis quantity (as determined by the Commission) of swap dealing in connection with transactions with or on behalf of its customers.
	  • Swap dealer designation is specific to a category of swaps, so an entity can be required to register with regards to its activities in one type of swap, but not others.
	  • Rules regarding swap dealers and security-based swap dealers are substantially similar, but are administered by the CFTC and SEC, respectively.
	  • Entities that are both swap dealers and security-based swap dealers are required to register with both the CFTC and SEC.
	  • "Major swap participant" ("MSP")
	  • An MSP is any entity that is not a swap dealer and:

	• maintains a substantial position in swaps, excluding positions held for hedging commercial risk (substantial position and commercial risk are to be defined by the Commission); • whose outstanding swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the U.S. banking system or financial markets; or • is a financial entity that is highly leveraged, not subject to capital requirements and maintains a substantial position in swaps in any major swap category. • Captive finance companies are excluded from MSP status. • MSP designation is specific to a category of swaps, so an entity can be required to register with regards to its activities in one type of swap, but not others. • Entities that are both MSPs and security-based MSPs are required to register with both the CFTC and SEC • Futures Commission Merchant (FCM): • The definition of FCM is expanded to include an entity soliciting or accepting orders for swaps, or accepting property to margin swaps. • This appears to impose FCM status, and multiple registration requirements, on most, if not all, swap dealers. • Registration: Swap dealers and MSPs must be registered with the Commission within one year of enactment, regardless of whether they are banks.
Rules of Conduct for Swap Dealers and MSPs	• "Special Entities": Swap dealers and MSPs that enter into, or offer to enter into swaps with special entities must have a reasonable basis to believe that the counterparty has an independent representative that has sufficient knowledge to evaluate the transactions and its risks. Special Entities include government entities, retirement plans, and endowments. • This requirement will not apply to transactions initiated by a Special Entity on an exchange or swap execution facility where the swap dealer or MSP does not know the identity of the counterparty. • A swap dealer that acts as an advisor to a Special Entity has a duty to act in the best interests of the Special Entity. • Disclosure: Swap dealers or MSPs must disclose to their non-swap dealer or non-MSP counterparties, with respect to each transaction: • material risks; • material incentives or conflicts of interest; and • daily mark from the appropriate DCO or daily mark of the swap dealer or MSP (for uncleared trades). • Conflicts of Interest: Swap dealers and MSPs must establish structural and institutional safeguards to ensure that those providing commodity or swap research, clearing activities or clearing determinations are separated by

	appropriate informational partitions from the review, oversight and pressure of those whose involvement in pricing, trading or other clearing activities may create potential bias. A parallel provision exists for FCMs and introducing brokers. • Catch-all: The Commission may establish such other standards and requirements as it may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Clearing	• Clearing Requirement: Any swap or category of swaps that is determined by the Commission (either the CFTC or the SEC) to require clearing must be submitted for clearing to a derivatives clearing organization ("DCO"), exempt DCO or clearing agency.
	  • Swap Submissions: The Commission may make such a determination in response to a request by a DCO or clearing agency.
	  • A DCO or clearing agency must submit to the Commission for prior approval any swap or category of swaps that it seeks to accept for clearing.
	  • Any swap or category of swap already listed for clearing by a DCO or clearing agency at the date of enactment will be considered as having been submitted to the Commission.
	  • Commission-Initiated Review: The Commission, on an ongoing basis, will determine whether a swap or category of swaps not yet cleared should be required to be cleared.
	• Exceptions to Clearing Requirement:
	  • Swaps for which the Commission has not yet determined that clearing is required or has determined that clearing is not required.
	  • Swaps in which the counterparty is not a financial entity and uses the swap to hedge its own commercial risk (an "end user").
	  • Financial entities include swap dealers, MSPs, hedge funds and others predominantly engaged in financial activities; captive finance companies are excluded from the definition of financial entity.
	  • Commercial risk is to be defined by the Commission.
	• Transition: Pre-enactment swaps are exempt from clearing if reported to a registered swap data repository or the Commission within 180 days of the effective date. Swaps entered into after enactment, but before application of the clearing requirement, must be reported to a registered swap data repository or the Commission within the later of 90 days after the effective date or such other time as the Commission may prescribe.
	• DCOs and clearing agencies must be registered with the CFTC and SEC, respectively, except for certain existing clearing organizations. The SEC or CFTC may exempt, conditionally or unconditionally, a clearing organization from registration if it determines that the clearing organization is subject to comparable, comprehensive U.S. (that is, SEC or CFTC) or home country

	supervision and regulation.

Limitation on Ownership of Registered Entities	• The CFTC and SEC may establish numerical limits on the control of any DCO, SEF or exchange by:
	  • a bank holding company with total consolidated assets of $50 billion or more;
	  • a nonbank financial company supervised by the Fed;
	  • an affiliate of such bank holding company or nonbank financial company;
	  • a swap dealer, MSP or associated person of a swap dealer or MSP.
	• Rules relating to these limitations must be adopted within 180 days of enactment.

Capital and Margin	• Swap dealers and MSPs
	  • Capital Requirements
	  • Capital requirements for depository institutions will be set by the appropriate prudential regulators.
	  • Capital requirements for non-depository institutions will be set by the CFTC and/or the SEC.
	  • Margin Requirements
	  • Cleared Transactions: swap dealers and MSPs must meet the margin requirements set by the DCOs.
	  • Uncleared transactions
	  • Depository institutions must meet margin requirements set by the appropriate federal banking agency.,
	  • Non-Depository institutions must meet margin requirements set by the CFTC and/or the SEC.,
	  • June 30th letter from Senators Dodd and Lincoln seeks to clarify that end users will not be subject to margin requirements.
	  • Regulators may permit the use of non-cash collateral.
	  • Unlike the clearing requirement, where pre-enactment swaps are positively exempted, the margin requirement does not indicate whether pre-enactment swaps are exempted.
	• Non-swap dealers and non-MSPs will be subject to the margin requirements of the clearing organization for cleared trades.
	• Portfolio Margining: Changes are made to the Commodity Exchange Act (the "CEA") and Exchange Act to make it easier for the CFTC and SEC to permit portfolio margining across products.
	• Segregation and Bankruptcy
	  • FCMs must treat any property received for a swap through a DCO as property of the customer, which may not be comingled with non-customer property. Swap dealers and MSPs would have to register as FCMs in order to accept margin.
	  • Segregation requirement for uncleared swaps.

	• Swap dealers and MSPs must notify each counterparty that it may require segregation of initial collateral (not mark-to-market collateral) with the account to be held by an independent third party • These requirements only apply to swaps where one party is a swap dealer or MSP, and the transaction is not submitted to a DCO • For bankruptcy purposes, cleared swaps will be treated like commodity contracts; posted margin for security-based swaps appear to be treated as customer property for purposes of a stockbroker liquidation.
Trade Execution	• Trade Execution: Swaps required to be cleared are required to be executed on an exchange or on a swap execution facility ("SEF"). • Exception: if no exchange or SEF makes the swap available to trade or if an exception to the clearing requirement applies. • An SEF is a facility in which multiple participants have the ability to execute or trade swaps that are open to multiple participants in the facility or system, through any means of interstate commerce.
Position Limits and Large Trader Reporting	• Position Limits • The CFTC is required to set aggregate limits, including limits on the spot month, other months and aggregate, on products related to physical commodities unless it designates the underlying physical commodity as an "excluded commodity." • The CFTC is authorized to establish aggregate position limits for other products for • swaps traded on an SEF, or designated contract market, and • swaps that are not traded on an SEF or designated contract market, but that perform a "significant price discovery function." • Exemptions are authorized for bona fide hedging transactions. • The SEC is authorized to establish aggregate position limits across security-based swaps. • Limits to include swaps that are "economically equivalent" to futures and options traded on a designated contract market. • Large Swap Trader Reporting • The Commission may set limits on swaps with a significant price discovery function. • Such limits may be exceeded if the person files reports with the Commission and keeps books and records of these swaps and related commodities.
Reporting and Recordkeeping	• Reporting: • Cleared swaps: The Commission will require real-time public reporting (meaning as soon as technologically practicable following trade execution) for swaps that are subject to mandatory clearing requirements

	• Uncleared swaps: Swap dealers and MSPs are required to report uncleared swaps to a swap data repository or, if no repository would accept the swap, to the Commission. The Commission is to provide for "real-time" reporting of this data.
	• Recordkeeping
	  • Uncleared Swaps: Any person who did not clear a swap or submit its data to a repository will (1) provide reports upon written request by the Commission and (2) maintain books and records open to inspection by the regulators.
	  • Swap Dealers and MSPs:
	  • If swaps must be reported to the Commission, the swap dealer or MSP must maintain records of the swaps as the Commission requires, open to inspection by any representative of the Commission.
	  • Must maintain daily records of swaps and all related records for both the swap dealers and MSPs and also for each counterparty.
	  • Must maintain a complete audit trail for comprehensive and accurate trade reconstructions.
	• The Commission will issue a public written report on an annual and semi-annual basis reflecting trading and clearing in the major swap categories, market participants and development of new products.
	• Analogous reporting and recordkeeping requirements exist in the context of security-based swaps, security-based swap dealers and security-based MSPs.

Beneficial Ownership	• The SEC, in conjunction with the prudential regulators and the Treasury Secretary, may determine that the purchase or sale of a security-based swap is comparable to direct ownership of the equity security.
	  • Such a determination would require inclusion of such security-based swap in reports pursuant to Sections 13(d) and 16(b).
	  • It would also require reports by institutional investment managers under Section 13(f)(1) to include such security-based swap.
	• This is an important issue for the SEC and market participants.

International Issues	• Authority to Bar: The Commission may bar non-U.S. entities from participating in the U.S. in any swap or security-based swap activities if they determine that the regulation of swaps in that jurisdiction undermines the stability of the U.S. financial system.
	• International Reach:
	  • The Act will not apply to activities outside the U.S. unless those activities have a direct and significant connection with activities in, or effect on, commerce of the U.S., or contravene rules to prevent evasion pursuant to the Act.
	  • SEC: The Act will not apply to security-based swaps without U.S.

	jurisdiction, unless such transactions were in contravention of rules prescribed to prevent evasion of the Act. • Non-U.S. CCPs can be DCOs if they register and are granted DCO status from the regulator(s) or if they are exempt from registration because they are subject to comparable home country regulation. • Non-U.S. entities that transact in U.S. swap markets beyond certain thresholds may be subject to registration, reporting, clearing, trading and margin requirements. • Foreign Boards of Trade ("FBT"): Closing the so-called "London loophole," the Commission may not permit an FBT to provide direct access to participants located in the United States with respect to transactions settled against contracts listed for trading here, unless the Commission determines that the FBT meets certain requirements and makes certain trading information available. • International Harmonization: The SEC, CFTC, Council and the Treasury Department will: • consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of swaps, security-based swaps, swap entities and security-based swap entities and • may agree to such information-sharing arrangement as deemed necessary.
Expansion of CFTC Enforcement Authority	• Closes the so-called "Zelener Loophole" in CFTC jurisdiction over foreign currency retail transactions and gives CFTC jurisdiction over certain transactions with non-"eligible contract participants" or "eligible commercial entities." • Expands significantly the CEA's definition of manipulation. • Adds language that mimics Section 10(b) of the Securities Exchange Act of 1934. • Existing manipulation provisions remain in place as well. • Intention is to allow manipulation to be established with the lower recklessness standard rather than the traditional requirement that "actual intent" to manipulate be proven. • Creates new violations for "disruptive practices" on a registered entity. • Violating bids or offers. • Intentional or reckless disregard for "orderly transactions" during a close. • "Spoofing": bidding or offering with the intent to cancel before execution.

5. Credit Rating Agencies and Asset-Backed Securities

Subtitle C of Title IX addresses regulation of credit rating agencies, private institutions that provide opinions on the credit-worthiness of various types of securities. While the SEC already had authority to regulate nationally recognized statistical rating organizations ("NRSROs"), the provisions of Subtitle C greatly enhance the SEC's ability to monitor rating agency activities and prevent conflicts of interest from harming investors. As detailed below, Subtitle C empowers the SEC to examine the rating activities of NRSROs, to require reports and public disclosures of, among other things, ratings methodologies and third-party due diligence reports for asset-backed securities ("ABS"), to enforce various corporate governance requirements, and generally to supervise NRSROs on a more comprehensive basis. It also removes the rule deeming NRSRO ratings not to be part of the registration statement for ratings purposes and the exemption of NRSROs from Regulation FD, as well as several references to ratings in various statutes.

Subtitle D of Title IX addresses asset-backed securities, or ABS, most notably requiring issuers of ABS to retain credit risk in securitized assets (commonly known as a "skin in the game" requirement). Other provisions in Subtitle D eliminate the ability of most ABS issuers to automatically suspend reporting after the year of issuance, create several new disclosure requirements for ABS offerings, eliminate a limited exemption from the federal securities laws for some mortgage-related securities, and mandate a due diligence review of securitized assets.

CREDIT RATING AGENCIES - TITLE IX - SUBTITLE C	

Enhanced Regulation of Credit Rating Agencies	• Applications for NRSRO status will be required to be filed with the SEC, rather than merely furnished.
	• Each NRSRO will be required to establish effective internal controls over the credit ratings process.
	• The SEC will issue rules requiring each NRSRO to submit an annual internal controls report, detailing:
	  ◦ a description of the responsibility of the management of the NRSRO in maintaining an effective internal control structure,
	  ◦ an assessment of the effectiveness of such internal control structure, and
	  ◦ an attestation of the CEO, or equivalent, of the NRSRO.
	• The SEC is authorized to fine NRSROs under certain circumstances where, previously, it was only authorized to censure them.
	• The SEC is authorized to censure, limit the activities of, suspend or bar persons from association with an NRSRO under certain circumstances.
	• The SEC is authorized to temporarily suspend or permanently revoke the registration of an NRSRO with respect to a particular class of securities if it does not have adequate financial and managerial resources to produce credit ratings with integrity.
	• The SEC will issue rules to separate the ratings functions of NRSROs from sales and marketing activities, and compliance officers of NRSROs will be prohibited from participating in the ratings function, performing marketing or sales activities or establishing compensation levels.
	• Compensation of compliance officers will not be linked to the financial performance of the NRSRO.

	• Compliance officers will submit an annual report on the compliance of the NRSRO with the securities laws and its own policies and procedures, which will be filed with the SEC.

Look-back Requirement for Former NRSRO Employees	• Each NRSRO will be required to establish, maintain and enforce policies and procedures designed to review whether any employees of issuers, underwriters or sponsors of rated securities that were previously employed by the NRSRO during the one-year period preceding the initial rating or rating action influenced the credit rating, and to take appropriate action in accordance with SEC rules.
	• The SEC will review these policies of NRSROs at least annually and whenever they are materially modified or amended.
	• Each NRSRO will be required to report to the SEC, which will publicly disclose the report, any case where the NRSRO knows or can be reasonably expected to know that a person who had been associated with the NRSRO during the previous five years obtains employment with any obligor, issuer or underwriter of securities rated by the NRSRO, if the person:
	  • was a senior officer of the NRSRO;
	  • was involved in determining credit ratings for the obligor, issuer or underwriter; or
	  • supervised an employee who participated in determining credit ratings for the obligor, issuer or underwriter.

Office of Credit Ratings	• The SEC will establish the Office of Credit Ratings (the "Office") to enforce rules relating to NRSROs. • The Office will examine each NRSRO annually and review the NRSRO's compliance with internal controls, policies, procedures, methodologies and statutory requirements, with an annual report detailing its essential findings available to the public.

Public Disclosure of Ratings and Methodologies	• The SEC will issue rules requiring each NRSRO to publicly disclose information about its credit ratings (and subsequent changes thereto) so that the performance of its ratings over time may be compared to that of other NRSROs.
	• Each NRSRO will be required to include an attestation with every credit rating it issues affirming that the rating was not influenced by any other business activities, that the rating was based solely on the merits of the securities being rated, and that the rating was an independent evaluation of the instrument's risks and merits.
	• The SEC will require each NRSRO to ensure that all methodologies used to produce credit ratings are approved by its board, that material changes are applied consistently, and that those methodologies are disclosed to users of credit ratings, including:
	  • the version of such methodology;
	  • material changes to any methodology used to produce the credit rating;
	  • any significant errors identified in a methodology that may result in credit

	rating actions; and • the likelihood of a material change to any methodology resulting in a change to current ratings. • The SEC will require NRSROs to prescribe a form to accompany the publication of credit ratings which includes, among other things: • assumptions used to produce the rating and in constructing the applicable ratings methodologies; • potential limitations of the rating and the types of risks excluded from the rating; • information on the uncertainty of the rating, including the reliability and limitations of the data relied on to produce the rating; • any use of servicer or remittance reports used to conduct surveillance of the rating; and • historical performance information, including volatility, expected probability of default and sensitivity of the rating to assumptions made by the NRSRO.
Disclosure of Third-Party Due Diligence Reports for ABS	• ABS issuers or underwriters will be required to publicly disclose the findings and conclusions of any third-party due diligence reports. • The SEC staff has informally indicated its unofficial view that this requirement will not be effective until the adoption and effectiveness of implementing rules. • In cases where an NRSRO hires a third party to perform due diligence services, the SEC will require the NRSRO to publicly disclose a certification by the third party that it has conducted a thorough review of information necessary for an NRSRO to provide an accurate rating.
Corporate Governance of NRSROs	• Each NRSRO's board of directors must include at least two independent members, constituting at least half of the members of the board, that: • do not accept any compensation from the NRSRO, other than director fees; • are not associated with the NRSRO; and • are disqualified from any deliberations in which they have a financial interest in the outcome. • Compensation of independent directors may not be performance-based, and their terms of office will not exceed five years and will not be renewable. • Each NRSRO's board of directors will be responsible for policies and procedures governing the determination of ratings and any conflicts of interest, as well as internal controls and compensation policies of the NRSRO.
Penalties for Statements Made by Credit Rating Agencies	• Enforcement and penalty provisions of the securities laws will apply to statements made by credit rating agencies in the same way as they apply to statements made by public accounting firms and securities analysts, and those statements will not be deemed forward-looking statements for purposes of the forward-looking statement safe harbor from liability.
State of Mind in	• In an action for money damages brought against a credit rating agency or a

Private Actions	controlling person, to plead state of mind, the complaint will need only to state facts giving rise to a strong inference that the credit rating agency knowingly or recklessly failed to: • conduct a reasonable investigation of the rated security with respect to facts relied upon to make the rating; or • obtain reasonable verification of such facts from other sources that it deems to be competent that were independent of the issuer or underwriter.
Duty to Report Tips to Law Enforcement	• Each NRSRO will be required to refer to law enforcement authorities any credible tips alleging that an issuer of rated securities has committed a material violation of law that has not been adjudicated in court.
Consideration of Other Information About an Issuer	• An NRSRO will be required to consider any information about an issuer of rated securities that it obtains from a source other than the issuer or underwriter if it finds the information credible and potentially significant to a rating decision.
Qualification Standards for Rating Analysts	• Within one year of enactment, the SEC will issue rules requiring any employees of NRSROs that perform credit ratings to meet specified competence, experience and knowledge requirements.
Universal Ratings Symbols	• The SEC will issue rules requiring NRSROs to establish, maintain and enforce policies and procedures that assess the probability of default by assigning clearly defined ratings symbols in a consistent manner for all types of securities and money market instruments. However, different sets of symbols may be used for different types of securities and money market instruments.
Removal of Statutory References to Credit Ratings	• A variety of references to credit ratings in several statutes will be removed. These include: • Title LXII of the Revised Statutes of the United States, replacing a requirement that national banks may not hold an interest in a financial subsidiary unless the bank meets a tiered rating requirement with one requiring it to meet "standards of credit-worthiness" established by the Office of the Comptroller of the Currency (the "OCC"), and • the Securities Exchange Act of 1934 (amending the definitions of "mortgage related security" and "small business related security" by removing the ratings requirement and instead requiring that securities meet "standards of credit-worthiness" as established by the SEC). • Other statutes whose provisions will be similarly amended are: • The Federal Deposit Insurance Act; • The Federal Housing Enterprises Financial Safety and Soundness Act of 1992; • The Investment Company Act of 1940; and • Public Law 100-461, the "World Bank Discussions."
Review of Reliance on Ratings	• Within one year of enactment, each federal agency will review any regulations issued by that agency that requires an assessment of the creditworthiness of a

	security or money market instrument, or any references to credit ratings in those regulations. • Each federal agency will be required to remove any such reference to or requirement for credit ratings and to substitute a standard of creditworthiness that the agency determines to be appropriate. • Each federal agency will submit a report to Congress detailing a description of any changes made to regulations pursuant to this section.
Elimination of Exemption from Fair Disclosure Rule	• Within 90 days of enactment, the SEC will revise Regulation FD to remove its exemption for disclosures made to credit rating agencies.
Study on NRSRO Independence	• The SEC will conduct a study, with a report due within three years of enactment, regarding how the independence of NRSROs affects ratings issued by NRSROs, including study of conflicts of interest and the potential impact of rules prohibiting NRSROs from providing other services to issuers of rated securities.
GAO Study on Alternative Business Models	• The Comptroller General will conduct a study, with a report due within 18 months of enactment, on alternative means for compensating NRSROs in order to incentivize more accurate credit ratings.

GAO Study on Independent Professional Analyst Organization	• The Comptroller General will conduct a study, with a report due within one year of the SEC's publication of rules pursuant to Section 936, on the feasibility and merits of creating an independent organization for rating analysts that would:
	  • establish independent rating standards;
	  • establish an ethical code of conduct; and
	  • oversee the profession of rating analysts.

Assigned Credit Ratings	• The SEC will conduct a study, with a report due within 24 months of enactment, regarding the credit rating process for structured finance products and the conflicts of interest associated with compensation of rating agencies for producing ratings, including:
	  • the feasibility of establishing a system where an independent utility would assign NRSROs to rate structured finance products;
	  • the range of metrics that could be used to judge the accuracy of credit ratings; and
	  • any alternative means for compensating NRSROs that would incentivize more accurate ratings.
	• After submitting this report to Congress, the SEC will be authorized to establish a system for assigning NRSROs to rate structured finance products in a manner that prevents the issuer, sponsor or underwriter of the product from selecting the NRSRO to provide the rating.

Effect of Rule 436(g)	• The Securities Act of 1933, Rule 436(g), which provides that ratings made by NRSROs are not part of the registration statement for liability purposes, is repealed. • Therefore, references to credit ratings in a registration statement constitute the

	views of an "expert," meaning that the consent of the NRSRO is required pursuant to Rule 436(a). The SEC staff has granted temporary relief to ABS issuers from the provisions of Regulation AB that would otherwise require the inclusion of information regarding credit ratings of the offered securities, until January 24, 2011.
Sense of Congress	• The SEC should exercise its rulemaking authority under Section 15E(h)(2)(B) of the Securities Exchange Act of 1934 to prevent improper conflicts of interest arising from employees of NRSROs providing non-rating services to issuers of securities.

ASSET-BACKED SECURITIES - TITLE IX - SUBTITLE D	
Credit Risk Retention	• Within 270 days after enactment, the federal banking agencies (OCC, FDIC and Federal Reserve), the SEC and, for residential mortgage securitizations only, the Department of Housing and Urban Development and the Federal Housing Finance Agency, will issue regulations to require securitizers or originators to retain an economic interest in a portion of the credit risk of any securitized asset. These regulations will: • take effect one year, for securitizations of residential mortgages, or two years, for securitizations of other assets, after publication in the Federal Register; • be enforced by the appropriate federal banking agency, for insured depository institutions, or by the SEC, for all other securitizers; • prohibit direct or indirect hedging or transfer of the credit risk that is required to be retained; • require securitizers or originators to retain at least five percent of the credit risk for any securitized assets (with the allocation determined by considering the credit risk of the assets, the form or volume of transactions in securitization markets, and the potential impact of risk retention obligations on the availability of credit); • establish appropriate standards for retention of economic interests with respect to collateralized debt obligations ("CDOs"), securities collateralized by CDOs and similar instruments collateralized by other ABS; and • specify forms and duration of risk retention that will comply with the requirement. • For commercial mortgages, specify the permissible types, forms and amounts of risk retention, which may include: • retention of a specified amount or percentage of the total credit risk of the asset; • retention of the first-loss position by a third-party purchaser that negotiates for such purchase and provides due diligence on pool

	assets before issuance; • a determination by a federal banking agency or the SEC that the underwriting standards and controls for the asset are adequate; or • the provision of adequate representations and warranties and related enforcement mechanisms. • The rules will provide several exemptions to the risk retention requirement, including exemptions for: • "Qualified residential mortgages," which will be jointly defined by the federal banking agencies, the SEC, the Secretary of Housing and Urban Development and the Director of the Federal Housing Finance Agency as those containing underwriting and product features that indicate a lower risk of default (such as verification of assets and income, maximum debt-to-income ratios, required mortgage insurance and others), although the definition of "qualified residential mortgages" may not be broader than the definition of "qualified mortgages" under the Truth in Lending Act; • Securitizations of assets originated under specified underwriting standards that the Federal banking agencies will issue for each asset class, which may be subject to a requirement to retain less than five percent of the credit risk of such assets; • Any securitization of an asset guaranteed by the United States or any agency of the United States (excluding Fannie Mae and Freddie Mac) or by any state or any institution supervised by the Farm Credit Administration, including the Federal Agricultural Mortgage Corporation; and • Other securitizations where such exemption may be appropriate in the public interest and for the protection of investors. • All joint rulemaking under this section will be coordinated by the Chairperson of the Financial Stability Oversight Council.
Study on Risk Retention Requirements	• The Chairman of the Financial Services Oversight Council will conduct a study, with a report due to Congress within 180 days of enactment, on the macroeconomic effects of risk retention requirements with emphasis on potential benefits in stabilizing the real estate market. The study will include: • an analysis of the effects of risk retention on real estate bubbles, including an estimate of the fraction of real estate losses that may have been averted in recent years; • an analysis of the feasibility of preventing real estate bubbles by proactively adjusting risk retention levels based on market conditions; • a comparable analysis for proactively adjusting mortgage origination requirements; • an assessment of whether such proactive adjustments should be made by an independent regulator or by formula, either independently or in concert with monetary policy; and • recommendations for implementation and enabling legislation.

Elimination of Automatic Periodic Reporting Suspension	• The duty to file periodic reports for any class of ABS under Section 15(d) of the Securities Exchange Act of 1934 will no longer be automatically suspended after the year of issuance when the ABS are held by fewer than 300 persons. • Instead, the SEC will be authorized to suspend these reporting obligations by rule.

Asset-level Data Disclosure for ABS Offerings	• The SEC will issue rules requiring ABS issuers to disclose information regarding the assets backing that specific ABS, including asset-level or loan-level data necessary for investors to perform due diligence, including:
	  • data having unique identifiers relating to loan brokers or originators;
	  • the nature and extent of compensation of loan brokers or originators; and
	  • the amount of risk retention by the originator or securitizer.

Due Diligence Analysis of ABS Issues	• The SEC will, no later than 180 days after enactment, issue rules requiring issuers of registered ABS to perform a due diligence review of the assets underlying the ABS and disclose the nature of the review.
Representations and Warranties in ABS Offerings	• The SEC will, no later than 180 days after enactment, issue rules requiring NRSROs to include in any rating report a description of representations, warranties and enforcement mechanisms available to investors, and how they differ from representations, warranties and enforcement mechanisms in issuances of similar securities. • The SEC will, no later than 180 days after enactment, issue rules requiring securitizers to disclose fulfilled and unfulfilled repurchase requests across all trusts aggregated by that securitizer.
Elimination of Exempted Transaction	• The Act eliminates the exemption provided by Section 4(5) of the Securities Act of 1933, which currently exempts certain mortgage-related securities from registration.

Conflicts of Interest in Offerings of ABS	• The SEC will, no later than 270 days after enactment, issue rules prohibiting underwriters or sponsors of ABS (or their affiliates) from engaging in any transaction within one year of the first sale of a class of ABS that would constitute a material conflict of interest with respect to any investor in a transaction relating to that ABS.
	• This general prohibition will not apply to:
	  • risk-mitigation activities, provided that such activities are designed to reduce the specific risks to the underwriter or sponsor arising out of the ABS transaction;
	  • purchases or sales of ABS made pursuant to liquidity commitments of the underwriter or sponsor; or
	  • purchases or sales of ABS made pursuant to bona fide market-making in the ABS.

6. Corporate Governance, Internal Controls and Private Placements

The Act contains many provisions that will affect all public companies, not only those in a financial services industry. Most of these changes are in Title IX and involve corporate governance and executive compensation disclosure. We summarize the principal changes below, but there are others, including further restrictions on broker discretionary voting, which are in effect now and will impact the upcoming proxy season. While most of the changes impose new requirements and restrictions, Title IX also exempts smaller public companies from SOX internal controls audit requirements, to which they would otherwise have become subject this year. Titles IV and IX require SEC amendments to the principal private placement rule relied on by all issuers, public or private.

CORPORATE GOVERNANCE AND INTERNAL CONTROLS – TITLE IX	
Corporate Governance and Executive Compensation	• SEC authority to adopt "Proxy Access" rules, as it proposed in 2009, giving shareholders of companies (including investment companies) the right to include an alternate director candidate in the company's annual proxy, has been confirmed. Following passage of the Act, the SEC adopted these rules, which were originally slated to take effect on November 15, 2010, but are currently the subject of a stay on effectiveness arising out of a lawsuit challenging the rules filed by the Business Roundtable and U.S. Chamber of Commerce with the U.S. Court of Appeals for the D.C. Circuit. If ultimately upheld, the rules will give 3% stockholders the right to make director nominations. Smaller reporting companies have been granted a three-year grace period before they must comply. • The proxy for the first annual meeting that takes place at least six months after enactment must contain a non-binding shareholder "say-on-pay" vote, with respect to the executive compensation disclosed in the proxy. That proxy must also contain a separate vote, by which shareholders will express their preference whether, going forward, "say-on-pay" votes will take place every one, two, or three years, and that decision must be revisited every six years. The SEC is to consider whether to exempt smaller public companies from "say-on-pay." • A non-binding shareholder vote will also be required on "golden parachutes" (very broadly defined) for executives in Merger-and-Acquisition transactions, unless they have already been approved in a "say-on-pay" vote. • Exchanges are required to adopt new requirements for independent compensation committees. ("Independence" requirements may be stricter than the existing NYSE rule.) New proxy statement disclosures regarding compensation consultants will also be required. • Exchange rules must require listed companies to adopt a "clawback" policy, to recover incentive compensation, including stock options, paid to current or former executives in the three years before a restatement, even in the absence of any misconduct, to the extent the compensation was based on erroneous results. (The existing SEC clawback right requires misconduct and covers a shorter period and fewer officers.) • The SEC must amend executive compensation disclosure rules to increase

	disclosure of the link between compensation and the company's performance, as well as the ratio of median employee to CEO compensation.
SOX Internal Controls Audit Requirement	• Smaller public companies (market cap under $75 million) are permanently exempted from this expensive requirement. (An SEC regulatory exemption for these companies expired this year.) The SEC must conduct a study whether to extend the exemption to companies between $75 million and $250 million.

PRIVATE PLACEMENTS - TITLES IV and IX	

Reg D Private Placement Rules	• The SEC must amend Rule 506 - the standard private placement exemption - by:
	  • changing the "$1 million net worth" test for individual "Accredited Investors" by excluding the value of the individual's principal residence, with other changes to be considered by the SEC, and
	  • adding a disqualification provision, so that the exemption could not be used by persons who have incurred certain federal or state securities, banking or insurance sanctions.
	  • See Section 1 of this Summary for further information.

7. Banking

The Act touches upon nearly every aspect of federal banking regulation in some way. Generally speaking, its enactment would result in greater and broader powers for bank regulatory agencies, other than the Office of Thrift Supervision ("OTS"), which is to be abolished.

Title I, the Financial Stability Act of 2010, establishes a Financial Stability Oversight Council to address risks to the financial markets. The Board of Governors of the Federal Reserve System is given regulatory authority over significant nonbank financial companies and further authority over significant bank holding companies. Present prudential regulatory standards are enhanced.

The headline of Title III, the Enhancing Financial Institution Safety and Soundness Act of 2010, is the abolishment of the OTS and the transfer of its powers to other agencies. The OCC will now regulate and supervise federal thrifts and will have rulemaking authority over state thrifts. Though the Senate version of the legislation had provided for the elimination of the thrift charter, the final legislation preserves it. Existing thrift statutes, primarily the Home Owners' Loan Act ("HOLA"), will continue to set the framework of thrift and thrift holding company regulation. Thrift holding companies will now be regulated and supervised by the Fed, and the Fed will also supervise their non-depository subsidiaries. The FDIC will assume all other functions of the OTS with respect to state thrifts not transferred to the OCC.

Title VI, the Bank and Saving Association Holding Company and Depository Institution Regulatory Improvements Act of 2010, expands regulatory supervision over holding companies and depository institutions. Holding companies and depository institutions must meet more stringent capital adequacy requirements and face new restrictions in several areas, including proprietary trading, transactions with affiliates, engagement in expanded financial activities, mergers/acquisitions and loans to insiders.

Title XI directs the Fed to establish policies and procedures which effectively limit its emergency lending authority. Provision is made for emergency financial stabilization programs. The position of Vice-Chairman of Supervision of the Fed is established to facilitate the supervision and regulation of entities under Fed supervision.

Also relevant to banking is the Volcker Rule, summarized above beginning in Section II(b), which would prohibit, subject to certain exceptions, banking entities from engaging in proprietary trading and from investing in or sponsoring a hedge fund or private equity fund.

FINANCIAL STABILITY - TITLE I	
Subtitle A - Financial Stability Oversight Council	
Establishment	• The Financial Stability Oversight Council (the "Council") is established.
Members	• Voting members are the Secretary of Treasury, as Chairperson of the Council, the Chairman of the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Bureau of Consumer Financial Protection, the Chairman of the Securities and Exchange Commission, the Chairperson of the Federal Deposit Insurance Corporation, the Chairperson of the Commodity Futures Trading Commission, the Director of the Federal Housing Finance Agency, the Chairman of the National Credit Union Administration Board and an independent member appointed by the President with advice and consent of the Senate having insurance expertise.
Purposes	• The purposes of the Council are to identify risks to the financial stability of the U.S. that could arise from material financial distress, failure or ongoing

	activities of large interconnected bank holding companies or nonbank financial companies or that could arise outside the financial services marketplace. • Promote market discipline by eliminating expectations the government will shield shareholders, creditors and counterparties from losses in the event of failure. • To respond to emerging threats to the stability of the U.S. financial markets.

Directives	• Duties of the Council include:
	  • monitoring the financial services marketplace to identify potential threats to the financial stability of the U.S.;
	  • recommending to member agencies general supervisory priorities and principles;
	  • identifying gaps in regulation that could pose risks to financial stability;
	  • requiring supervision by the Fed of nonbank financial companies that may pose risks to the financial stability of the U.S. in the event of their material financial distress or failure;
	  • making recommendations to the Fed concerning the establishment of heightened prudential standards for nonbank financial companies supervised by the Fed and large interconnected bank holding companies;
	  • identifying systemically important financial market utilities and payment clearing and settlement activities;
	  • make recommendations to the financial regulatory agencies to apply new or heightened standards and safeguards for financial activities or practices that could create or increase risks;
	  • review and comment to the SEC and any standard setting body regarding existing or proposed accounting principles, standards or procedures; and
	  • annually report to Congress on, among other things, activities of the Council, market and regulatory developments, together with assessments of same, emerging threats, making recommendations to enhance the integrity, efficiency, competitiveness and stability of U.S. financial markets, promote market discipline and maintain investor confidence.

Authority to require supervision and regulation of certain nonbank financial companies	
Authority to Regulate Certain Nonbank Financial Companies	• The Council may determine by a two-thirds vote, including the Chairperson, that a U.S. or foreign nonbank financial company shall be supervised by the Fed and subject to prudential standards in accordance with the Act if the Council determines that material financial distress of the nonbank financial company or the nature, scope, size, scale, concentration, interconnectedness, and mix of activities of such company could pose a threat to the financial stability of the U.S. • Nonbank financial companies are broadly defined and, although not explicitly defined as such, could include investment companies, business development companies, hedge funds and investment advisers.

Determination Criteria	• Determinations based on criteria, including:
	  • extent of leverage;
	  • amount and nature of financial assets of company;
	  • amount and types of liabilities;
	  • extent and nature of off-balance sheet exposures;
	  • extent and types of transactions and relationships of company with other significant nonbank companies and significant bank holding companies;
	  • importance of company as source of credit and as a source of liquidity for the U.S. financial system;
	  • the degree to which the company is already regulated by financial regulatory agencies; and
	  • the nature, scope, size, scale, concentration, interconnectedness, and mix of the company's activities.
	(Criteria for foreign companies generally consider U.S. significance.)

Anti-evasion Authority	• The Council has the authority to determine that a company is organized or operates in such a manner as to avoid and evade the application of the Act and should forthwith be supervised by the Fed and subject to prudential standards.
Intermediate Holding Company Option	• Upon a determination to supervise, a nonbank financial company may establish an intermediate holding company in which the financial activities of the company and its subsidiaries will be conducted. The intermediate holding company shall be subject to the supervision of the Fed and prudential standards as if the intermediate holding company is a nonbank financial company supervised by the Fed.
Intermediate Holding Company Mandated	• The Fed may require the establishment of an intermediate holding company subject to supervision of the Fed and prudential standards as if the intermediate holding company is a nonbank financial company supervised by the Fed.
Financial Activities Covered	• All activities financial in nature under the Gramm-Leach-Bliley Act and including ownership or control of insured depository institutions, but excluding internal financial activities for the company and affiliates including internal treasury, investment and employee benefit functions.
Non-Financial Activities Not Covered	• Non-financial activities (i.e. commercial activities), shall not be subject to supervision by the Fed and prudential standards.
Re-evaluation and Rescission of Determinations	• The Council is directed, not less frequently than annually, to reevaluate each determination made with respect to each nonbank financial company supervised by the Fed and rescind any such determination if the standards set forth in the Act are no longer met.
Notice and	• A nonbank financial company shall have a right to address the basis of the

Opportunity for Hearing	proposed determination of the Council as well as a hearing subject to an emergency exception. Final determinations by the Council are subject to judicial review by a U.S. District Court under a standard of whether the final determination was arbitrary and capricious.
Registration of Supervised Nonbank Financial Companies	• Not later than 180 days after final Council determination that a nonbank financial company is to be supervised, the Company shall register with the Fed.
Recommendations of Council for Enhanced Supervision and Prudential Standards	• The Council may recommend to the Fed the establishment and refinement of prudential standards and reporting and disclosure requirements applicable to nonbank financial companies supervised by the Fed and large interconnected bank holding companies that: • are more stringent than those applicable to other nonbank financial companies and bank holding companies that do not present a similar risk to the financial stability of the U.S.; • that increase in stringency, based on statutory criteria; • differentiate on an individual or category basis, activities, size, or other risk factors; and • include an asset threshold higher than $50 billion for the application of any standard.
Nature of Prudential Standards	• The recommendations of the Council may include: (a) risk-based capital requirements; (b) leverage limits; (c) liquidity requirements; (d) resolution plan and credit exposure report requirements; (e) concentration limits; (f) a contingent capital requirement; (g) enhanced public disclosure; (h) short-term debt limits; and (i) overall risk management requirements. • (Standards for foreign nonbank companies are directed to give due regard to the principle of national treatment, equality of competitive opportunity, and the extent of home country supervisory standards.)
Reports	• The Council may require bank holding companies with total assets of $50 billion or more or nonbank financial companies supervised by the Fed, or any subsidiary thereof, to submit certified reports to keep the Council informed as to financial condition, systems and transactions, the extent to which activities and operations of any subsidiary could, under adverse circumstances, have the potential to disrupt financial markets or affect financial stability of the U.S.
Continued Supervision of	• Any company that was a bank holding company with consolidated assets of $50 billion or more and received TARP assistance but ceases to be a bank holding company after January 1, 2010 shall be treated like a nonbank financial

Certain Bank Holding Companies	company supervised by the Fed.
Recommendations of Additional Standards	• The Council may issue recommendations to the financial regulatory agencies to apply new or heightened standards and safeguards for financial activities or practices applicable to bank holding companies or supervised nonbank financial companies if the Council determines that the activities or practices could create a risk of the problems spreading among such companies or the financial markets of the U.S.

Mitigation of Risks Authority	• The Fed can determine that a bank holding company with assets of $50 billion or more or a nonbank holding company supervised by the Fed poses a grave threat to the financial stability of the U.S. then upon a two-third vote of the Council, the Fed shall:
	  • limit the ability of the company to merge, acquire or become affiliated with another company;
	  • restrict the ability to offer a financial product;
	  • require the termination of activities or impose conditions on the manner in which they are conducted; or
	  • if that is deemed inadequate, to sell or transfer assets or off balance sheet items to nonaffiliated entities.

Subtitle B - Office of Financial Research	
Establishment	• The Act establishes an Office of Financial Research within the Department of the Treasury.
Purpose	• The Office is to support the Council in fulfilling the purposes and duties of the Council and by supporting member agencies by data collection and analysis.
Organization and Activities	• Within the Office there are a Data Center and Research and Analysis Center. The Data Center's mandate is to prepare and publish financial company and financial instrument reference databases. The general duty of the Research and Analysis Center is to develop and maintain independent analytical capabilities and computing resources to maintain metrics and reporting systems for risks to the financial stability of the U.S., to monitor, investigate and report on changes to system-wide risk levels and patterns, to conduct research, to support and improve regulation of financial entities in the markets, and report on stress tests or other stability-related evaluations of financial institutions. • A financial research fund is established to support the activities of the Office.
Subtitle C - Additional Fed Authority for Certain Nonbank Financial Companies and Bank Holding Companies	
Reports by and Examinations of Nonbank Financial Companies	• The Fed may require each nonbank financial company supervised by the Fed and any subsidiary to submit reports to keep the Fed informed as to financial condition, systems, the extent to which activities and operations pose stability risks and compliance by the company with the requirement of the Act. The Fed may also examine any nonbank financial company supervised by the Fed and

	any subsidiary to determine the nature of its operations and financial condition as well as compliance.
Enforcement	• Nonbank financial institutions supervised by the Fed are subject to the formal regulatory enforcement mechanisms contained in the Federal Deposit Insurance Act as if such companies were bank holding companies.
Acquisitions	• Bank Acquisitions – Nonbank financial companies supervised by the Fed are subjected to Section 3 of the Bank Holding Company Act as if such companies were bank holding companies, meaning they may not acquire more than 5 percent of any voting class of stock of a bank or bank holding company without prior Fed approval. • Nonbank Financial Company Acquisitions – Bank holding companies having $50 billion or more in consolidated assets or a nonbank financial company supervised by the Fed may not acquire voting shares of a company engaged in financial activities having consolidated assets of $10 billion or more without prior written notice to and effective approval by the Fed. Acquisitions of securities underwriters are excepted.
Standards for Review	• In addition to the usual BHCA standards of public benefits that outweigh possible adverse effects such as undue concentration, financial, and managerial factors, the Act directs consideration of the extent to which the proposed acquisition would result in greater or more concentrated risks to global or U.S. financial stability, or the U.S. economy.
Prohibition Against Management Interlocks	• Nonbank financial companies supervised by the Fed shall be treated as bank holding companies for purposes of the Depository Institutions Management Interlocks Act, provided that the Fed may not exercise its authority to allow service by a management official of such a nonbank financial company as a management official, any bank holding company with total consolidated assets of $50 billion or more or another non-affiliated, nonbank financial company supervised by the Fed.
Enhanced Supervision for Nonbank Financial Companies and Certain Bank Holding Companies	• The Fed is required to establish prudential standards and reporting and disclosure requirements for nonbank financial companies supervised by the Fed and bank holding companies with consolidated assets of $50 billion or more that are more stringent than those applicable to non-supervised nonbank financial companies and other bank holding companies and that increase in stringency as risk increases. • The standards may differentiate among companies individually or by category and may have different asset thresholds above $50 billion for different standards.
Required Standards	• Those standards shall include risk-based capital requirements, leverage limits, liquidity requirements, overall risk management requirements, resolution plan and credit exposure report requirements and concentration limits.
Discretionary Standards	• In addition, the Fed may establish additional prudential standards that include a contingent capital requirement, enhanced public disclosure, short short-term

	debt limits and other appropriate prudential standards. • Such requirements, when applied to foreign nonbank financial companies supervised by the Fed and foreign bank holding companies, will consider the principles of national treatment and competitive equity as well as home country supervisory standards.
Considerations	• In prescribing standards, the Fed is directed to take into account differences among such nonbank financial companies and bank holding companies based on the original determination criteria, whether the company owns an insured depository institution, nonbank activities and affiliations and any other factors the Fed determines appropriate. Standards are to be adopted in light of any predominant line of business.
Annual Report	• The Fed is to submit an annual report to Congress regarding implementation of prudential standards including the use of such standards to mitigate risk to the financial stability of the U.S.
Contingent Capital	• The Fed is authorized to promulgate regulations requiring the maintenance of a minimum amount of long-term hybrid debt capital that is convertible to equity in times of financial stress.
Resolution Plans and Credit Exposure Reports	• The Fed shall require each nonbank financial company supervised by the Fed and each bank holding company having $50 billion or more in assets to report periodically to the Fed, the Council and the FDIC, the plan for such company for its rapid and orderly resolution in the event of material financial distress or failure. • Resolution plans are not binding upon bankruptcy courts or receivers and no private right of action may be based on such plans. • The Fed shall require such companies to report on the nature and extent of their credit exposure to other significant financial holding companies and bank holding companies and the nature and extent to which other holding companies have credit exposure to that company.
Failure to Submit Adequate Plan	• In the event that a resolution plan is determined to be insufficient or not credible after an opportunity for a cure, the Fed and the FDIC may jointly impose more stringent capital, leverage or liquidity requirements or restrictions on the growth activities or operations of the company or any subsidiary until such time as a plan remedying the deficiencies has been tendered. • The Fed and the FDIC, in consultation with the Council, may also direct a nonbank financial company supervised by the Fed or such large bank holding company, to divest certain assets or operations identified to facilitate an orderly resolution of such company under chapter 11 of the U.S. Code.
Concentration Limits	• The Fed is directed to prescribe standards for nonbank companies supervised by the Fed and such large bank holding companies that limit concentration exposure and credit exposure to any nonaffiliated company that exceeds 25% of the capital stock and surplus of such company or such lower amount as the Fed may determine by regulation to be necessary to mitigate risks to the financial

	stability of the U.S.
Enhanced Public Disclosures	• The Fed may prescribe periodic public disclosures by such nonbank companies and bank holding companies in order to support market evaluations of the risk profile, capital adequacy and risk management capabilities of the companies.
Short-Term Debt Limits	• The Fed may prescribe limits on short term debt of such companies, including off balance sheet exposures, that may be accumulated.
Risk Committees	• Each nonbank financial company supervised by the Fed that is a publically traded company, must establish a risk committee no later than one year after receipt of its designation. • The Fed shall issue regulations requiring each bank holding company that is publicly traded and that has total consolidated assets of not less than $10 billion to establish a risk committee. • The Fed may require bank holding companies that are publicly traded companies and have consolidated assets of less than $10 billion to establish a risk committee. • Risk committees are responsible for the oversight of enterprise-wide risk management practices, must include a number of independent directors as the Fed may determine appropriate based on the nature of operations, etc., and must include at least one risk management expert having experience in identifying, assessing, and managing risk exposures of large complex firms.
Stress Tests	• The Fed is required to conduct annual stress tests on nonbank financial companies supervised by the Fed and bank holding companies with consolidated assets of $50 billion or more. • Such companies are also required to self-conduct semiannual stress tests. All other regulated financial companies having consolidated assets of more than $10 billion are required to have annual stress tests.
Leverage Limitation	• The Fed must require nonbank financial companies supervised by it and bank holding companies of over $50 billion or more in assets to maintain a debt to equity ratio of no more than 15 to 1 if a determination by the Council is made that the company poses a grave threat to the financial stability of the U.S. and the imposition of such limitation is necessary to mitigate the risk.
Off Balance Sheet Activities	• All nonbank companies supervised by the Fed and bank holding companies having $50 billion or more in assets must include all off balance sheet activities in the computation of required capital ratios.
Early Remediation Requirements	• The Fed, the Council, and the FDIC shall prescribe requirements to provide for early remediation of financial distress of nonbank financial companies supervised by the Fed and bank holding companies with assets of $50 billion or more.
Affiliations	• There is no requirement that a nonbank financial company supervised by the Fed or a company that controls such a company conform its activities to the requirements of Section 4 of the BHCA which restricts bank holding companies from the ownership or control of nonbank companies or engaging in activities that are other than financial in nature as defined in the Gramm-Leach-Bliley Act.

Formation of Intermediate Holding Companies; Source of Strength Responsibility	• However, if a nonbank financial company supervised by the Fed conducts activities other than those that are financial in nature under Section 4(k) of the BHCA, the Fed may require such a company to establish and conduct such activities that are financial in nature in an intermediate holding company established pursuant to regulation of the Fed no later than ninety days after the Fed's direction to do so. • Establishment of an intermediate holding company is mandatory if the Fed determines it as necessary to appropriately supervise activities determined to be financial or to ensure Fed supervision does not extend to commercial activities. • Activities subject to this mandate do not include internal financial activities conducted for a nonbank financial company supervised by the Fed or any affiliate including internal treasury, investment and employee benefit functions. Any internal financial activity conducted during the year prior to enactment of the Act may be continued as long as at least two-thirds of the assets or two-thirds of the revenues generated on the activity are from or attributable to such company or an affiliate subject to Fed review to determine whether such activity presents undue risk to the company or financial stability in the U.S. • A company that directly or individually controls an intermediate holding company is required to serve as a source of strength to the intermediate holding company. Such company may be required to submit reports to the Fed and shall be subject to the Fed's enforcement authority. • The Fed is required to promulgate regulations to establish criteria for determining whether to require the establishment of intermediate holding companies which regulations might include restrictions or limitations on transactions between intermediate holding companies or a nonbank financial company supervised by the Fed and its affiliates as necessary to prevent unsafe and unsound practices.
Safe Harbor	• The Fed, together with the Council, is permitted to promulgate regulations setting forth criteria for exempting certain types or classes of U.S. or foreign nonbank financial companies from supervision by the Fed. • The Fed is instructed to consider the same factors as are relevant to a determination of whether the nonbank financial company should be supervised in the first place.
Leverage and Risk Based Capital Requirements	• The appropriate federal banking regulatory agencies are required to establish minimum leverage capital and risk-based capital requirements on a consolidated basis for insured depository institutions, depository institution holding companies and nonbank financial companies supervised by the Fed. The requirements are to be no less than currently applicable total leverage and risk-based capital rules. • The capital rules are to address risks that the activities of these institutions pose not only to the institution itself but to other public and private stakeholders in the event of adverse performance disruption or failure of the institution or activity.

	• At a minimum, these capital rules are required to address risks arising from volume of activity in derivatives, securitized products, concentrations in assets which values presented in financial statements are based on models rather than historical costs or market price and concentrations in market share for any activity that would disrupt markets if the institution is unexpectedly forced to cease the activity.
Access to U.S. Financial Markets	• The International Banking Act is amended to include consideration of risk to the stability of the U.S. financial system both for the establishment of foreign bank offices and termination of such activities in the U.S.

TRANSFER OF POWERS TO THE COMPTROLLER OF THE CURRENCY, THE CORPORATION AND THE BOARD OF GOVERNORS - TITLE III	
Transfer of Powers and Duties of the OTS	
Effective Date	• Becomes effective one year after the date of enactment unless extended by the Secretary of the Treasury (in consultation with certain other agency heads) for as much as an additional six months.
OTS ⇢ OCC	• The OTS's functions relating to federal savings associations (a/k/a federal thrifts) are transferred to the OCC. • All rulemaking authority of the OTS relating to savings associations (federal and state) is transferred to the OCC. • The thrift charter will be preserved. There will be a Deputy Comptroller of the Currency at the OCC to supervise and examine federal thrifts.
OTS ⇢ Fed	• The functions of the OTS relating to supervision of savings and loan holding companies (a/k/a thrift holding companies) and their subsidiaries (other than depository institution subsidiaries) and rulemaking authority over thrift holding companies are transferred to the Fed. • The Fed will also have rulemaking authority under the Home Owners' Loan Act with respect to transactions with affiliates, extensions of credit to executive officers, directors, and principal shareholders, and Section 5(q) relating to tying arrangements. The Fed has analogous regulations in place that could be made applicable to thrifts.
OTS ⇢ FDIC	• All remaining functions of the OTS relating to state savings associations (a/k/a state thrifts/state savings banks) are transferred to the FDIC.
Abolishment of the OTS	• The OTS will cease to exist 90 days after its functions are transferred.
OTS Orders, Resolutions, Determinations, Agreements, Regulations, Etc.	• All OTS orders, resolutions, determinations, agreements, regulations, interpretations, guidelines, procedures and other advisory materials will remain in effect and will be enforceable by the Fed, the OCC and/or the FDIC, as applicable, unless modified or terminated by the applicable agency. The applicable agency must identify which OTS regulations, advisory materials, etc.

	it will enforce by the date that OTS powers are transferred. • Proposed OTS regulations and interim and final OTS regulations that are not yet effective will become proposed, interim, or final regulations of the Fed, the OCC or the FDIC, as appropriate.
Branching of Converted Savings Associations	
Retaining Existing Branches Upon Conversion to National Bank	• Thrifts that convert to national banks may continue to operate any branches or agencies that existed prior to conversion. Such thrifts may also open new branches in states where they already have a branch as long as the state would permit the establishment of the branch if the thrift were a bank chartered by that state.
Deposit Insurance Reforms	
Deposit Insurance Assessments	• Assessments will be based on average consolidated total assets during the assessment period minus average tangible equity during the assessment period (and, for custodial banks and banker's banks, minus an additional amount deemed necessary by the FDIC). • Repeals a provision that prevented the FDIC from discriminating based on size in determining risk category.
Transition Reserve Ratio Requirements to Reflect New Assessment Base	• The minimum reserve ratio is now increased to 1.35 from 1.15 percent of estimated insured deposits or the comparable percentage of the assessment base with the increase in assessments to be borne by banks having assets of $10 billion or more. • The FDIC must make public the reserve ratios for five years.
Elimination of Procyclical Assessments	• There will continue to be a requirement that the FDIC declare dividends if the reserve ratio of the Deposit Insurance Fund at the end of a calendar year exceeds 1.5 percent of estimated insured deposits in the amount of the excess; however, the FDIC will have discretion to suspend or limit the declaration of such dividends. The FDIC will promulgate regulations prescribing the method for the declaration, calculation, distribution, and payment of dividends. • The requirement that the FDIC pay dividends if the reserve ratio of the Deposit Insurance Fund equals or exceeds 1.35 percent but is not more than 1.5 percent in the amount of half of the excess above 1.35 percent is eliminated.
Enhanced Access to Information for Deposit Insurance Purposes	• The FDIC will be required to merely consult with an institution's primary federal regulator prior to requiring additional reports from the institution for insurance purposes. Agreement by the primary federal regulator was previously required. • In determining risk of losses at insured depository institutions and economic conditions generally affecting depository institutions, the FDIC will be required to collect certain information that it previously collected at its option, such as reports of other federal and state banking agencies.
Permanent Increase in Deposit and	• The temporary increase of the standard maximum deposit insurance amount to $250,000 is now permanent. This increase is retroactive to January 1, 2008,

Share Insurance	which means that depositors at banks that failed between January 1, 2008 and the time the insurance limit was temporarily increased on October 3, 2008 will benefit from this provision. • Share insurance for deposits at credit unions is also permanently increased to $250,000.
Insurance of Transaction Accounts	• Deposits in noninterest-bearing transaction accounts will be fully insured, separately from other deposits of the depositor at the same institution through December 31, 2012. Unlike the Transaction Account Guarantee Program, there is no opportunity for institutions to opt-out. • While Interest on Lawyers Trust Accounts (IOLTAs) and certain Negotiable Order of Withdrawal Accounts (NOWs) were expressly covered by the Transaction Account Guarantee Program, they are not covered by these new deposit insurance provisions. Therefore, after the expiration of the Transaction Account Guarantee Program (currently scheduled for December 31, 2010 but extendable without further rulemaking until December 31, 2011), standard deposit limits will apply to IOLTA and NOW accounts. • Deposits in noninterest-bearing transaction accounts at credit unions will be similarly insured.
Office of Minority and Women Inclusion	
Establishment of Office of Minority and Women Inclusion	• The Treasury, the FDIC, the Federal Housing Finance Agency, each of the Federal Reserve banks, the Fed, the National Credit Union Administration, the OCC, the Securities and Exchange Commission and the Bureau of Consumer Financial Protection are each required to establish an Office of Minority and Women Inclusion (each, an "Office").
Utilization of Minorities and Women in Activities of Each Agency	• In addition to seeking diversity in the workforce of each agency, the director of each Office is required to develop and implement standards and procedures for inclusion and utilization of minorities, women and minority-owned and women-owned businesses in all business and activities of the agency. • Reviewing contract proposals and the hiring of service providers must include consideration of the diversity of the applicant. If an agency contractor has failed to make a good faith effort to include minorities and women in its workforce, certain actions may be taken, including termination of the contract. The contract provisions apply to all contracts for services of any kind.

REGULATION OF HOLDING COMPANIES AND DEPOSITORY INSTITUTIONS - TITLE VI	

Moratorium on Deposit Insurance and Changes in Control	• The FDIC may not approve, for a three-year period, applications for federal deposit insurance for entities owned by a "commercial firm." The moratorium covers:
	  • credit card banks;
	  • trust banks; and
	  • industrial banks.
	  For purposes of this title, a company is a commercial firm if the annual gross revenues derived by the company and all affiliates that are financial in nature under Section 4(k) of the Bank Holding Company Act and from owned depository institutions equals less than 15% of annual gross revenues.
	• The appropriate bank regulatory agency may not approve, for a three-year period, changes in control that will result in a "commercial firm" obtaining control over a:
	  • credit card bank;
	  • trust bank; or
	  • industrial bank.
	• The appropriate bank regulatory agency may approve changes in control that will result in a commercial firm obtaining control over one of the above listed entities if such entity is in danger of default to the FDIC, or if the change in control is the result of a merger or acquisition between two commercial firms or the acquisition of less than 25% of a voting class of stock of a publicly traded commercial firm.
	• The Government Accountability Office will do a study of these exceptions from the Bank Holding Company Act definition of "bank" and the current exemption of federal savings banks to determine whether they are necessary in order to strengthen safety and soundness of institutions or the stability of the U.S. financial system to eliminate these exceptions.

Reports and Examinations	• The Fed's authority to require reports from bank holding companies and subsidiaries is expanded. Bank holding companies and their subsidiaries must promptly provide:
	  • reports and supervisory information provided to federal or state regulatory agencies;
	  • externally audited financial statements;
	  • information available from federal or state regulatory agencies; and
	  • publicly reported information.
	• The Fed's authority to examine bank holding companies and subsidiaries is expanded. The Fed may conduct examinations focusing on operations, financial condition and factors that may pose safety and soundness risks or risks to the

	stability of the U.S. financial system. • The Fed is given examination authority over savings and loan holding companies and subsidiaries.
Additional Conditions For Expanded Financial Activities; Thrift Holding Company Activities.	• In addition to existing conditions for engaging in expanded financial activities under the Gramm-Leach-Bliley Act that all depository institution subsidiaries are and remain well-capitalized and well-managed, the bank holding company itself must be and remain well-capitalized and well-managed. • Thrift holding companies are permitted to engage in any activity permissible for a financial holding company subject to all requirements that apply to financial holding companies.
Fed Authority to Regulate Functionally Regulated Subsidiaries of Bank Holding Companies	• Removes the Gramm-Leach-Bliley Act restrictions on the Fed's ability to require reports from, examine and adopt rules for functionally regulated subsidiaries of bank holding companies.
Bank and Nonbank Acquisition Standards	• Effect of risks to the stability of the U.S. banking or financial systems is added to the approval criteria for the acquisition of banks and nonbanks by bank holding companies under the Bank Holding Company Act and for bank mergers under the Bank Merger Act. • A new approval requirement is applied to financial holding companies for an acquisition of nonbank companies having assets exceeding $10 Action.
Interstate Acquisitions and Mergers	• Approval criteria for interstate acquisitions or mergers are revised to require the acquirer to be well-capitalized and well-managed, as opposed to just being adequately capitalized and adequately managed.
Consistent Oversight of Subsidiaries of Depository Holding Companies	• The Fed is required to examine the activities of non-depository institution subsidiaries other than functionally regulated subsidiaries or subsidiaries of depository institutions in the same manner subject to the same standards and with the same frequency as would be required if such activities were conducted in the lead insured depository institution of the depository institution holding company. • Federal bank regulatory agencies are given backup examination authority in the event the Fed does not conduct examinations as required.
Financial Holding Companies to Remain Well Capitalized and Well Managed	• Financial holding companies are required to be both well-capitalized and well-managed in order to retain such status.
Restrictions on Transactions with	• The restrictions on bank transactions with affiliates are expanded to include an investment fund for which a bank or affiliate acts as an investment advisor as an "affiliate" of the bank. "Covered transactions" are expanded to include

Affiliates; Exceptions for Transactions with Financial Subsidiaries	transactions involving repurchase agreements, acceptance of debt obligations, the borrowing or lending of securities when this borrowing or lending results in credit exposure for a bank or the bank's subsidiaries and derivative transactions resulting in credit exposure for a bank or the bank's subsidiaries. • The Fed is authorized to issue regulations regarding the impact of netting agreements in determining whether covered transactions are "fully secured." • The existing exceptions to provisions limiting transactions between a bank and its financial subsidiaries are eliminated. • Effectiveness is one year after the transfer date of OTS powers and duties under the Act which is one year after enactment subject to extension (the "transfer date").

Lending Limits, including Derivative Transactions, Repurchase Agreements and Securities Lending	• Lending limits for national banks are extended to include:
	  • direct or indirect advances of funds based on obligation to repay or repayable from specific property pledged;
	  • liability to advance funds pursuant to a contractual commitment; and
	  • credit exposure arising from derivative transactions, repurchase agreements, reverse repurchase agreements, securities lending transactions, or securities borrowing transactions.
	• Effectiveness is one year after the transfer date.
	• State banks' authority to engage in derivative transactions are made contingent upon the inclusion of the credit exposure of derivative transactions within state lending limits. Effectiveness is 18 months after the transfer date.

Conversion of Troubled Banks	• Banks are not permitted to convert their charters if there is any outstanding formal enforcement order or informal MOU or other regulatory action involving a significant supervisory matter.
De Novo Branching into States	• The OCC may allow a national bank to establish and operate a de novo branch if state law would permit establishment of a branch if the national bank were a state bank. • The FDIC may allow a state nonmember bank to establish and operate a de novo branch if state law would permit establishment of a branch if the bank were a state bank chartered by such state.
Lending Limits to Insiders	• Restrictions on loans to insiders are expanded to include derivative transactions, repurchase agreements, reverse repurchase agreements, securities lending transactions, or securities borrowing transactions that result in credit exposure for the bank. • Effectiveness is one year from the transfer date.
Limitations on Purchases of Assets from Insiders	• Insured depository institutions may not purchase assets from, or sell assets to, insiders (or any related interest of an insider) unless: • the transaction is on market terms, and • for transactions representing more than 10% of the capital stock and surplus of the insured depository institution, a majority of non-interested directors of the bank have approved the transaction in advance.

	• Effectiveness is on the transfer date.
Capital Levels of Holding Companies	• The Fed is explicitly authorized to issue regulations relating to the capital requirements of bank holding companies and savings and loan holding companies and is directed to make such requirements counter-cyclical so that more capital is required in expansionary times and less in times of economic contraction.
Source of Strength Requirement	• Bank holding companies and savings and loan holding companies are required to serve as sources of financial strength for depository institution subsidiaries. • Any company that directly or indirectly controls an insured depository institution that is not a bank holding company or savings and loan holding company must serve as a source of financial strength for the subsidiary. • Effectiveness is on the transfer date.
Elimination of Elective Investment Bank Holding Company Framework	• The framework allowing investment bank holding companies to elect (or withdraw from) oversight by the SEC is eliminated.

Securities Holding Companies	• A framework for securities holding companies is established to satisfy non-U.S. regulators or non-U.S. law provision requirements to be subject to comprehensive consolidated supervision.
	• A securities holding company that elects to be subject to comprehensive consolidated supervision may register with the Fed to become a supervised securities holding company.
	• The Fed shall require supervised securities holding companies to keep and furnish copies of certain records, including:
	  • balance sheets or income statements;
	  • assessments of consolidated capital and liquidity; and
	  • reports by independent auditors.
	• The Fed shall promulgate capital adequacy and risk management standards for supervised securities holding companies. In imposing these standards, the Fed may differentiate among holding companies on an individual basis or by category.
	• Supervised securities holding companies are subject to the provisions of the Federal Deposit Insurance Act dealing with:
	  • notice and hearing regarding allegations of unsafe or unsound practices; and
	  • enforcement actions stemming from findings of unsafe or unsound practices.
	• Supervised securities holding companies are subject to the provisions of the BHCA.

Conflicts of Interest	• A provision is added to the Securities Act of 1933 which prohibits any sponsor

Relating to Certain Securitizations	or any affiliate or subsidiary of any such entity, of an asset-backed security inclusive of any synthetic asset-backed security, for a period ending on the date that is one year after the first closing of the sale of an asset-backed security from engaging in any transaction that would involve or result in a material conflict of interest with respect to any investor in a transaction arising out of such activity.

Concentration Limits on Large Financial Firms	• Subject to the recommendations of the Council, the entities listed below may not merge with, acquire all or substantially all of the assets of, or otherwise acquire control of, another company if the total consolidated liabilities of the acquiring entity upon completion of the transaction will exceed 10% of the aggregate consolidated liabilities of all financial companies at the end of the calendar year preceding the transaction.
	• The following entities are subject to the concentration limits:
	  • insured depository institutions;
	  • bank holding companies;
	  • savings and loan holding companies;
	  • companies controlling insured depository institutions;
	  • nonbank financial companies supervised by the Fed under the Act; and
	  • foreign banks or companies treated as bank holding companies for the purposes of the BHCA.
	• A study is required of the effect of the above limit within a six-month period with final implementation regulations within nine months thereafter.
	• Interstate merger transactions of insured depository institutions are not permitted if the transaction would result in control of more than 10% of the total deposits in the U.S.

Qualified Thrift Lenders	• The Homeowner's Loan Act is amended to provide that savings banks that fail to become or remain a qualified thrift lender are immediately subject to statutory penalty provisions and are prohibited from making new investments or engaging in activities other than those allowed for national banks, establishing any new branch office or paying dividends unless allowable for a national bank or are necessary to meet obligations of a company that controls the savings bank or are specifically approved by the OCC and the Fed.
Dividends by Certain Mutual Holding Companies›	• The Homeowner's Loan Act is amended to require advance notice of a declaration of dividend by any subsidiary of a mutual holding company that's a savings bank. • A mutual holding company may waive the right to receive any dividend declared if: • No insider of the mutual holding company, associate of an insider or tax qualified or non-tax qualified employee/stock benefit plan of the mutual holding company holds any stock in the class of stock to which the waiver would apply or if the mutual holding company gives written notice to the Fed of the intent to waive the right to receive dividends not later than 30

	days before the date of the proposed date of payment of the dividend and the Board does not object. • The Fed may not object to a waiver of dividends if the waiver would not be detrimental to the safe and sound operation of the savings bank, the Board of Directors of the mutual holding company expressly determines that a waiver of the dividend is consistent with the fiduciary duties of the Board to the mutual members of the holding company and the mutual holding company has prior to December 1, 2009 reorganized into a mutual holding company issued minority stock from its mid-tier holding company or its subsidiary stock bank and waived dividends it had a right to receive from subsidiary savings bank. • The appropriate bank regulatory agency shall consider waived dividends in determining an appropriate exchange ratio in connection with a full conversion to stock form except where the mutual holding company issued minority stock from the mid-tier holding company or its subsidiary savings bank and prior to December 1, 2009 waived such dividends. • This provision shall take effect on the transfer date.
Intermediate Holding Companies for Unitary Savings and Loan Holding Companies	• The Homeowner's Loan Act is amended to provide for the creation of intermediate holding companies. • For a grandfathered unitary savings and loan holding company that conducts activities other than financial activities, the Fed may require such company to establish and conduct all or a portion of the financial activities in or through an intermediate holding company. • The intermediate holding company shall be a savings and loan holding company pursuant to regulations of the Fed established not later than 90 days or such longer period as the Board may deem appropriate after the transfer date. • Board shall require a grandfathered unitary savings and loan holding company to establish an intermediate holding company if the Board makes a determination that the establishment of such an intermediate holding company is necessary to appropriately supervise activities that are determined to be financial activities or to ensure that supervision by the Fed does not extend to the activities of the company that are not financial activities. • Internal financial activities of a grandfathered unitary savings and loan holding company, e.g., internal treasury, investment and employee benefit functions, shall not be required to be placed in an intermediate holding company. • A grandfathered unitary savings and loan holding company may continue to engage in an internal financial activity subject to review by the Fed to determine whether engaging in such activity presents undue risk to the grandfathered unitary savings and loan holding company or to the financial stability of the United States if the grandfathered unitary savings and loan holding company engaged in the activity during the year before the date of enactment of this section and at least two-thirds of the assets or two-thirds of the revenues generated from the activity are from or attributable to the grandfathered unitary S&L Holding Company.

Source of Strength Requirement	• A grandfathered unitary savings and loan holding company that directly or indirectly controls an intermediate holding company established under this section shall serve as a source of strength to its subsidiary intermediate holding company. • The Board may, from time to time, examine and require reports under oath from a grandfathered unitary savings and loan holding company that controls an intermediate holding company and from the officers and directors of such company solely for the purposes of assuring compliance with the provisions of this section including assessing the ability of the company to serve as a source of strength to its subsidiary intermediate holding company as required and enforcing compliance with such requirement.
Interest Bearing Transaction Accounts	• Banks may now pay interest on demand deposit accounts. • Effectiveness is one year from enactment.
Volcker Rule	• See Section 2(b) of this Summary for further information.

FEDERAL RESERVE SYSTEM PROVISIONS - TITLE XI	

Emergency Lending Authority	• The Board of Governors of the Federal Reserve System is directed to establish policies and procedures relating to its emergency lending authority in Section 13(3) of the Federal Reserve Act to ensure:
	  • that any such lending program or facility is for the purpose of providing liquidity and not to aid a failing financial company;
	  • that security for emergency loans is sufficient to protect U.S. tax payers from losses; and
	  • such program or facility is terminated in a timely and orderly fashion.
	• Such policies and procedures shall:
	  • require that a Federal Reserve bank assign a lendable value to all collateral for an emergency loan received from that Federal Reserve bank; and
	  • prohibit borrowing by insolvent borrowers.
	• The Fed's authority to provide emergency loans is limited to participation in programs or facilities with broad-based eligibility.

Emergency Financial Stabilization	• If the FDIC and the Fed determine, with the consent of the Treasury, that a liquidity event exists, the FDIC shall create a widely available program designed to guarantee the obligations of solvent insured depository institutions or depository institution holding companies during periods of "severe economic distress." This guarantee shall not include the provision of any type of equity. • The FIDC may require program participants to provide collateral as a condition of participating in the guarantee program.

	• The FDIC will charge fees to program participants such that projected losses and administrative expenses will be off-set. Any excess funds remaining at the termination of such a guarantee program will be deposited in the Treasury. • The FDIC is authorized to impose additional fees on program participants if necessary to address any shortfall in funds required to cover losses and expenses. • Utilization of the authority to issue guarantees is subject to Congressional approval. • The FDIC may not exercise existing authority under the Federal Deposit Insurance Act to establish any new widely available debt guarantee program, such as the existing Temporary Liquidity Guarantee Program.

Additional Related Amendments	• The Federal Deposit Insurance Act is amended to restrict FDIC use of its systemic risk authority to allow the FDIC to take necessary actions, or provide assistance only to an insured depository institution for which the FDIC has been appointed as receiver, for the purpose of winding up the affairs of the insured depository institution.
	• The FDIC shall appoint itself as receiver for an insured depository institution that defaults on a guarantee received pursuant to an FDIC debt guarantee program.
	• If an institution participating in a guarantee program that is not an insured depository institution defaults on its guarantee, the FDIC may:
	  • require consideration whether to resolve the company under Section 203 of the Act;
	  • require the company to file for chapter 11 proceedings if the FDIC is not appointed receiver pursuant to Section 203 of the Act; or
	  • file a petition for involuntary chapter 11 proceedings.

Federal Reserve Act Amendments: Misc. Federal Reserve Bank Governance; Risk Responsibility	• A position of Vice-Chairman for Supervision is established whose responsibilities include oversight, supervision and regulation of depository institution holding companies and other financial firms supervised by the Fed and development of policy recommendations. • The Fed is charged with responsibility for identifying, measuring, monitoring, and mitigating risks to the financial stability of the U.S.

8. Insurance

Title V of the Act pertains to Insurance. Although the Act leaves in place the current state-based regulation of insurance companies, it establishes a Federal Insurance Office within the Treasury Department. The Office will have certain limited authority but will not have general supervisory or regulatory authority over the business of insurance. Subtitle B of Title V streamlines the regulation of surplus lines insurance and reinsurance by limiting the number of states that may regulate certain transactions.

The provisions of Title II (Orderly Liquidation) may also affect insurance companies to the extent an insurance company is designated as a covered financial company. The Act gives the FDIC backup authority to commence liquidation proceedings if the appropriate state regulatory agency fails to commence an orderly liquidation proceeding within sixty days after a determination has been made.

INSURANCE - TITLE V	
Subtitle A - Federal Insurance Office	

Federal Insurance Office	• The Federal Insurance Office (the "FIO") is established within the Department of the Treasury. The FIO will be headed by a Director (the "Director"), to be appointed by the Secretary of the Treasury (the "Secretary").
	• Authority
	  • Monitor all aspects of the insurance industry, including identifying issues which could contribute to systemic crisis in the insurance industry.
	  • Recommend to the Financial Stability Oversight Council that it designate an insurer as an entity subject to regulation as a nonbank financial company supervised by the Board of Governors pursuant to Title I.
	  • Coordinate federal efforts and develop federal policy on prudential aspects of international insurance matters.
	  • Represent the United States in the International Association of Insurance Supervisors, assist in negotiating covered agreements.
	  • Assist the Secretary in administering the Terrorism Insurance Program.
	  • Consult with the States, including state insurance regulators, regarding insurance matters of national importance.
	  • The FIO shall not have general supervisory or regulatory authority over the business of insurance.
	• Scope of Authority
	  • All lines of insurance except health insurance and long-term care insurance.
	• Advisory Functions
	  • The FIO will advise the Secretary on major domestic and prudential international insurance policy issues.
	  • The Director will serve in an advisory capacity on the Council established under the Financial Stability Act of 2010.

Information Gathering	• The Director will have subpoena power to require production of data/information but only upon a written finding that such data is necessary to carry out the functions of the and that the FIO has coordinated with the relevant federal agency and state insurance regulator.
Preemption of State Measures	• The Director may determine that a state insurance measure is preempted if the measure results in less favorable treatment to a non-U.S. domiciled insurer, that is subject to an international agreement, than a U.S. insurer admitted in that state and is inconsistent with a covered agreement. • A covered agreement is a written bilateral or multilateral agreement regarding prudential measures, entered into between the U.S. and one or more foreign governments or regulatory entities and relating to the recognition of prudential measures with respect to the business of insurance or reinsurance. • The Director must notify and consult with the relevant state regulator prior to making a preemption determination. • Any determination regarding state insurance measures, and any preemption as a result of such determination, will be limited to the subject matter of the covered agreement and shall achieve a level of protection for insurance or reinsurance consumers that is substantially equivalent to the level of protection achieved under state insurance or reinsurance regulation.
Report	• The Director must conduct a study and submit a report to Congress within eighteen months of enactment on how to modernize and improve the system of insurance regulation in the United States.
Subtitle B - State-Based Insurance Reform ("Nonadmitted and Reinsurance Reform Act of 2010")	
Part I - Nonadmitted Insurance	
Home State Exclusive Authority	• No state other than the home state of an insured may require any premium tax payment for nonadmitted insurance (with exceptions for workers' compensation insurance or excess insurance for self-funded workers' compensation plans with a nonadmitted insurer). • States may enter into compacts or otherwise establish procedures to allocate premium taxes paid to the home state among the states. • An insured's home state may require surplus lines brokers and insureds who have independently procured insurance to annually file tax allocation reports with the insured's home state detailing the portion of the nonadmitted insurance policy premium attributable to properties, risks or exposures located in each state.
Broker Licensing	• No state other than an insured's home state may require a surplus lines broker to be licensed in order to sell, solicit or negotiate nonadmitted insurance with respect to such insured. • Within two years of enactment, a state may not collect any fees relating to

	licensing an individual or entity as a surplus lines broker unless the state participates in the national insurance producer database of the NAIC. • A state may not impose eligibility requirements on, or otherwise establish criteria for, nonadmitted insurers domiciled in a U.S. jurisdiction except in conformance with criteria set forth in the NAIC's Nonadmitted Insurance Model Act. • A state may not prohibit a surplus lines broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from, a nonadmitted insurer domiciled outside the U.S. if it is included on an NAIC list. • A surplus lines broker seeking to procure or place nonadmitted insurance in state for certain sophisticated parties is not required to satisfy state requirements to make due diligence search to determine whether coverage can be obtained from admitted insurers.
Comptroller General Study	• The Comptroller General of the United States shall conduct a study of the nonadmitted insurance market to determine the effect of the legislation on the nonadmitted insurance market. The results of that study shall be reported to certain congressional committees within 30 months.
Part II - Reinsurance	
Domiciliary State Regulation	• If the state of domicile of a reinsurer is an NAIC-accredited state or has requirements substantially similar to those necessary for accreditation, such state shall be solely responsible for regulating the financial solvency of the reinsurer. • States are prohibited from denying admitted asset treatment to reinsurance if the state of domicile of a ceding insurer is an NAIC-accredited state, or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation.

9. Consumer Financial Protection

The Act establishes a new Bureau of Consumer Financial Protection (the "Bureau"), which has broad authority to regulate consumer financial services products and services provided by banks and a wide range of nonbank entities. The Title X provisions had been strongly opposed by most of the financial services industry. It has been observed that the creation of yet another behemoth federal agency does not facilitate the goals of reducing regulatory complexity or increasing regulatory effectiveness. The Bureau is viewed by some as an ineffective response to the financial crisis in that few commentators believe that the financial crisis was caused by the lack of authority of the existing state and federal agencies to adopt more stringent consumer protection laws. Just the opposite – many believe that the agencies had plenty of authority to act, but lacked the regulatory perception and political will to tackle early on the subprime mortgage lending abuses and the related impacts on the financial services industry. The Fed was one of the agencies, along with the respective state agencies regulating finance lenders, criticized for failing to take action sooner. Yet the new Bureau will be housed within the Fed, although the Bureau will be established as an independent agency. And the issues related to the Government-Sponsored Enterprises' role in the housing crisis, which many believe were pivotal, are not addressed in the Act's provisions, other than by commission of a study report in the Act.

At the time of the initial proposals, the banking agencies and others expressed deep concern about the consumer protection function being cut off from safety and soundness supervision by examiners who are very familiar with the specific business line operational issues. It is believed by some that such a functional separation will result in a consumer protection agency that may produce increasingly more onerous and unworkable consumer protection rules to fuel its budget and justify its existence.

How the Bureau will be staffed and the viability of the proposed funding scheme is unclear. It is contemplated that the staff in the existing agencies with consumer protection experience will apply for jobs with the Bureau and new personnel also will be hired, but whether the Bureau will ever have enough "boots on the ground" examination resources to deploy a bank examination model to the newly regulated nonbank entities remains to be seen. There is also likely to be a delay in the regional office structure being established and able to operate.

The federal preemption doctrine took a huge hit under the Act. The Office of the Comptroller of the Currency's ability to preempt inconsistent state laws is curtailed to an onerous process for preempting only state laws which "significantly interfere" with the business of banking. As a consequence, it may be very difficult for companies to rollout nationwide consumer financial services products. Under the Act, state regulators and Attorneys General may also assume enforcement authority for the federal consumer financial protection laws.

The leadership chosen for the new Bureau will significantly influence the direction the Bureau will take in the years ahead. President Obama has named Elizabeth Warren, a Harvard law professor, as his special adviser for establishing up the new Bureau. As of the date of this writing, it is unclear who will be ultimately named as the first Director of the Bureau.

Some believe that the new Bureau will agitate more turf wars among the agencies, result in extreme regulation and extreme enforcement actions, with continued unequal enforcement of the laws among banks versus nonbank institutions. But once the Bureau is in place, we can expect to be living with it for years to come.

BUREAU OF CONSUMER FINANCIAL PROTECTION - TITLE X	
Establishment and	• The Act establishes a new "independent" federal agency, the Bureau, housed

Administration of New Independent Agency	within the Fed, to regulate the offering and provision of consumer financial products and services under the federal consumer financial laws.
	• The Bureau will be led by an independent director (the "Director") appointed by the President and confirmed by the Senate.
	• The Bureau shall be considered a Federal Executive Agency under 5 USC Section 105, subject to the federal laws dealing with public or federal contracts, property, works, officers, employees, etc.
	• Although the Bureau will coordinate with the Board of Governors of the Fed on examination for compliance with the federal consumer financial laws, the Board of Governors must observe the Bureau's independence in that the Board of Governors may not
	  • intervene in any matter or proceeding before the Director;
	  • appoint, direct or remove any officer or employee of the Bureau; or
	  • merge or consolidate the Bureau or any of its functions or responsibilities with any other division or office of the Fed.
	• The Bureau will not be liable under the law for any action or inaction of the Board of Governors, and the Board or Governors will not be liable for any action or inaction of the Bureau.
	• The Bureau is well-funded, with an independent budget paid by the Federal Reserve System. The Fed shall transfer to the Bureau on an annual or quarterly basis an amount deemed necessary by the Director to carry out the authorities of the Bureau under federal consumer financial law, subject to a funding cap of fixed percentage of total operating expenses of the Fed (e.g., 12% in 2013 and the years following), adjusted for inflation and subject to review.
	  • The financial statements of the Bureau shall not be consolidated with the Fed's financial statements.
	  • The Fed shall establish a separate financial fund for the benefit of the Bureau.
	  • On an annual basis, the Bureau shall be audited by the Comptroller General.
	• The main office of the Bureau will be in D.C., supported by as many regional offices as the Director deems necessary for carrying out the federal consumer financial laws, including offices in the cities in which the Federal Reserve banks, or branches of the Reserve banks, are located.
	• The Director may hire employees for the Bureau; the employees shall be compensated, including benefits, in an equivalent manner to the compensation and benefits paid to employees of the Fed.
	• The Bureau shall establish an agency ombudsman to address complaints brought against the Bureau.

Scope of Authority	• The Bureau will be able to autonomously promulgate rules for consumer protection governing all financial institutions, both banks and nonbanks, offering or providing consumer financial services and products, and their

	affiliates providing services to such "covered persons." • Covered consumer financial products and services include any financial product or service offered or provided for use by consumer primarily for personal, family or household purposes. The scope of the covered consumer financial products and services is expansive and includes credit and loan servicing activities; extending or brokering leases of personal or real property that are the functional equivalent of purchase finance arrangements; deposit-taking activities, transmitting or exchanging funds, or acting as a custodian of funds; selling, providing or issuing stored value or payment instruments; check-cashing, check collection or check guaranty services; financial payments and data processing services provided to a consumer through technological means; real estate settlements services; real or personal property appraisals; consumer reporting activities, consumer credit counseling and debt collection activities if they are delivered, offered or provided in connection with a financial product or service for use by consumers primarily for personal, family or household purposes. Securities services provided by a person or entity regulated by the SEC are excluded from the definition of covered consumer financial services, but only to the extent such person or entity acts in a regulated capacity. • The Bureau will have the authority to implement the federal consumer financial protection laws through rules, orders, guidance, interpretations, statements of policy, examinations and enforcement actions. • The Act makes the Bureau the one agency accountable for consumer financial protection. It consolidates into the Bureau the consumer protection responsibilities currently held by the OCC, the OTS, the FDIC, the National Credit Union Administration, the Department of Housing and Urban Development, and the Federal Trade Commission ("FTC"). Responsibility for regulation and enforcement of the Bank Secrecy Act, Red Flags for Identity Theft and Data Safeguarding/Information Security will remain with the banking agencies as part of their ongoing safety and soundness authority. • The Bureau will also oversee the enforcement of federal laws intended to ensure the fair, equitable and nondiscriminatory access to credit for individuals and communities.
Examination and Enforcement of Banks over $10 Billion in Assets	• The Bureau shall have the authority to examine and enforce regulations for banks and credit unions with assets of over $10 billion and their affiliates. • To minimize regulatory burden, the Bureau shall coordinate its supervisory activities with the institutions' prudential regulators (i.e., the appropriate federal banking agency) and the state banking regulators, including with respect to scheduling exams. • The Bureau will have primary authority to enforce the federal consumer financial laws over the institutions. However, if the proposed supervisory determinations of the Bureau and the prudential regulator are conflicting, the institution may request that the agencies coordinate and present a joint statement of coordinated supervisory action.

Banks Under $10 Billion in Assets	• Banks with assets of $10 billion or less will be examined for consumer complaints by the appropriate bank regulator. • However, the Bureau may require that such institutions file reports regarding their compliance with the federal consumer financial laws. • The Bureau may also conduct sampling of the examinations conducted by the bank regulator to ensure compliance with the federal consumer financial laws.
Supervision of NonDepository Institutions; Registration of NonDepository institutions	• In addition to the regulation of depository institutions, the Bureau will have regulatory authority over a broad range of entities engaged in the provision of consumer financial products and services, including all-mortgage related businesses (lenders, services, mortgage brokers and foreclosure scam operators), payday lenders and student lenders, as well as other nonbank financial companies that are large, such as debt collectors and consumer reporting agencies. • The Bureau may also require these "covered persons" to register with and file reports to it. It will consult with appropriate state agencies with respect to the development of the registration requirements. • The entities will be subject to examination under "risk-based" supervision programs developed by the Bureau. • Although the Bureau will coordinate with other agencies, it shall have exclusive authority to enforce the federal consumer financial laws.
Ability to Conduct Research and Collect Information	• The Bureau will have the ability to conduct research and collect information on the offering and provision of consumer financial products and services. • However, the Bureau may not use its authority in this area for the purposes of gathering or analyzing personally identifiable financial information of consumers.
Coordination with Other Agencies	• The Bureau shall coordinate with other agencies, including the SEC, CFTC, FTC and other federal agencies and state regulators to promote consistent regulatory treatment of consumer financial products and services. • The Bureau shall consult with appropriate prudential regulators on proposed rules during the notice and comment process. Any member agency of the Council can petition the Council to set aside a final regulation prescribed by the Bureau if it would put the safety and soundness of the U.S. banking system or the stability of the financial system at risk. A two-thirds vote of the members of the Council is required to reverse a Bureau regulation. • A court, however, shall afford deference to the Bureau with respect to the meaning or interpretation of any provision of the federal consumer protection laws as though the Bureau were the only agency authorized to apply, enforce, interpret or administer the provisions of such federal consumer financial law. • The Bureau shall also coordinate with the bank regulators when examining banks to prevent undue regulatory burden.
Establishes Certain Offices Within the	• The Act provides that the Director shall establish several offices within the Bureau:

Bureau	• an Office of Fair Lending and Equal Opportunity, to provide oversight and enforcement of the federal laws intended to ensure fair equitable, and nondiscriminatory access to credit; • an Office of Financial Protection for Older Americans, to facilitate the financial literacy of individuals 62 years of age and up; • an Office of Financial Literacy, to develop and implement initiatives intended to educate and empower consumers to make better informed financial decisions; and • an Office of Service Member Affairs, to develop and implement initiatives for service members and their families.
Ongoing Role of the FTC	• Although the Bureau may take actions to prevent covered persons or service providers from engaging in unfair, deceptive or abusive practices under federal law in connection with any consumer financial product or service, the FTC still retains its authority under Section 5 of the Federal Trade Commission Act and other provisions, except for laws which the Act specifically specifies that regulatory/supervisory authority will transfer to the Bureau.

Creates a Consumer Hotline	• Creates a national consumer hotline so consumer will have a single toll-free number to report problems with financial products and services.
	• The complaints will be tracked and monitored through a centralized database.
	  • Where appropriate, the Bureau will route complaints to the FTC and other agencies.
	  • Reporting of complaints will include measures to safeguard complainants' personally identifiable information.
	• The Bureau shall make annual reports of the consumer complaints to Congress.

Exclusions for Certain Businesses	• The Act protects small businesses, meeting certain standards, from unintentionally being regulated by the Bureau. The Act contains exclusions for certain merchants, retailers and other sellers of nonfinancial goods and services (unless credit extended through these parties significantly exceeds the market value of the goods and services in question). • Licensed real estate brokers and agents are not subject to regulation by the Bureau except if they are engaged in an activity offering or providing any consumer financial product or service, but then are regulated only with respect to that activity. • Similar exclusions apply to manufactured home retailers and modular home retailers. • Accountants, tax preparers and attorneys are also subject to exclusions.
Auto Dealers Excluded	• Although early versions of the legislation proposed that auto dealers be subject to Bureau rule-making, the current Act excludes auto dealers predominantly engaged in the sale and servicing of motor vehicles and/or the leasing and servicing of motor vehicles (unless the dealer is operating a line of business that involves extending retail credit or leases).

Effect of Conflicting State Law; Scope of Preemption Authority	• Existing preemption rules articulated by the OCC are curtailed under the Act. State consumer financial laws are preempted only if:
	  • The state law would have a discriminatory effect on the national bank; or
	  • Consistent with *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25 (1996), the state law prevents or "significantly" interferes with the exercise by the national bank of its powers; or
	  • The state law is preempted by a provision of the federal law.
	• If the OCC believes that a state law significantly interferes with the business of banking and should be preempted, it shall make its determination on a case-by-case basis, and shall confer prior to making its determination with the Bureau.
	• It shall conduct reviews within five years after making such preemption determinations, through a notice and comment process, and take the comments into consideration in determining whether a given preemption determination should be continued or rescinded. Its related decision shall be published.
	• Subsidiaries and affiliates of national banks that are not chartered as a national bank shall be subject to state laws to the same extent as other entities subject to state law.
	• The Bureau's enforcement efforts may be supported by the states.
	  • State regulators may bring enforcement actions to enforce the federal consumer financial regulations against any state chartered, licensed or incorporated entities.
	  • The state Attorneys General may take enforcement action to enforce the federal consumer protection financial regulations against any national bank or federal savings bank located in their states.

Regulatory Improvements Studies and Reports	• The Act requires that certain data collection projects and reports be conducted, aimed at improving the data reporting for fair lending laws, assisting those who are economically vulnerable, studying reverse mortgage products, studying credit scores, studying private educational loans and lenders, analyzing exchange facilitators, analyzing appraisal methods, etc. • A study is mandated on ending the conservatorships of Fannie Mae and Freddie Mac and reforming the housing finance system.
Money Remittance	• The Act establishes certain disclosures that money transmitters must provide to senders requesting remittances.
Reasonable Fees and Rules for Payment Card Transactions	• The Fed shall have the authority to establish rules regarding any interchange transaction fees related to electronic debit transactions (fees should be reasonable and proportional to the actual cost of the transaction). The authority is aimed at reducing the interchange fees imposed on merchants. The Fed will determine what constitutes "reasonable and proportional fees" for debit card transactions • Card issuers with less than $10 billion in assets are exempt from the rules, but many commentators believe that the imposition of the interchange rules will generally impact the pricing of all debit card transactions.

	• Exclusivity arrangements between an issuer and a network are prohibited (affects mostly large banks). Will require banks to display multiple network logos on their cards. • Retailers will be allowed to offer consumers a discount for using cash, a check or a debit card, instead of a credit card. Retailers would also be allowed to require a minimum purchase before they will accept a debit or credit card transaction. • The Act contains other related provisions.
Financial Fraud Provisions	• The U.S. Sentencing Commission shall review and, if appropriate, amend the Federal Sentencing Guidelines and policy statements applicable to persons convicted of fraud offenses relating to financial institutions.

Effective Date	• Although different subtitles in the Act have different effective dates, many of the subtitles become effective on the "designated transfer date." The Bureau was "established" as of the enactment date of the Act, but the authorities of the other agencies are not transferred to it until the designated transfer date.
	  • Within 60 days of the enactment of the legislation, the Secretary shall consult with the respective agencies about the proposed transfer date, on which existing consumer protection authorities from the existing agencies shall transfer to the Bureau.
	  • That date may not be earlier than 180 days from the date of enactment of the legislation or later than 12 months from the date of the enactment. However, the Secretary may designate a later date if necessary for orderly implementation, but that date is to be no later than 18 months from the date of enactment of the Act.

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