

**Section by Section of H.R. XXXX, the Consumer Protection and Regulatory
Enhancement Act of 2009**

July 20, 2009

Title 1 — Creation of New Bankruptcy Chapter for Certain Institutions

Section 101 — This section provides special venue provisions for bankruptcies of non-bank financial institutions. Non-bank financial institutions will have to file for bankruptcy in a bankruptcy court that is located in a federal judicial district in which the non-bank financial institution has its principal place of business or principal assets in the United States that is also the location of a Federal Reserve Bank. If such a district does not exist, the institution will file in the district within the Federal judicial circuit in which it has its principal place of business or principal assets in the United States that is also the location of a Federal Reserve Bank.

Section 102 — Amendments to Title 11 of the United States Code. This section creates a new chapter of the Bankruptcy Code (chapter 14) for non-bank financial institutions and makes technical changes to the Code necessary to incorporate the new chapter. The provisions of chapter 11 will by and large apply to cases under the new chapter 14; however, the provisions of chapter 14 will make the chapter-11-based bankruptcy of a non-bank financial institution run more smoothly lessening any adverse effects the bankruptcy may have on the larger financial system. It also will ensure that the United States taxpayers will not be the source of any debtor-in-possession financing.

Section 1403 of the new chapter provides for pre-bankruptcy consultation between the non-bank financial institution, its functional regulator, the Market Stability and Capital Adequacy Board (created in Section 201 of the bill), and any agency that administers a nonbankruptcy resolution regime for a component of the non-bank financial institution (*e.g.*, a bank component of a bank holding company). During this consultation, these entities will work with the non-bank financial institution and its creditors to determine if steps, such as forbearances, can be taken to avoid bankruptcy or make a bankruptcy more orderly.

Section 1404 of the new chapter provides that if the court determines appointment of a trustee is warranted, the Market Stability and Capital Adequacy Board will aid the United States Trustee in the selection of a qualified, disinterested person to serve as trustee for the case by providing the U.S. Trustee with a list of such persons. The U.S. Trustee will appoint a trustee from that list, subject to the court's approval.

Section 1405 of the new chapter builds on chapter 11 by providing that in addition to the Securities and Exchange Commission, the non-bank financial institution's functional regulator, the Market Stability and Capital Adequacy Board, the Federal Reserve, the Department of the Treasury, and any agency charged with administering a nonbankruptcy insolvency regime for any component of the non-bank financial institution may by right file legal briefs with the court. This will allow the court to gain valuable insight and information from the financial institution's regulators and relevant federal agencies.

Section 1406 of the new chapter provides that the court may communicate directly with, and request information or assistance from, the functional regulator, the Market Stability and Capital Adequacy Board, the Federal Reserve, the Department of the Treasury, and any agency charged with administering a nonbankruptcy insolvency regime for any component of the non-bank financial institution. This provision will complement the right to be heard contained in section 1405 of the new chapter.

Section 1407 of the new chapter exempts, upon motion of the non-bank financial institution, qualified financial derivatives contracts, such as options, swaps, and repurchase agreements, from the operation of their ordinary exclusion from the automatic stay with the approval of the Market Stability and Capital Adequacy Board or the bankruptcy court. It further provides for a highly expedited hearing and decision on whether an exemption imposed at the time the petition is filed should remain in place or whether the Bankruptcy Code's ordinary exclusion from the automatic stay for these derivatives contracts should apply. This regime will on an expedited basis balance the interests of the non-bank financial institution and its creditors in determining whether to allow the automatic stay to operate with regard to derivatives contracts.

Section 1408 of the new chapter provides that a bankruptcy by a non-bank financial institution under chapter 14 can be converted to a chapter 7 bankruptcy under the normal standards that apply to such conversions.

Section 103 — This section provides that chapter 14 will become effective on the date of enactment and will apply to bankruptcies filed by non-bank financial institutions on or after the date of enactment.

Title 2 —Market Stability and Capital Adequacy

Section 201 — Establishes the Market Stability and Capital Adequacy Board consisting of the Secretary of the Treasury, the Chairman of the Federal Reserve Board of Governors, the Chairman of the SEC, the Chairman of the FDIC, the Chairman of the CFTC, the

Chairman of the Financial Institutions Regulator (FIR), the Director of the Federal Housing Finance Agency (temporary appointment) and five private members of the Board to be appointed by the President and confirmed by the Senate.

Section 202 — Directs the Market Stability and Capital Adequacy Board to: gather industry data; review capital standards set by the functional regulators; monitor government policies which could affect market stability; and evaluate and report on systemic risks in our financial markets. Establishes a Humphrey-Hawkins style semi-annual report to Congress by the Secretary of the Treasury.

Section 203 — Allows for contracting of employees to staff the Board. Establishes standards for receipt and handling of information collected by the Board.

Section 204 — Provides for the federal functional regulators to make reports to the Market Stability Board.

Section 205 — Establishes staff and detailees from other agencies to support the functions of the Board.

Section 206 — Compensation and Travel Expenses.

Title 3 — Regulatory Consolidation and Consumer Protection

Section 301 — Establishes a Financial Institutions Regulator (FIR) as the umbrella regulatory body for all depository institutions. The FIR shall consist of a Federal Banking Division and a State Banking Division.

Section 302 — Creates a Board of Directors to act as the management of the FIR, consisting of an Independent Chairman, the head of the Federal Banking Division, the head of the State Banking Division, the Chairman of the National Credit Union Administration (NCUA) and the Chairman of the Federal Deposit Insurance Corporation (FDIC).

Section 303 — Establishes the powers of the FIR, consolidating the banking supervision responsibilities of the Federal Reserve, Office of Thrift Supervision and Office of the Comptroller of the Currency into one agency.

Section 304 — Allocation of responsibility among FIR Divisions

Section 305 — Technical Amendments

Section 306 — Office of the Comptroller of the Currency is abolished

Section 307 — Office of Thrift Supervision is abolished

Section 308 — Savings Provisions

Section 309 — References in Federal law to Federal banking agencies

Section 310 — NCUA moved within the Financial Institutions Regulator

Section 311 — Creates an Office of Consumer Protection within the FIR. The Office of Consumer protection is responsible for all consumer protection rulemaking under the Consumer Credit Protection Act, and will coordinate with the other divisions of the FIR in enforcing consumer protection. Establishes a consumer complaint hotline for the timely referral and remedy of consumer complaints, regardless of charter type or regulatory structure. Requires the Office of Consumer Protection to use extensive consumer testing prior to the promulgation of new consumer protections. Requires a comprehensive review of consumer protection rules and regulations on a regular basis with reports to be issued to Congress based on inaction or action with regards to consumer protection standards.

Title 4 — Reform of the Federal Reserve

Section 401 — Grants the Government Accountability Office (GAO) audit authority

Section 402 — Requires the Federal Reserve and the Federal Open Market Committee (FOMC) to establish an explicit inflation target.

Section 403 — Reforms emergency powers under Section 13(3) of the Federal Reserve Act to require the Treasury Secretary's approval to utilize any of the authority granted under the section. Requires that should the Federal Reserve desire to use its emergency powers to assist the market, it do so in a broad fashion. No individual firm may be assisted by the Federal Reserve. Once the Treasury Secretary approves the Federal Reserve's invocation of 13(3), a notice is sent to Congress which then has 90-days to disapprove of the authority. If such disapproval is signed into law, the Federal Reserve will have 180-days to unwind the emergency facility.

Title 5 — Government-Sponsored Enterprises Reform

Section 501 — Short Title

Section 502 — Definitions

Section 503 — Provides for a finite end to the current conservatorship period for both GSEs scheduled for 2 years from the date of enactment (with an option for FHFA to extend the conservatorship for either or both for an additional 6 months if adverse market conditions exist). If, at the end of the conservatorship a GSE is not financially viable,

FHFA must place that GSE in receivership under the terms established in Housing and Economic Recovery Act of 2008 (HERA, P.L. 110-289). If a GSE is financially viable, then it would be allowed to re-enter the market under new operating restrictions.

Section 504 — Establishes the following new operating restrictions for a GSE re-entering the market post-conservatorship: (1) new portfolio limits for mortgage assets held on its books of no more than \$850 billion for the first year, declining by 20 percent each year thereafter, until a floor of \$250 billion is reached; (2) new risk-based minimum capital requirements that can be increased as needed; (3) a repeal of the temporary increases to the conforming loan limit and the high-cost area increases, and a return to the \$417,000 conforming loan limit for the first year, subject to annual adjustment by FHFA each year thereafter; (4) a prohibition on the purchase of any mortgage that exceeds the median home price for the area where that residence is located; (5) the requirement that the GSEs pay all applicable state and local taxes; (6) a repeal of the SEC securities laws exemption for both GSEs; and (7) the assessment of a fee on the GSEs, as determined by FHFA, to recoup the full value of the benefit that the GSEs enjoy from the guarantee provided by the federal government. GAO shall conduct a study to determine the current value of that government guarantee.

Section 505 — Establishes that three years after the end of the conservatorship period, if a GSE wants to continue its government charter, it can re-apply for a one-time-only extension of its charter for an additional three years by certifying that it is still financially sound. If a GSE does not re-apply for continuation of its charter or has its application rejected because it is no longer financially sound, that GSE would lose its government charter subject to the provisions of Section 506.

Section 506 — Provides for the orderly wind down of a GSE over a ten-year period following the expiration, rejection, or voluntary refusal to extend its charter through the creation of a separate holding corporation and a dissolution trust fund for any remaining mortgages or debt obligations held by the GSE. Following the conclusion of that ten-year period, the GSE charters are repealed.

Title 6 — Credit Rating Agency Reform

Section 601 — Amends each reference in the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940 by striking “nationally recognized statistical rating organization” each place it appears and inserting “nationally registered statistical rating organization”.

Section 602 — Eliminates all references to credit ratings that appear in Federal law including the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Higher Education Act of 1965, Launching Our Communities’ Access to Local Television Act

of 2000, Employee Retirement Income Security Act of 1974, Chapter 6 of Title 23, Federal Housing Enterprises Financial Safety and Soundness Act of 1992, Section 5136A of Title LXII (62) of the Revised Statutes of the United States, and the Federal Deposit Insurance Act.

Section 603 — This section requires each Federal agency and department to modify any regulation that requires the use of an assessment of creditworthiness of a security or money market instrument by removing such requirement not later than three months after the date of enactment.

Title 7 — Anti-Fraud Provisions

Section 701— Amends the existing administrative cease-and-desist authority of the Securities and Exchange Commission (SEC) to permit the SEC to impose civil money penalties in these proceedings. The section also would ensure appropriate due process protections for subjects of administrative penalty proceedings by making the SEC's authority to seek penalties in this context coextensive with its authority to seek penalties in federal court. As is the case when a federal district court imposes a civil penalty in a Commission action, imposition of a civil penalty in an administrative cease-and-desist proceeding would be appealable to a federal court of appeals.

Section 702 — Would make it explicit that the SEC has the authority to bring action over persons formerly associated with a regulated or supervised entity for misconduct that occurred during that association. The regulated or supervised entities covered by the section include (1) the Municipal Securities Rulemaking Board, (2) a government securities broker or dealer, (3) a national securities exchange or registered securities association, (4) a participant of a registered clearing agency, (5) an officer or director of a self-regulatory organization, or (6) an officer or director of an investment company.

Section 703 — Authorizes the Commission to resume imposing collateral bars against regulated persons. As a result of this section, a regulated person who violates the securities laws in one part of the industry, like a broker-dealer who misappropriates customer funds, could be barred from access to customer funds in another part of the securities industry, as the initial violation supports a reasonable likelihood of future misconduct in the related field. The section would apply only to persons well within the Commission's regulatory sphere, *i.e.*, persons associated with, or seeking to become associated with, brokers, dealers, investment advisers, transfer agents, and municipal securities dealers. Moreover, it would authorize collateral bars only when it is in the public interest and on the bases the Commission is already authorized to bar violators from entering segments of the securities industry, such as convictions, injunctions and federal securities law violations.

Section 704 — Technical Correction

Section 705 — This section would provide the SEC with the ability to make nationwide service of process available in civil actions filed in federal courts.

Section 706 — Reauthorizes the Financial Crimes Enforcement Network (FinCEN) and authorizes the appropriate of \$15 million to be used for efforts to detect financial fraud.

Section 707 — Fair Fund improvements. This section would authorize the SEC to add civil penalties to a fund for distribution to the victims of a securities law violation regardless of whether the Commission also obtains disgorgement against the violator.

Section 708 — Authority to contract for collection of delinquent judgments and orders. This section would give the SEC express authority to hire outside collection agencies and private counsel to provide legal services, including litigation, for the collection of unpaid debt owed by securities law violators.