As passed by the Senate Conferees
6/23/2010

Title I

Revised Senate Counteroffer

The House proposed to strike Senate Title I, except for Section 171 as modified, and replace it with the House version of Title I.

The Senate does not accept the House offer to strike and replace Title I.

The Senate's counteroffer includes the following amendments adopted by the Senate conferees on June 17, 2010:

- Amendment #1 by Senator Corker requiring the GAO to conduct studies of hybrid capital instruments and foreign bank intermediate holding company capital requirements;

- Amendment #2 by Senator Corker to add the following duty to the Financial Stability Oversight Council: "to monitor domestic and international financial regulatory proposals and developments, including insurance and accounting issues, and to advise Congress and make recommendations in these areas that will enhance the integrity, efficiency, competitiveness, and stability of the U.S. financial markets"; and

- Amendment #4 by Senator Corker to require that the Board of Governors consult with Council members that supervise functionally regulated or depository institution subsidiaries of companies subject to heightened standards under section 165 before imposing such standards and other requirements.

The Senate's counteroffer also includes the following changes to the Conference base text, as shown in the attachment:

- Add the Chairman of the National Credit Union Administration as a voting member of the Financial Stability Oversight Council;

- Add four additional nonvoting members to the Council, including the head of the Federal Insurance Office, a state insurance commissioner, a state banking supervisor, and a state securities commissioner;

- Clarify that the purposes of the Council include identifying risks to U.S. financial stability that may arise from ongoing activities of large, interconnected financial companies as well as from outside the financial services marketplace;

- Add an additional duty to those already enumerated for the Council: to review and submit comments to the Securities and Exchange Commission and any standard-setting body with respect to an existing or proposed accounting principle, standard, or procedure;

- Clarify and expand on the requirements of the Council's annual report and testimony before Congress, including providing signed statements by each voting member as to

whether or not all reasonable steps are being taken to ensure financial stability;

- Clarify that the Council may designate a nonbank financial company to be supervised by the Board of Governors under section 113 if the nature, scope, size, scale, concentration, or mix of its activities could pose a threat to U.S. financial stability;
- Make changes to the list of criteria that the Council shall consider in making a determination under section 113, including adding (1) the degree to which the company is already regulated by one or more primary financial regulatory agencies, and (2) the nature, scope, size, scale, concentration, interconnectedness, and mix of the company's activities;
- Authorize the Council to make recommendations under section 115, and the Board of Governors to prescribe heightened standards under section 165 on its own or pursuant to a Council recommendation, to differentiate among companies subject to heightened standards on an individual basis or by category, taking into account various risk-related factors;
- Clarify that the Council may recommend, and the Board of Governors may establish upon a Council recommendation, a bank holding company asset threshold higher than $50 billion for heightened standards, except for risk-based capital, leverage, liquidity, and overall risk management standards;
- Clarify that the Council shall adapt its recommendations as appropriate in light of the predominant line of business of the financial company subject to heightened standards;
- Permit the Council to recommend under section 115, and the Board to require under section 165, limits on short term debt;
- Provide that the Council shall make recommendations rather than binding decisions on any disputes under section 119;
- Clarify that the Council may issue recommendations for heightened standards on financial activities under section 120 based on the conduct, scope, nature, size, scale, concentration, and interconnectedness of the activities;
- Expand the actions under section 121 that the Board of Governors may take, subject to a vote of 2/3 of the Council, for a bank holding company with assets of $50 billion or more or a nonbank financial company supervised by the Board that poses a grave threat to U.S. financial stability;
- Strengthen the non-compete provision for employees of the Office of Financial Research who have had access to confidential data;
- Require the Board in consultation with the Council to apply to a company similarly stringent risk controls as an alternative to the risk-based capital requirements and leverage limits under section 165 if such requirements and limits are not appropriate for the company's activities (such as investment company activities or assets under management) or structure;
- Require resolution plans to include information on how insured depository institutions are protected from risks arising from their affiliates, and on the company's ownership

structure, assets, liabilities, contractual obligations, cross-guarantees, major counterparties, and collateral;

- Clarify that resolution plans submitted under section 165 are not binding on bankruptcy courts or receivers and that no private right of action may be based on such plans;
- Expand the stress test requirements for large financial companies.
- Direct the Board of Governors to require a bank holding company with assets of $50 billion or more or a nonbank financial company supervised by the Board to maintain a debt to equity ratio of 15 to 1 upon a Council determination that such company poses a grave threat to U.S. financial stability and that the imposition of the leverage limit would mitigate risk to U.S. financial stability.
- Direct the regulators to include off balance sheet activities in the computation of capital requirements.
- Strengthen the intermediate holding company requirements applicable to nonbank financial companies supervised by the Board of Governors.
- Give the FDIC Board back-up examination and enforcement authority for bank holding companies subject to heightened standards and nonbank financial companies supervised by the Board of Governors;
- Allow regulators to deny expansion into U.S. banking and securities operations by foreign companies that present risks to U.S. financial stability if the home country lacks adequate supervisory regimes to mitigate such risk;
- Modify the capital provisions of section 171 of the base text..
- Provide for international policy coordination on financial stability by the President, the Council, the Board of Governors, and the Treasury Secretary.
- Provide that any regulation or standard imposed under this title not be construed in a manner that would lessen the stringency of the requirements of any applicable primary financial regulatory agency or any other Federal or State agency that are otherwise applicable.

The Senate's counteroffer also includes several technical and conforming amendments to the Conference base text, which are attached.

FINANCIAL REFORM CONFERENCE:

FOR SENATE COUNTEROFFER FOR TITLE I

[Page and line numbers refer to Conference Base Text]

On page 125, between lines 14 and 15, insert the following:

(3) DEFINITION OF DEPOSITORY INSTITUTION HOLDING COMPANY.—The term "depository institution holding company" means a bank holding company or a savings and loan holding company (as those terms are defined in section 3 of the Federal Deposit Insurance Act) that is organized in the United States, including any bank or savings and loan holding company that is owned or controlled by a foreign organization, but does not include the foreign organization.

On page 125, beginning on line 21, strike "identified under section 113" and insert "supervised by the Board of Governors".

On page 126, beginning on line 11, strike "identified under section 113" and insert "supervised by the Board of Governors".

On page 126, line 21, strike "(3)" and insert the following:

(3) INVESTMENTS IN FINANCIAL SUBSIDIARIES.—For purposes of this section, investments in financial subsidiaries that insured depository institutions are required to deduct from regulatory capital under section 5136A of the Revised Statutes of the United States or section 46(a)(2) of the Federal Deposit Insurance Act need not be deducted from regulatory capital by depository institution holding companies or nonbank financial companies supervised by the Board of Governors, unless such capital deduction is required by the Board of Governors or the primary financial regulatory agency in the case of nonbank financial companies supervised by the Board of Governors.

(4) EFFECTIVE DATES AND PHASE-IN PERIODS.—

(A) DEBT OR EQUITY INSTRUMENTS ON OR AFTER MAY 19, 2010.—For debt or equity instruments issued on or after May 19, 2010, by depository institution holding companies or by nonbank financial companies supervised by the Board of Governors, this section shall be

deemed to have become effective as of May 19, 2010.

(B) DEBT OR EQUITY INSTRUMENTS ISSUED BEFORE MAY 19, 2010.—For debt or equity instruments issued before May 19, 2010, by depository institution holding companies or by nonbank financial companies supervised by the Board of Governors, any regulatory capital deductions required under this section shall be phased in incrementally over a period of 3 years, with the phase-in period to begin on January 1, 2013, except as set forth in subparagraph (C).

(C) DEBT OR EQUITY INSTRUMENTS OF SMALLER INSTITUTIONS.—For debt or equity instruments issued before May 19, 2010, by depository institution holding companies with total consolidated assets of less than $15,000,000,000 as of December 31, 2009, and by organizations that were mutual holding companies on May 19, 2010, the capital deductions that would be required for other institutions under this section are not required as a result of this section.

(D) DEPOSITORY INSTITUTION HOLDING COMPANIES NOT PREVIOUSLY SUPERVISED BY THE BOARD OF GOVERNORS.—For any depository institution holding company that was not supervised by the Board of Governors as of May 19, 2010, the requirements of this section, except as set forth in subparagraphs (A) and (B), shall be effective 5 years after the date of enactment of this Act

(E) CERTAIN BANK HOLDING COMPANY SUBSIDIARIES OF FOREIGN BANKING ORGANIZATIONS .—For bank holding company subsidiaries of foreign banking organizations that have relied on Supervision and Regulation Letter SR-01-1 issued by the Board of Governors (as in effect on May 19, 2010), the requirements of this section, except as set forth in subparagraph (A), shall be effective 5 years after the date of enactment of this Act.

(5) EXCEPTIONS.—This section shall not apply to—

(A) debt or equity instruments issued to the United States or any agency or instrumentality thereof pursuant to the Emergency Eco-

nomic Stabilization Act of 2008, and prior to October 4, 2010;

(B) any Federal home loan bank; or

(C) any small bank holding company that is subject to the Small Bank Holding Company Policy Statement of the Board of Governors, as in effect on May 19, 2010.

(6) STUDY AND REPORT ON SMALL INSTITUTION ACCESS TO CAPITAL.—

(A) STUDY REQUIRED.—The Comptroller General of the United States, after consultation with the Federal banking agencies, shall conduct a study of access to capital by smaller insured depository institutions.

(B) SCOPE.—For purposes of this study required by subparagraph (A), the term "smaller insured depository institution" means an insured depository institution with total consolidated assets of $5,000,000,000 or less.

(C) REPORT TO CONGRESS.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the

House of Representatives a report summarizing the results of the study conducted under subparagraph (A), together with any recommendations for legislative or regulatory action that would enhance the access to capital of smaller insured depository institutions, in a manner that is consistent with safe and sound banking operations.

(7)

On page 127, line 3, strike "all institutions covered by this section" and insert "insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Board of Governors".

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TITLE I AMENDMENT – TECHNICAL AND NONCONTROVERSIAL AMENDMENTS

On p.25, line 1 and line 12, strike "or a subsidiary thereof".

Strike p. 27 lines 13-18 and insert the following:

(c) Foreign Nonbank Financial Companies.—For purposes of the application of subtitles A and C of this title (other than section 113(b)) with respect to a foreign nonbank financial company, references in this title to "company" or "subsidiary" include only the United States activities and subsidiaries of such foreign company, except as otherwise provided.

On p. 30, in line 12 before "members" insert "voting".

On p. 32, in line 18 strike "and" and insert a comma, and in line 19 after "agencies" insert ", the Federal Insurance Office".

On p. 36, in line 6 strike "and" and insert a comma, and in line 7 insert after the comma "and the Federal Insurance Office,".

On p. 36, in line 15 strike "and" and insert a comma, and in line 16 after "agency" insert ", and the Federal Insurance Office".

On p. 38, in line 3 insert "U.S." before "nonbank", in line 6 strike "paragraph (3)" and insert "paragraphs (1) and (3)", and in line 10 insert "U.S." before "nonbank".

On p. 38 line 19, strike "subsection and subtitle B" and insert "title".

On p. 44, line 5, strike "(b)(2)" and insert "(a)(2) or (b)(2), as applicable".

On p. 56 line 8, strike "convertible debt" and insert "contingent capital".

On p. 57 line 13, strike "long-term hybrid debt" and insert "contingent capital".

On p. 61, in line 2 insert the following before the semicolon: "or to a relevant foreign supervisory authority".

On p. 63, in line 1 insert a new sentence before "Not" to read as follows: "A Council decision to grant an appeal under this subsection shall be made by a vote of not fewer than 2/3 of the members then serving, including an affirmative vote by the Chairperson."

On p. 65, strike the matter between the parentheses in lines 5-7 and insert the following: "excluding matters for which another dispute mechanism specifically has been provided under title X"

On p. 66, beginning on line 19, strike the phrase "issue recommendations" and insert "may provide for more stringent regulation of a financial activity by issuing recommendations".

On p. 83, at the end of line 2 after the period insert the following: "This paragraph shall not supersede or interfere with a member agency's independent authority under other law to collect

data in such format and manner as it requires."

On p. 86, in line 7 strike "or" and insert a comma, in line 8 after the comma insert "a foreign supervisory authority, or", in line 10 insert "or authority" before "and", and in line 11 before the period insert "or authority".

On p. 96, in line 5, strike "subtitle" and insert "title".

On p. 97, in line 10 strike "within the company" and insert "of the company or such subsidiary", in line 16 insert "or such subsidiary" after "company", in line 17 strike "subtitle" and insert "title", and in lines 21-22 strike "depository institution subsidiary" and insert "subsidiary depository institution".

On p. 98, strike lines 3-7 and insert the following: "(1) provide reasonable notice to, and consult with, the primary financial regulatory agency for any subsidiary before requiring a report or commencing an examination of such subsidiary under this section; and".

On p. 106, in line 9 insert "risk-related" before "factors"

On p. 107, in lines 7-8, strike "long-term hybrid debt" and insert "contingent capital", in line 10 strike "establishing" and insert "issuing", and in line 17 strike "conversion" and insert "contingent capital".

On page 120, strike lines 6-24 and insert the following:

(2) INTERNAL FINANCIAL ACTIVITIES.—For purposes of this subsection, activities that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act of 1956, as described in paragraph (1), shall not include internal financial activities, including, but not limited to, internal treasury, investment, and employee benefit functions. With respect to any internal financial activity engaged in for the company or an affiliate and a non-affiliate of such company during the year prior to the date of enactment of this Act, such company (or an affiliate that is not an intermediate holding company or subsidiary of an intermediate holding company) may continue to engage in such activity as long as at least 2/3 of the assets or 2/3 of the revenues generated from the activity are from or attributable to such company or an affiliate, subject to review by the Board of Governors, to determine whether engaging in such activity presents undue risk to such company or to the financial stability of the United States."

On p. 121, strike line 20 and all that follows through line 23 and insert the following:

"The Board of Governors shall have authority to issue regulations to implement subtitles A and C and the amendments made thereunder. Except as otherwise specified in subtitle (A) or (C), not later than 18 months after the effective date, the Board of Governors shall issue final regulations to implement subtitles (A) and (C) and the amendments made thereunder."

TITLE I – REVISED SENATE COUNTER-OFFER

On p. 28, line 16, strike "and".

On p. 28, after line 16, insert the following and renumber the subsequent subparagraph accordingly:

"(I) the Chairman of the National Credit Union Administration; and".

On p. 28, strike line 20 and all that follows through p. 29 line 3 and insert the following:

"(2) NONVOTING MEMBERS.—The nonvoting members, who shall serve in an advisory capacity as a nonvoting member of the Council, shall be:

(A) the Director of the Office of Financial Research;

(B) the Director of the Federal Insurance Office;

(C) a state insurance commissioner, to be designated by a selection process determined by the state insurance commissioners;

(D) a state banking supervisor, to be designated by a selection process determined by the state banking supervisors; and

(E) a state securities commissioner (or an officer performing like functions), to be designated by a selection process determined by such state securities commissioners.

(3) Nonvoting member participation. – The nonvoting members shall not be excluded from any of the proceedings, meetings, discussions, or deliberations of the Council, except that the Chairperson may, upon an affirmative vote of the member agencies, exclude the nonvoting members from any of the proceedings, meetings, discussions, or deliberations of the Council when necessary to safeguard, and promote the free exchange of confidential supervisory information."

On p. 29, line 6, insert after "years" the following: ", and each nonvoting member described in subparagraphs (C), (D), and (E) shall serve for a term of 2 years".

On p. 32, in line 5 after "failure" insert ", or ongoing activities," and in line 7 after "companies" insert ", or that could arise outside the financial services marketplace".

On page 34, after line 24, insert the following new subparagraph and redesignate subparagraphs accordingly:

(K) review and, as appropriate, may submit comments to the Securities and Exchange Commission and any standard-setting body with respect to an existing or proposed accounting principle, standard, or procedure;

On p. 35, strike line 10 and all that follows through p. 36 line 2, insert the following new subparagraph and subsections, and redesignate the remaining subsection accordingly –

(M) annually report to and testify before Congress on—

(i) the activities of the Council;

(ii) significant financial market and regulatory developments, including insurance and accounting regulations and standards, along with an assessment of those developments on the stability of the financial system;

(iii) potential emerging threats to the financial stability of the United States;

(iv) all determinations made under section 113 or title VIII, and the basis for such determinations;

(v) all recommendations made under section 119 and the result of such recommendations; and

(iv) recommendations—

(I) to enhance the integrity, efficiency, competitiveness, and stability of United States financial markets;

(II) to promote market discipline; and

(III) to maintain investor confidence.

(b) Statements by Voting Members of the Council.—At the time each report is submitted under subsection (a), each voting member of the Council shall—

(1) if such member believes that the Council, the Government, and the private sector are taking all reasonable steps to ensure financial stability and to mitigate systemic risk that would negatively affect the economy, submit a signed statement to Congress stating such belief; or

(2) if such member does not believe that all reasonable steps described under paragraph (1) are being taken, submit a signed statement to Congress stating what actions such member believes need to be taken in order to ensure that all reasonable steps described under paragraph (1) are taken.

(c) Testimony by the Chairman.—The Chairman of the Council shall appear before the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate at an annual hearing, after the report is submitted under subsection (a)—

(1) to discuss the efforts, activities, objectives, and plans of the Council; and

(2) to discuss and answer questions concerning such report.

On p. 39, strike lines 13 and all that follows through p. 41 line 12 and insert the following:

(1) DETERMINATION.— The Council, on a non-delegable basis and by a vote of not fewer than 2/3 of the members then serving, including an affirmative vote by the Chairperson, may determine that a U.S. nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards, in accordance with this title, if the Council determines that material financial distress at the U.S. nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities

of the U.S. nonbank financial company, could pose a threat to the financial stability of the United States.

(2) CONSIDERATIONS.—In making a determination under paragraph (1), the Council shall consider the following criteria:

(A) the extent of the leverage of the company;

(B) the extent and nature of the off-balance-sheet exposures of the company;

(C) the extent and nature of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies;

(D) 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 United States financial system;

(E) the importance of the company as a source of credit for low-income, minority, or underserved communities, and the impact that the failure of such company would have on the availability of credit in such communities;

(F) the extent to which assets are managed rather than owned by the company and the extent to which ownership of assets under management is diffuse;

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

(H) the degree to which the company is already regulated by one or more primary financial regulatory agencies;

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

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

(K) any other risk-related factors that the Council deems appropriate."

On p. 41, strike line 15 and all that follows through p. 42 line 2 and insert the following:

(1) DETERMINATION.— The Council, on a non-delegable basis and by a vote of not fewer than 2/3 of the members then serving, including an affirmative vote by the Chairperson, may determine that a foreign nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards, in accordance with this title, if the Council determines that material financial distress at the foreign nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the foreign nonbank financial company, could pose a threat to the financial stability of the United States.

(2) CONSIDERATIONS.—In making a determination under paragraph (1), the Council shall consider the following criteria:

(A) the extent of the leverage of the company;

(B) the extent and nature of the U.S. related off-balance-sheet exposures of the

company;

(C) the extent and nature of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies;

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

(E) the importance of the company as a source of credit for low-income, minority, or underserved communities in the United States, and the impact that the failure of such company would have on the availability of credit in such communities;

(F) the extent to which assets are managed rather than owned by the company and the extent to which ownership of assets under management is diffuse;

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

(H) the extent to which the company is subject to prudential standards on a consolidated basis in the home country of such foreign financial parent that are administered and enforced by a comparable foreign supervisory authority;

(I) the amount and nature of the U.S. financial assets of the company;

(J) the amount and natures of the liabilities of the company used to fund activities and operations in the United States, including the degree of reliance on short-term funding; and

(K) any other risk-related factors that the Council deems appropriate.

On page 43, line 21, after "distress related to" insert the following: ", or the nature, scope, size, scale, concentration, interconnectedness, or mix of, the".

On p. 52, in line 21, strike "distress or failure" and insert "distress, failure, or ongoing activities"

On p. 53, strike lines 10-17 and insert the following:

(2) RECOMMENDED APPLICATION OF REQUIRED STANDARDS.— In making recommendations under this section, the Council may—

(A) differentiate among companies that are subject to heightened standards on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities (including the financial activities of their subsidiaries), size, and any other risk-related factors that the Council deems appropriate; or

(B) recommend an asset threshold higher than $50,000,000,000 for the application of any standard described in subsections (c) through (g).

On p. 54, at the end of line 3 strike "and", insert "(H) short-term debt limits; and", and redesignate paragraph (H) as paragraph (I).

On p. 55, in lines 15-16 strike "paragraph (1)" and insert "section 165", strike the period in line 16, and insert the following:

; and (C) adapt its recommendations as appropriate in light of any predominant line of business of such company, including assets under management or other activities for which particular standards may not be appropriate.

On p. 59, after line 22 insert the following new subsection:

(g) Short term debt limits. – The Council may make recommendations to the Board of Governors to require short term debt limits to mitigate the risks that an over-accumulation of such debt could pose to bank holding companies described in subsection (a), nonbank financial companies supervised by the Board of Governors, or the financial system."

On page 64, line 22, strike "REQUEST FOR DISPUTE RESOLUTION" and insert "REQUEST FOR COUNCIL RECOMMENDATION"

On page 64, line 23, insert "seek to" before "resolve"

On page 65, line 19, insert "seek to" before "resolve"

On page 65, line 21, strike "COUNCIL DECISION. – The Council shall resolve" and insert "COUNCIL RECOMMENDATION. – The Council shall seek to resolve"

On page 66, line 6, strike "FORM OF DECISION. – Any Council decision" and insert "FORM OF RECOMMENDATION. – Any Council recommendation"

On p. 66 line 12 insert "voting" before "members

On page 66, line 13, strike "BINDING EFFECT. – Any decision" and insert "NON-BINDING EFFECT. – Any recommendation"

On page 66, line 14, strike "shall be binding on all" and insert "shall not be binding on the"

On p. 67 line 1, after "conduct" insert ", scope, nature, size, scale, concentration, or interconnectedness".

On p. 71, line 3, insert the following and renumber accordingly:

(1) to limit the ability of the company to merge with, acquire, consolidate with, or otherwise become affiliated with another company;
(2) to restrict the ability to offer a financial product or products;

On page 78, line 13, insert a new paragraph (d)(4), "(4) SENIOR EXECUTIVES.—Section 3132(a)(1)(D) of title 5, United States Code, is amended by striking 'and the National Credit Union Administration;' and inserting 'the National Credit Union Administration, the Bureau of Consumer Financial Protection, and the Office of Financial Research;"

On page 79, line 5, strike subsection (g).

On page 79, line 18, strike subsection (h) and insert the following: "(h) The Secretary, with the concurrence of the Director of the Office of Government Ethics, shall issue regulations prohibiting the Director and any employees of the Office who has had access to the transaction or position data maintained by the Data Center or other business confidential information about financial entities required to report to the Office from being employed by or providing advice or consulting services to a financial company, for a period of 1 year after last having had access in the course of official duties to such transaction or position data or business confidential information, regardless of whether that entity is required to report to the Office. For employees whose access to business confidential information was limited, the regulations may provide, on a case-by-case basis, for a shorter period of post-employment prohibition, provided that the shorter period does not compromise business confidential information."

On p. 81, beginning on line 24, strike "and member agencies" and insert ", member agencies, and the Bureau of Economic Analysis".

On p. 86, after line 11 insert the following:

"(iii) COLLECTION OF FINANCIAL TRANSACTION AND POSITION DATA.—The Office shall collect, on a schedule determined by the Director, in consultation with the Council, financial transaction data and position data from financial companies."

On p. 103, in line 10 after "failure" insert ", or ongoing activities,"

On p. 103, in line 13 strike "establish" and all that follows through the end of line 17 and insert the following:

"establish prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies with total consolidated assets equal to or greater than $50,000,000,000 that—"

Strike p. 103 line 25 through p. 104 line 6 and insert the following new paragraph:

"(2) Tailored application.

(A) In general. In prescribing more stringent prudential standards under this section, the Board of Governors may, on its own or pursuant to a recommendation by the Council in accordance with section 115, differentiate among companies on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities (including the financial activities of their subsidiaries), size, and any other risk-related factors that the Board of Governors deems appropriate.

(B) Adjustment of threshold for application of certain standards. The Board of Governors may, pursuant to a recommendation by the Council in accordance with section 115,

establish an asset threshold above $50,000,000,000 for the application of any standard established under subsections (c) through (g)."

On p. 104, strike line 8 and all that follows through p. 105 line 6 and insert the following:

"(1) IN GENERAL.—

(A) REQUIRED STANDARDS.—The Board of Governors shall establish prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), that shall include—

(i) risk-based capital requirements and leverage limits, unless the Board of Governors, in consultation with the Council, determines that such requirements are not appropriate for a company subject to more stringent prudential standards because of the activities of such company (such as investment company activities or assets under management) or structure, in which case the Board of Governors shall apply other standards that result in similarly stringent risk controls;

(ii) liquidity requirements;

(iii) overall risk management requirements;

(iv) resolution plan and credit exposure report requirements; and

(v) concentration limits.

(B) ADDITIONAL STANDARDS AUTHORIZED.—The Board of Governors may establish additional prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), that include—

(i) a contingent capital requirement;

(ii) enhanced public disclosures;

(iii) short-term debt limits; and

(iv) such other prudential standards as the Board or Governors, on its own or pursuant to a recommendation made by the Council in accordance with section 115, determines are appropriate."

On p. 106, in line 18 delete the period and insert the following:

"; and

(D) adapt the required standards as appropriate in light of any predominant line of business of such company, including assets under management or other activities for which particular standards may not be appropriate."

On p. 108, in line 12 strike the period and insert the following:

", which shall include—

(A) information regarding the manner and extent to which any insured depository institution affiliated with the company is adequately protected from risks arising from the activities of any nonbank subsidiaries of the company;

(B) full descriptions of the ownership structure, assets, liabilities, and contractual

obligations of the company;

(C) identification of the cross-guarantees tied to different securities, identification of major counterparties, and a process for determining to whom the collateral of the company is pledged; and

(D) any other information that the Board of Governors and the Corporation jointly require by rule or order."

On p. 111, after line 14 insert the following new paragraphs and redesignate the remaining paragraph accordingly:

"(6) No limiting effect. A resolution plan submitted in accordance with this subsection shall not be binding on a bankruptcy court, a receiver appointed under title II of this Act, or any other authority that is authorized or required to resolve the nonbank financial company supervised by the Board, any bank holding company, or any subsidiary or affiliate of the foregoing.

(7) No private right of action. No private right of action may be based on any resolution plan submitted in accordance with this subsection."

On p. 115, after line 3 insert the following new subsection and redesignate succeeding paragraphs accordingly:

"(g) Short-term debt limits.—

(1) IN GENERAL.—In order to mitigate the risks that an over-accumulation of short-term debt could pose to financial companies and to the stability of the United States financial system, the Board of Governors may by regulation prescribe a limit on the amount of short-term debt, including off-balance sheet exposures, that may be accumulated by any bank holding company described in subsection (a) and any nonbank financial company supervised by the Board of Governors.

(2) BASIS OF LIMIT.—Any limit prescribed under paragraph (1) shall be based on the short-term debt of the company described in paragraph (1) as a percentage of capital stock and surplus of the company or on such other measure as the Board of Governors considers appropriate.

(3) SHORT-TERM DEBT DEFINED.—For purposes of this subsection, the term "short-term debt" means such liabilities with short-dated maturity that the Board of Governors identifies by regulation, except that such term does not include insured deposits.

(4) RULEMAKING AUTHORITY.—In addition to prescribing regulations under paragraphs (1) and (3), the Board of Governors may prescribe such regulations, including definitions consistent with this subsection, and issue such orders as may be necessary to carry out this subsection.

(5) AUTHORITY TO ISSUE EXEMPTIONS AND ADJUSTMENTS.—Notwithstanding the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), the Board of Governors may, if it determines such action is necessary to ensure appropriate heightened prudential supervision, with respect to a company described in paragraph (1) that does not control an insured depository institution, issue to such company an exemption from or adjustment to the limit

prescribed under paragraph (1).

On p. 117, in line 6 strike "The" and all that follows through line 19 and insert the following:

"(1) By the Board of Governors. –

(A) Annual tests required. The Board of Governors, in coordination with the appropriate primary financial regulatory agencies and the Federal Insurance Office, shall conduct annual analyses in which nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a) are subject to evaluation of whether such companies have the capital, on a total consolidated basis, necessary to absorb losses as a result of adverse economic conditions.

(B) Test parameters and consequences. The Board of Governors—

(i) shall provide for at least three different sets of conditions under which the evaluation required by this subsection shall be conducted: baseline, adverse, and severely adverse;

(ii) may require the tests described in paragraph (1)(A) at bank holding companies and nonbank financial companies in addition to those for which annual tests are required under paragraph (1)(A);

(iii) may develop and apply such other analytic techniques as are necessary to identify, measure, and monitor risks to the financial stability of the United States;

(iv) shall require the companies described in paragraph (1)(A) to update their resolution plans required under subsection (d)(1), as the Board of Governors determines appropriate, based on the results of the analyses; and.

(v) shall publish a summary of the results of the tests required under paragraph (1)(A) or paragraph (1)(B)(ii).

(2) By the company. –

(A) Requirement. A nonbank financial company supervised by the Board of Governors and a bank holding company described in subsection (a) shall conduct semiannual stress tests. All other financial companies that have total consolidated assets of more than $10,000,000,000 and are regulated by a Federal primary financial regulatory agency shall conduct annual stress tests. The tests required under this clause shall be conducted in accordance with the regulations prescribed under subparagraph (C).

(B) Report. A company required to conduct stress tests under subparagraph (2)(A) shall submit a report to the Board of Governors and to its primary financial regulatory agency at such time, in such form, and containing such information as the primary financial regulatory agency shall require.

(C) Regulations. Each Federal primary financial regulatory agency, in coordination with the Board of Governors and the Federal Insurance Office, shall issue consistent and comparable regulations to implement this paragraph that shall—

(i) define the term "stress test" for purposes of this paragraph;

(ii) establish methodologies for the conduct of stress tests required by this

paragraph that shall provide for at least three different sets of conditions: baseline, adverse, and severely adverse;

(ii) establish the form and content of the report required in paragraph (B); and

(iii) require companies subject to this paragraph to publish a summary of the results of the required quarterly stress tests."

On page 117, after line 19, insert the following new subsections:

"( ) LEVERAGE LIMITATION.—

(1) Requirement.—The Board of Governors shall require a bank holding company with total consolidated assets equal to or greater than $50,000,000,000 or a nonbank financial company supervised by the Board of Governors to maintain a debt to equity ratio of no more than 15 to 1, upon a determination by the Council that such company poses a grave threat to the financial stability of the United States and the imposition of such requirement is necessary to mitigate the risk that such company poses to the financial stability of the United States.

(2) Considerations.—In making a determination under this subsection, the Council shall consider the factors described in subsections (a) and (b) of section 113 and any other risk-related factors that the Council deems appropriate.

(3) Regulations.—The Board of Governors shall promulgate regulations to establish procedures and timelines for complying with the requirements of this subsection.

( ) Inclusion of off balance sheet activities in computing capital requirements.

(1) In general. In the case of any bank holding company described in subsection (a) or nonbank financial company supervised by the Board of Governors, the computation of capital for purposes of meeting capital requirements shall take into account any off balance sheet activities of the company.

(2) Exemptions. If the appropriate Federal banking agencies determine that an exemption from the requirement under subparagraph (A) is appropriate, the Federal banking agencies may exempt a company, or any transaction or transactions engaged in by such company, from the requirements of subparagraph (A).

(3) Off balance sheet activities defined. For purposes of this paragraph, the term "off balance sheet activities" means an existing liability of a company that is not currently a balance sheet liability but may become one upon the happening of some future event, including the following transactions to the extent that they may create a liability:

(A) direct credit substitutes in which a bank substitutes its own credit for a third party, including standby letters of credit;

(B) irrevocable letters of credit that guarantee repayment of commercial paper or tax-exempt securities;

(C) risk participations in bankers' acceptances;

(D) sale and repurchase agreements;

(E) asset sales with recourse against the seller;

(F) interest rate swaps;

(G) credit swaps;

(H) commodities contracts;

(I) forward contracts;

(J) securities contracts; and

(K) such other activities or transactions as the Federal banking agencies may, by rule, define."

On page 119, line 15, strike "GENERAL.—If" and insert: "GENERAL.—(A) If".

On page 120, after line 5, insert:

"(B) Notwithstanding subparagraph (A), the Board of Governors shall require a nonbank financial company supervised by the Board of Governors to establish an intermediate holding company if the Board of Governors makes a determination that the establishment of such intermediate holding company is necessary to—

(i) appropriately supervise activities that are determined to be financial in nature or incidental thereto, or

(ii) to ensure that supervision by the Board of Governors does not extend to the commercial activities of such nonbank financial company."

On page 120, after line 24, insert the following:

"(3) SOURCE OF STRENGTH. A 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.

(4) PARENT COMPANY REPORTS.— The Board of Governors may, from time to time, require reports under oath from a company that controls an intermediate holding company, and from the appropriate officers or directors of such company, solely for purposes of ensuring 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 pursuant to paragraph (3) and enforcing such compliance.

(5) LIMITED PARENT COMPANY ENFORCEMENT

(A) IN GENERAL.— In addition to any other authority of the Board of Governors, the Board of Governors may enforce compliance with the provisions of this subsection that are applicable to any company described in paragraph (1) that controls an

intermediate holding company under section 8 of the Federal Deposit Insurance Act, and such company shall be subject to such section (solely for such purposes) in the same manner and to the same extent as if such company were a bank holding company.

(B) APPLICATION OF OTHER ACT— Any violation of this subsection by any company that controls an intermediate holding company may also be treated as a violation of the Federal Deposit Insurance Act for purposes of subparagraph (A).

(C) No effect on other authority. — No provision of this subparagraph shall be construed as limiting any authority of the Board of Governors or any other Federal agency under any other provision of law."

On page 121, line 5, strike "(a)" and insert "(b)".

On p. 128, after line 2, insert the following new sections:

SEC [ ]. Examination and enforcement actions for insurance and orderly liquidation purposes. –

(a) Examinations for insurance and resolution purposes. – Section 10(b)(3) of the Federal Deposit Insurance Act (12 USC 1820(b)(3)) is amended by striking "whenever the board of directors determines" and all that follows through the period and inserting "or nonbank financial company supervised by the Board of Governors or a bank holding company described in section 165(a) of the Restoring American Financial Stability Act of 2010 whenever the board of directors determines a special examination of any such depository institution is necessary to determine the condition of such depository institution for insurance purposes, or of such nonbank financial company supervised by the Board of Governors or bank holding company described in section 165(a) of the Restoring American Financial Stability Act for the purpose of implementing its authority to provide for orderly liquidation of any such company under title II of that Act, provided that such authority may not be used with respect to such company that is in a generally sound condition. Before conducting a special examination of a nonbank financial company supervised by the Board of Governors or a bank holding company described in section 165(a) of the Restoring American Financial Stability Act, the Corporation shall review any available and acceptable resolution plan the company has submitted in accordance with section 165(d) of the Restoring American Financial Stability Act, consistent with the non-binding effect of such plan, and available reports of examination, and shall coordinate to the maximum extent practicable with the Board of Governors in order to minimize duplicative or conflicting examinations.".

(b) Enforcement authority. – Section 8(t) of the Federal Deposit Insurance Act (12 USC 1818(t)) is amended—

(1) In paragraph (1), insert ", any depository institution holding company," before "or any institution-affiliated party";

(2) In paragraph (2)—

(A) at the end of subparagraph (B), by striking "or";

(B) at the end of subparagraph (C) , by striking the period and inserting "or"; and

(C) by inserting at the end the following new subparagraph:

"(D) the conduct or threatened conduct (including any acts or omissions) of the depository institution holding company poses a risk to the Deposit Insurance Fund, provided that such authority may not be used with respect to a depository institution holding company that is in generally sound condition and whose conduct does not pose a foreseeable and material risk of loss to the Deposit Insurance Fund"; and

(3) by adding at the end the following new paragraph:

"(6) For purposes of exercising the backup authority provided in this subsection:

(A) the Corporation shall have the same powers with respect to a depository institution holding company and its affiliates as the appropriate federal banking agency has with respect to the holding company and its affiliates; and

(B) the holding company and its affiliates shall have the same duties and obligations with respect to the Corporation as the holding company and its affiliates have with respect to the appropriate federal banking agency.

(c) Rule of Construction.—Nothing in this Act shall be construed to limit or curtail the Corporation's current authority to examine or bring enforcement actions with respect to any insured depository institution or institution-affiliated party.

SEC. [ ]. ACCESS TO UNITED STATES FINANCIAL MARKET BY FOREIGN INSTITUTIONS.

(a) Establishment of Foreign Bank Offices in the United States.—Subsection 7(d)(3) of the International Banking Act of 1978 (12 U.S.C. 3105(d)(3)) is amended—

(1) by striking "and" at the end of subparagraph (C);

(2) by striking the period at the end of subparagraph (D) and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(E) for a foreign bank that presents a risk to the stability of United States financial system, whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk.".

(b) Termination of Foreign Bank Offices in the United States.—Subsection 7(e)(1) of the International Banking Act of 1978 (12 U.S.C. 3105(e)(1)) is amended—

(1) by striking "or" at the end of subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting "; or"; and

(3) by inserting after subparagraph (B), the following new subparagraph:

"(C) for a foreign bank that presents a risk to the stability of the United States financial system, the home country of the foreign bank has not adopted or made demonstrable progress toward adopting an appropriate system of financial regulation to mitigate such risk.".

(c) Registration or Succession to United States Brokerage or Dealer and Termination of Such Registration.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following new subsections:

"(k) Registration or Succession to a United States Broker or Dealer.—In determining whether to permit a foreign person or an affiliate of a foreign person to register as a United States broker or dealer, or succeed to the registration of a United States broker or dealer, the Securities and Exchange Commission may consider whether, for a foreign person, or an affiliate of a foreign person that presents a risk to the stability of the United States financial system, the home country of the foreign person has adopted or made demonstrable progress toward adopting an appropriate system of financial regulation to mitigate such risk.

"(l) Termination of a United States Broker or Dealer.—For a foreign person or an affiliate of a foreign person that presents such a risk to the stability of the United States financial system, the Securities and Exchange Commission may determine to terminate the registration of such foreign person or an affiliate of such foreign person as a broker or dealer in the United States if the Commission determines that the home country of the foreign person has not adopted, or made demonstrable progress toward adopting, an appropriate system of financial regulation to mitigate such risk.".

SEC. [ ]. International policy coordination.

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

(b) By the Council. The Chairperson of the Council, in consultation with the other members of the Council, shall regularly consult with the financial regulatory entities and other appropriate organizations of foreign governments or international organizations on matters relating to systemic risk to the international financial system.

(c) By the Board of Governors and the Secretary of the Treasury. The Board of Governors and the Secretary of the Treasury shall consult with their foreign counterparts and through appropriate multilateral organizations to encourage comprehensive and robust prudential supervision and regulation to all highly leveraged and interconnected financial companies.

SEC [ ]. Rule of construction. – Any regulation or standard imposed under this title shall not be construed in a manner that would lessen the stringency of the requirements of any applicable primary financial regulatory agency or any other Federal or State agency that are otherwise applicable. This title, and the rules and regulations or orders prescribed pursuant to this title, do

not divest any such agency of any authority derived from any other applicable law.

Restoring American Financial Stability
Conference Amendment
Mr. Corker Amendment # 1, Title I

Title I

~~On page 124, Strike Section 171 and replace with:~~

"Studies and Reports on Holding Company Capital Requirements

(a) Study of hybrid capital instruments. -- The Comptroller General of the United States, in consultation with the Federal Reserve Board, Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, shall conduct a study of the use of hybrid capital instruments as a component of Tier 1 capital for banking institutions and bank holding companies. The study shall consider --

(1) the current use of hybrid capital instruments, such as trust preferred shares, as a component of tier 1 capital;

(2) the differences between the components of capital permitted for insured depository institutions and those permitted for companies that control insured depository institutions;

(3) the benefits and risks of allowing such instruments to be used to comply with tier 1 capital requirements;

(4) the economic impact of prohibiting the use of these capital instruments for tier 1;

(5) a review of the consequences of disqualifying trust preferred instruments, and whether it could lead to the failure or undercapitalization of existing banking organizations;

(6) the international competitive implications prohibiting hybrid capital instruments for tier 1;

(7) the impact on the cost and availability of credit in the United States from such a prohibition;

(8) the availability of capital for financial institutions with less than $10 billion in total assets;

(9) any other relevant factors relating to the safety and soundness of our financial system and potential economic impact of such a prohibition.

(b) Study of foreign bank intermediate holding company capital requirements. -- The Comptroller General of the United States, in consultation with the Treasury Department, the Federal Reserve Board, Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, shall conduct a study of capital requirements applicable to U.S. intermediate holding companies of foreign banks that are bank holding companies or savings and loan holding companies. The study shall consider --

(1) current Federal Reserve Board policy regarding the treatment of intermediate holding companies;

(2) the principle of national treatment and equality of competitive opportunity for foreign banks operating in the United States;

(3) the extent to which foreign banks are subject on a consolidated basis to home country capital standards comparable to U.S. capital standards;

(4) potential effects on U.S. banking organizations operating abroad of changes to U.S. policy regarding intermediate holding companies;

(5) the impact on the cost and availability of credit in the United States from a change in U.S. policy regarding intermediate holding companies; and

(6) any other relevant factors relating to the safety and soundness of our financial system and potential economic impact of such a prohibition.

(c) Report. – Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit reports to the Committee on Financial Services of the House of Representatives and to the Committee on Banking, Finance and Urban Affairs of the Senate summarizing the results of the studies authorized under subsection (a). The reports shall include specific recommendations for legislative or regulatory action regarding the treatment of hybrid capital instruments, including trust preferred shares, and shall explain the basis for such recommendations."

Restoring American Financial Stability
Conference Amendment
Mr. Corker Amendment #[redacted]
to Senate Title I Counteroffer (Additional Legislative Text document)

Title I

On p. 33, line 7, insert the following:

"(D) to monitor domestic and international financial regulatory proposals and developments, including insurance and accounting issues, and to advise Congress and make recommendations in these areas that will enhance the integrity, efficiency, competitiveness, and stability of the U.S. financial markets."

Restoring American Financial Stability
Conference Amendment
Mr. Corker Amendment # 4, Title I

Title I

On page 106, between lines 18 and 19, insert the following:

"(4) CONSULTATION. – Before imposing prudential standards or any other requirements pursuant to this section, including notices of deficiencies in resolution plans and more stringent requirements or divestiture orders resulting from such notices, that are likely to have a significant impact on a functionally regulated subsidiary or depository institution subsidiary of a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), the Board of Governors shall consult with each Council member that primarily supervises any such subsidiary with respect to any such standard or requirement."