AMENDMENT TO THE COMMITTEE PRINT OF OCTOBER 29, 2009

OFFERED BY MR. KANJORSKI OF PENNSYLVANIA

Page 18, after line 14, insert the following new paragraph (and redesignate subsequent paragraphs accordingly):

(3) details the size, scale, scope, concentration, activities, and interconnectedness of the 50 largest financial institutions, by total assets, in the United States;

Page 22, line 18, after "scope," insert "size, scale, concentration, and interconnectedness".

Page 30, strike line 17 and all that follows through page 31, line 5.

Page 59, after line 15, insert the following new section (and redesignate subsequent section and cross references and conform the table of contents accordingly):

SEC. 1105. MITIGATION OF SYSTEMIC RISK.

(a) COUNCIL AUTHORITY TO RESTRICT OPERATIONS AND ACTIVITIES.—If the Council determines, after notice and an opportunity for hearing, that despite the higher prudential standards imposed pursuant to section 1104(a)(2), the size of a financial company subject to stricter prudential standards or the scope, nature, scale, concentration, interconnectedness, or mix of activities directly or indirectly conducted by a financial company subject to stricter prudential standards poses a grave threat to the financial stability or economy of the United States, the Council shall require the company to undertake 1 or more mitigatory actions described in subsection (d).

(b) CONSULTATION WITH FEDERAL FINANCIAL REGULATORY AGENCIES.—The Council, in determining whether to impose any requirement under this section that is likely to have a significant impact on a functionally regulated subsidiary, or a subsidiary depository institution, of a financial company subjected to stricter prudential standards under this Act, shall consult with the Federal financial regulatory agency for any such subsidiary.

(c) FACTORS FOR CONSIDERATION.— In reaching a determination described in subsection (a), the Council shall take into consideration the following factors, as appropriate—

(1) the amount and nature of the company's financial assets;

(2) the amount and nature of the company's liabilities, including the degree of reliance on short-term funding;

(3) the extent and nature of the company's off-balance sheet exposures;

(4) the company's reliance on leverage;

(5) the extent and nature of the company's transactions, relationships, and interconnectedness with other financial and non-financial companies;

(6) the company's importance as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the financial system;

(7) the scope, nature, size, scale, concentration, interconnectedness and mix of the company's activities;

(8) the extent to which prudential regulations mitigate the risk posed; or

(9) any other factors identified that the Council determines appropriate.

(d) MITIGATORY ACTIONS.—

(1) IN GENERAL.—Mitigatory action may include—

(A) modifying the prudential standards imposed pursuant to section 1104(a);

(B) terminating 1 or more activities;

(C) imposing conditions on the manner in which a financial company subject to stricter prudential standards conducts 1 or more activities;

(D) limiting the ability to merge with, acquire, consolidate with, or otherwise become affiliated with another company;

(E) restricting the ability to offer a financial product or products; and

(F) selling, divesting, or otherwise transferring business units, branches, assets, or off-balance sheet items to unaffiliated companies.

(2) INTERNATIONAL COMPETITIVENESS CONSIDERATIONS.—In making any decision pursuant to paragraph (1), the Council shall consider—

(A) the need to maintain the international competitiveness of the United States financial services industry; and

(B) the extent to which other countries with a significant financial services industry have established corresponding regimes to mitigate threats to financial stability or the economy posed by financial companies.

(e) DUE PROCESS.—

(1) NOTICE AND HEARING.—The Council shall give notice to a financial company subject to stricter prudential standards, and opportunity for hearing if requested, that the financial company is being considered for mitigatory action pursuant to subsection (a). The hearing shall occur no later than 30 days after the financial company receives notice of the proposed action from the Council.

(2) NOTICE.—The Council shall notify the financial company subject to stricter prudential standards of the Council's determination, and, if the Council determines that mitigatory action is appropriate, require the company to submit a plan to the Council to implement the required mitigatory action.

(3) SUBMISSION OF PLAN.—The financial company subject to stricter prudential standards shall submit its proposed plan to implement the required mitigatory action or actions to the Council within 60 days from the date it receives notice under paragraph (2) or such shorter timeframe if the Council determines an emergency situation merits expeditious implementation.

(4) APPROVAL OR AMENDMENT OF THE PLAN.—The Council shall review the plan submitted pursuant to paragraph (3) and determine whether

the plan achieves the goal of mitigating a grave threat to the financial stability or the economy of the United States. The Council may approve or disapprove the plan with or without amendment.

(5) EFFECT OF PLAN APPROVAL.—The Council shall—

(A) notify a financial company subject to stricter prudential standards by order, which shall be public, that the Council has approved the plan with or without amendment; and

(B) direct the Board to require a financial company subject to stricter prudential standards to comply with the plan to implement mitigatory action or actions within a reasonable timeframe after the Council's approval and in accordance with such deadlines established in the plan.

(f) TREASURY SECRETARY CONCURRENCE.—Mitigatory action imposed by the Council involving the sale, divestiture, or transfer of more than $10,000,000,000 in total assets by a financial company subject to stricter prudential standards shall require the Treasury Secretary's concurrence before the issuance of the notice in subsection (e)(5)(A). If the sale, divestiture, or transfer of total assets by a financial company subject to stricter prudential standards exceeds $100,000,000,000, the Treasury Secretary shall consult with the President before concurrence.

(g) FAILURE TO IMPLEMENT THE PLAN.—If a financial company subject to stricter prudential standards fails to implement a plan for mitigatory action imposed pursuant to subsection (e)(5) within a reasonable timeframe, the Council shall direct the Board to take such actions as necessary to ensure compliance with the plan.

(h) JUDICIAL REVIEW.—For any plan required under this section, a financial company subject to stricter prudential standards may, not later than 30 days after receipt of the Council's notice under subsection (e)(5), bring an action in the United States district court for the judicial district in which the home office of such company is located, or in the United States District Court for the District of Columbia, for an order requiring that the requirement for a mitigatory action be rescinded. Judicial review under this section shall be limited to the imposition of a mitigatory action. In reviewing the Council's imposition of a mitigatory action, the court shall rescind or dismiss only those mitigatory actions it finds to be imposed in an arbitrary and capricious manner.

Page 60, line 17, after "conduct" insert ", scope, nature, size, scale, concentration, or interconnectedness".

Page 60, line 21, insert ‘‘or economy’’ before the period.

Page 64, line 6, after ‘‘scope,’’ insert ‘‘nature, size, scale, concentration, or interconnectedness,’’.

Page 182, strike line 9, and insert the following:

‘‘(7) FINANCIAL STABILITY.—

‘‘(A) IN GENERAL.—In every case, the

Page 182, line 14, before the period insert ‘‘, including the resulting scope, nature, size, scale, concentration, or interconnectedness of activities that are financial in nature’’.

Page 182, after line 14, insert the following new subparagraph:

(B) STANDARDS FOR APPROVAL.—The Board may in its sole discretion disapprove any acquisition, merger, or consolidation of, or by, a financial company subject to stricter prudential standards if the Board determines that the resulting concentration of liabilities on a consolidated basis could pose a greater threat to financial stability during times of severe economic distress.

Page 183, line 22, after "United States" insert "based on, among other things, the scope, nature, size, scale, concentration or interconnectedness of activities that are financial in nature".

Page 379, after line 3, insert the following new subtitle:

Subtitle I—International Policy Coordination

SEC. 1801. INTERNATIONAL POLICY COORDINATION.

The President of the United States, or a designee of the President, shall coordinate through all available international policy channels similar policies as found in United States law related to limiting the scope, nature, size, scale, concentration, and interconnectedness of financial companies in order to protect financial stability and the global economy.

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