

**** Senate Counteroffer ****

June 23, 2010

*Passed by
Senate Conference
by voice vote*

Title: Title VIII

Matter: Payment, Clearing, and Settlement Supervision

The Senate does not accept the following House proposal for amendment to the Base text:

1. Strike Title VIII in its entirety.

The Senate proposes the following amendment to the Base text:

1. This amendment would add terms to the definition section and clarify the authority of the Federal Reserve Bank to prescribe risk management standards for designated entities and activities. The amendment would also provide the Supervisory Agencies the lead role in examinations while maintaining a back-up examination and enforcement role for the Federal Reserve. The amendment also describes circumstances under which discount window access may be provided to a designated financial market utility. Finally, the amendment would require the SEC and CFTC to consult with the Federal Reserve in order to promote information sharing about key regulatory matters regarding clearing entities.

Restoring American Financial Stability Conference Amendment

Senate Counteroffer to Title VIII

Offered by Senator Dodd

1 On page 1003, lines 23 and 24, strike “prescribe”
2 and insert “promote”.

3 On page 1005, between lines 11 and 12, insert the
4 following new paragraph (and redesignate subsequent
5 paragraphs accordingly):

6 (3) DESIGNATED CLEARING ENTITY.—The term
7 “designated clearing entity” means a designated fi-
8 nancial market utility that is a derivatives clearing
9 organization registered under section 5b of the Com-
10 modity Exchange Act (7 U.S.C. 7a-1) or a clearing
11 agency registered with the Securities and Exchange
12 Commission under section 17A of the Securities Ex-
13 change Act of 1934 (15 U.S.C. 78q-1).

14 On page 1005, line 17, strike “The term” and insert
15 the following:

16 (A) IN GENERAL.—The term

1 Starting on page 1005, line 19 and ending on page
2 1006, line 26, redesignate subparagraphs (A) through (J)
3 as clause (i) through (x), respectively, and move margins
4 accordingly.

5 On page 1007, between lines 2 and 3, insert the fol-
6 lowing:

7 (B) EXCLUSIONS.—The term “financial in-
8 stitution” does not include designated contract
9 markets, registered futures associations, swap
10 data repositories, and swap execution facilities
11 registered under the Commodity Exchange Act
12 (7 U.S.C. 1 et seq.), or national securities ex-
13 changes, national securities associations, alter-
14 native trading systems, securities information
15 processors solely with respect to the activities of
16 the entity as a securities information processor,
17 security-based swap data repositories, and swap
18 execution facilities registered under the Securi-
19 ties Exchange Act of 1934 (15 U.S.C. 78a et
20 seq.), or designated clearing entities, provided
21 that the exclusions in this subparagraph apply
22 only with respect to the activities that require
23 the entity to be so registered.

1 On page 1007, strike lines 3 through 9 and insert
2 the following:

3 (6) FINANCIAL MARKET UTILITY.—

4 (A) INCLUSION.—The term “financial
5 market utility” means any person that manages
6 or operates a multilateral system for the pur-
7 pose of transferring, clearing, or settling pay-
8 ments, securities, or other financial transactions
9 among financial institutions or between finan-
10 cial institutions and the person.

11 (B) EXCLUSIONS.—The term “financial
12 market utility” does not include—

13 (i) designated contract markets, reg-
14 istered futures associations, swap data re-
15 positories, and swap execution facilities
16 registered under the Commodity Exchange
17 Act (7 U.S.C. 1 et seq.), or national secu-
18 rities exchanges, national securities asso-
19 ciations, alternative trading systems, secu-
20 rity-based swap data repositories, and
21 swap execution facilities registered under
22 the Securities Exchange Act of 1934 (15
23 U.S.C. 78a et seq.), solely by reason of
24 their providing facilities for comparison of
25 data respecting the terms of settlement of

1 securities or futures transactions effected
2 on such exchange or by means of any elec-
3 tronic system operated or controlled by
4 such entities, provided that the exclusions
5 in this clause apply only with respect to
6 the activities that require the entity to be
7 so registered; and

8 (ii) any broker, dealer, transfer agent,
9 or investment company, or any futures
10 commission merchant, introducing broker,
11 commodity trading advisor, or commodity
12 pool operator, solely by reason of functions
13 performed by such institution as part of
14 brokerage, dealing, transfer agency, or in-
15 vestment company activities, or solely by
16 reason of acting on behalf of a financial
17 market utility or a participant therein in
18 connection with the furnishing by the fi-
19 nancial market utility of services to its
20 participants or the use of services of the fi-
21 nancial market utility by its participants,
22 provided that services performed by such
23 institution do not constitute critical risk
24 management or processing functions of the
25 financial market utility.

1 On page 1007, strike line 16 and insert “trans-
2 actions, but shall not include any offer or sale of a security
3 under the Securities Act of 1933 (15 U.S.C. 77a et seq.),
4 or any quotation, order entry, negotiation, or other pre-
5 trade activity or execution activity.”.

6 On page 1009, between lines 4 and 5, insert the fol-
7 lowing:

8 (D) EXCLUSION.—Payment, clearing, and
9 settlement activities shall not include public re-
10 porting of swap transaction data under section
11 727 or 763(i) of the Wall Street Transparency
12 and Accountability Act of 2010.

13 Page 1011, line 2, insert before the period “of the
14 United States”.

15 Page 1015, line 20, strike “subsection (c)(3)” and
16 insert “subsection (c)(2)”.

17 Page 1016, line 3, strike “subsection (c)(3)” and in-
18 sert “subsection (c)(2)”.

19 Page 1016, strike line 18 and all that follows through
20 page 1017, line 5, and insert the following:

1 (a) AUTHORITY TO PRESCRIBE STANDARDS.—

2 (1) BOARD OF GOVERNORS.—Except as pro-
3 vided in paragraph (2), the Board of Governors, by
4 rule or order, and in consultation with the Council
5 and the Supervisory Agencies, shall prescribe risk
6 management standards, taking into consideration
7 relevant international standards and existing pru-
8 dential requirements, governing—

9 (A) the operations related to the payment,
10 clearing, and settlement activities of designated
11 financial market utilities; and

12 (B) the conduct of designated activities by
13 financial institutions.

14 (2) SPECIAL PROCEDURES FOR DESIGNATED
15 CLEARING ENTITIES AND DESIGNATED ACTIVITIES
16 OF CERTAIN FINANCIAL INSTITUTIONS.—

17 (A) CFTC AND COMMISSION.—The Com-
18 modity Futures Trading Commission and the
19 Commission may each prescribe regulations, in
20 consultation with the Council and the Board of
21 Governors, containing risk management stand-
22 ards, taking into consideration relevant inter-
23 national standards and existing prudential re-
24 quirements, for those designated clearing enti-
25 ties and financial institutions engaged in des-

1 ignated activities for which each is the Super-
2 visory Agency or the appropriate financial regu-
3 lator, governing—

4 (i) the operations related to payment,
5 clearing, and settlement activities of such
6 designated clearing entities; and

7 (ii) the conduct of designated activi-
8 ties by such financial institutions.

9 (B) REVIEW AND DETERMINATION.—The
10 Board of Governors may determine that exist-
11 ing prudential requirements of the Commodity
12 Futures Trading Commission, the Commission,
13 or both (including requirements prescribed pur-
14 suant to subparagraph (A)) with respect to des-
15 ignated clearing entities and financial institu-
16 tions engaged in designated activities for which
17 the Commission or the Commodity Futures
18 Trading Commission is the Supervisory Agency
19 or the appropriate financial regulator are insuf-
20 ficient to prevent or mitigate significant liquid-
21 ity, credit, operational, or other risks to the fi-
22 nancial markets or to the financial stability of
23 the United States.

24 (C) WRITTEN DETERMINATION.—Any de-
25 termination by the Board of Governors under

1 subparagraph (B) shall be provided in writing
2 to the Commodity Futures Trading Commission
3 or the Commission, as applicable, and the
4 Council, and shall explain why existing pruden-
5 tial requirements, considered as a whole, are in-
6 sufficient to ensure that the operations and ac-
7 tivities of the designated clearing entities or the
8 activities of financial institutions described in
9 subparagraph (B) will not pose significant li-
10 quidity, credit, operational, or other risks to the
11 financial markets or to the financial stability of
12 the United States. The Board of Governors' de-
13 termination shall contain a detailed analysis
14 supporting its findings and identify the specific
15 prudential requirements that are insufficient.

16 (D) CFTC AND COMMISSION RESPONSE.—

17 The Commodity Futures Trading Commission
18 or the Commission, as applicable, shall within
19 60 days either object to the Board of Gov-
20 ernor's determination with a detailed analysis
21 as to why existing prudential requirements are
22 sufficient, or submit an explanation to the
23 Council and the Board of Governors describing
24 the actions to be taken in response to the
25 Board of Governor's determination.

1 (E) AUTHORIZATION.—Upon an affirma-
2 tive vote by a majority of the Council, the
3 Council shall either find that the response sub-
4 mitted under subparagraph (D) is sufficient, or
5 authorize the Board of Governors to prescribe
6 risk management standards tailored to address
7 the specific prudential requirements that are
8 determined to be insufficient.

9 Page 1018, line 1, strike “the Board determines”.

10 Page 1018, between lines 2 and 3, insert the fol-
11 lowing new subsection (and redesignate the subsequent
12 subsections accordingly):

13 (d) LIMITATION ON SCOPE.—Except as provided in
14 subsections (e) and (f) of section 807, nothing in this title
15 shall be construed to permit the Council or the Board of
16 Governors to take any action or exercise any authority
17 granted to the Commodity Futures Trading Commission
18 under section 2(h) of the Commodity Exchange Act or the
19 Securities and Exchange Commission under section 3C(a)
20 of the Securities Exchange Act of 1934, including—

21 (1) the approval of, disapproval of, or stay of
22 the clearing requirement for any group, category,

1 type, or class of swaps that a designated clearing en-
2 tity may accept for clearing;

3 (2) the determination that any group, category,
4 type, or class of swaps shall be subject to the man-
5 datory clearing requirement of section 2(h)(1) of the
6 Commodity Exchange Act or section 3C(a)(1) of the
7 Securities Exchange Act of 1934;

8 (3) the determination that any person is exempt
9 from the mandatory clearing requirement of section
10 2(h)(1) of the Commodity Exchange Act or section
11 3C(a)(1) of the Securities Exchange Act of 1934; or

12 (4) any authority granted to the Commodity
13 Futures Trading Commission or the Securities and
14 Exchange Commission with respect to transaction
15 reporting or trade execution.

16 Page 1018, line 13, strike "by the Board of Gov-
17 ernors" and insert "under subsection (a)".

18 Page 1018, lines 15 and 16, strike "prescribed by
19 the Board of Governors".

20 Page 1018, line 22, strike "provide services to the"
21 and insert "provide the services listed in section 11A(b)
22 of the Federal Reserve Act (12 U.S.C. 248a(b)) to the".

1 Page 1019, strike lines 3 through 9 and insert the
2 following:

3 (b) ADVANCES.—The Board of Governors may au-
4 thorize a Federal Reserve Bank to provide to a designated
5 financial market utility discount and borrowing privileges
6 only in unusual or exigent circumstances, upon the affirm-
7 ative vote of a majority of the Board of Governors then
8 serving after consultation with the Secretary, and upon
9 a showing by the designated financial market utility that
10 it is unable to secure adequate credit accommodations
11 from other banking institutions. All such discounts and
12 borrowing privileges shall be subject to such other limita-
13 tions, restrictions, and regulations as the Board of Gov-
14 ernors may prescribe.

15 Page 1020, lines 4 and 5, strike “and the Board of
16 Governors”.

17 Page 1020, lines 7 through 8, strike “the Board of
18 Governors” and insert “each Supervisory Agency”.

19 Page 1020, lines 12 through 13, strike “THE BOARD
20 OF GOVERNORS.—The Board of Governors” and insert
21 “THE SUPERVISORY AGENCIES.—Each Supervisory Agen-
22 cy, in consultation with the Board of Governors,”.

1 Page 1021, line 2, strike "or the Board of Gov-
2 ernors".

3 Page 1021, line 12, strike "or the Board of Gov-
4 ernors".

5 Page 1021, line 24, strike "Board of Governors or
6 the".

7 Page 1022, line 7, strike "or the Board of Gov-
8 ernors".

9 Page 1022, line 10, strike "or the Board of Gov-
10 ernors".

11 Page 1022, lines 14 and 15, strike "or the Board
12 of Governors".

13 Page 1022, line 19, strike "or the Board of Gov-
14 ernors".

15 Page 1022, lines 23 and 24, strike "subparagraphs
16 (D) and (F)" and insert "subparagraphs (E) and (G)".

1 Page 1023, line 6, strike "or the Board of Gov-
2 ernors".

3 Page 1023, lines 7 and 8, strike "or the Board of
4 Governors".

5 Page 1023, lines 9 and 10, strike "or the Board of
6 Governors".

7 Page 1023, line 16, strike "or the Board of Gov-
8 ernors".

9 Page 1024, lines 6 and 7, strike "and the Board of
10 Governors".

11 Page 1024, line 21, strike "or the Board of Gov-
12 ernors".

13 Page 1024, line 24, insert "applicable" after "any".

14 Page 1025, lines 1 and 2, strike "by the Board of
15 Governors hereunder" and insert "under section 805(a)".

1 Page 1026, lines 11 and 12, strike "by the Board
2 of Governors".

3 Page 1027, line 14, insert after the period "The Su-
4 pervisory Agency shall lead all examinations conducted
5 under subsections (a) and (b).".

6 Page 1027, line 23, insert ", after consulting with
7 the Council and the Supervisory Agency," after "may".

8 Page 1027, line 25, strike the period and insert "in
9 order to prevent or mitigate significant liquidity, credit,
10 operational, or other risks to the financial markets or to
11 the financial stability of the United States.".

12 Page 1028, line 8, strike "MEDIATION" and insert
13 "BINDING ARBITRATION".

14 Page 1028, strike lines 11 through 13 and insert
15 "refer the recommendation to the Council for a binding
16 decision on whether an enforcement action is warranted.".

17 Page 1028, strike lines 14 through 17 and insert the
18 following:

1 (4) ENFORCEMENT ACTION.—Upon an affirma-
2 tive vote by a majority of the Council in favor of the
3 Board of Governors' recommendation under para-
4 graph (3), the Board of Governors may, upon a vote
5 of its members—

6 Page 1029, strike line 3 and insert “the Supervisory
7 Agency and upon an affirmative vote by a majority of the
8 Council, take en-”.

9 Page 1029, line 6, strike “believe” and insert “con-
10 clude”.

11 Page 1029, line 22, insert “of the United States”
12 after “system”.

13 Page 1030, strike lines 13 through 20.

14 Page 1031, line 7, strike “by the Board of Gov-
15 ernors” and insert “under section 805(a)”.

16 Page 1031, lines 24 and 25, strike “by the Board
17 of Governors under this title” and insert “under section
18 805(a)”.

1 Page 1032, lines 4 and 5, strike "by the Board of
2 Governors" and insert "under section 805(a)".

3 Page 1033, line 3, strike "by the Board of Gov-
4 ernors" and insert "under section 805(a)".

5 Page 1033, lines 7 and 8, strike "by the Board of
6 Governors".

7 Page 1033, lines 20 and 21, strike "by the Board
8 of Governors".

9 Page 1033, line 23, strike "by the Board of Gov-
10 ernors" and insert "under section 805(a)".

11 Page 1034, line 7, strike "by the Board of Gov-
12 ernors".

13 Page 1035, line 1, strike "by the Board of Gov-
14 ernors" and insert "under section 805(a)".

15 Page 1035, lines 4 and 5, strike "by the Board of
16 Governors".

1 Page 1035, line 7, strike "by the Board of Gov-
2 ernors" and insert "under section 805(a)".

3 Page 1035, line 17, strike "by the Board of Gov-
4 ernors".

5 Page 1036, line 3, strike "and".

6 Page 1036, line 23, strike the period and insert "
7 and".

8 Page 1036, between lines 23 and 24, insert the fol-
9 lowing:

10 (v) obtained the approval of the Coun-
11 cil upon an affirmative vote by a majority
12 of the Council.

13 Page 1037, line 6, strike "by the Board of Gov-
14 ernors".

15 Page 1037, line 16, strike "and".

16 Page 1038, lines 4 and 5, strike "by the Board of
17 Governors".

- 1 Page 1038, line 5, strike "a".
- 2 Page 1038, strike lines 6 through 11 and insert "sig-
3 nificant liquidity, credit, operational, or other risks to the
4 financial markets or to the financial stability of the United
5 States, subject to the Board of Governors notifying the
6 appropriate financial regulator of the Board's enforcement
7 action; and".
- 8 Page 1038, between lines 11 and 12, insert the fol-
9 lowing:
- 10 (iv) obtained the approval of the
11 Council upon an affirmative vote by a ma-
12 jority of the Council.
- 13 Page 1040, line 3, insert "each" after "may".
- 14 Page 1040, line 6, strike "and" and insert "or".
- 15 Page 1040, line 12, insert "each" after "may".
- 16 Page 1040, line 14, strike "by the Board of Gov-
17 ernors" and insert "under section 805(a)".

1 Page 1040, line 17, strike “and the Council” and in-
2 sert “or the Council”.

3 Page 1040, line 22, strike “by the Board of Gov-
4 ernors” and insert “under section 805(a)”.

5 Page 1041, lines 3 and 4, strike “by the Board of
6 Governors under this title” and insert “under section
7 805(a)”.

8 Page 1041, between lines 4 and 5, insert the fol-
9 lowing:

10 (3) LIMITATION.—The Board of Governors
11 may, upon an affirmative vote by a majority of the
12 Council, prescribe regulations under this section that
13 impose a recordkeeping or reporting requirement on
14 designated clearing entities or financial institutions
15 engaged in designated activities that are subject to
16 standards that have been prescribed under section
17 805(a)(2).

18 Page 1041, line 7, strike “directly”.

19 Page 1041, line 12, strike “and” and insert “or”.

1 Page 1041, line 18, strike "and" and insert "or".

2 Page 1043, line 7, strike "other persons" and all that
3 follows through line 8 and insert "each other, and to the
4 Secretary, Federal Reserve Banks, State financial".

5 Page 1043, lines 11 and 12, strike "confidentiality."
6 and insert "confidentiality, provided, however, that no per-
7 son or entity receiving information pursuant to this sec-
8 tion may disseminate such information to entities or per-
9 sons other than those listed in this paragraph without
10 complying with applicable law, including section 8 of the
11 Commodity Exchange Act (7 U.S.C. 12).".

12 Page 1043, line 22, insert ", the Supervisory Agen-
13 cies," after "Board of Governors".

14 Page 1043, line 24, insert ", the Supervisory Agen-
15 cies," before "or the Council".

16 Page 1043, line 24, strike "its" and insert "their".

17 Page 1044, line 2, strike "its" and insert "their".

1 Page 1044, strike lines 10 through 14 and insert the
2 following:

3 The Board of Governors, the Supervisory Agencies, and
4 the Council are authorized to prescribe such rules and
5 issue such orders as may be necessary to administer and
6 carry out their respective authorities and duties granted
7 under this title and prevent evasions thereof.

8 Page 1044, strike lines 16 through 23 and insert the
9 following:

10 This title does not divest any appropriate financial regu-
11 lator, any Supervisory Agency, or any other Federal or
12 State agency, of any authority derived from any other ap-
13 plicable law.

14 Page 1044, after line 23, insert the following new sec-
15 tion (and redesignate section 812 as section 813):

16 **SEC. 812. CONSULTATION.**

17 (a) CFTC.—The Commodity Futures Trading Com-
18 mission shall consult with the Board of Governors—

19 (1) prior to exercising its authorities under sec-
20 tions 2(h)(2)(C), 2(h)(3)(A), 2(h)(3)(C), 2(h)(4)(A)
21 and 2(h)(4)(B) of the Commodity Exchange Act, as
22 amended by the Wall Street Transparency and Ac-
23 countability Act of 2010;

1 (2) with respect to any rule or rule amendment
2 of a derivatives clearing organization for which a
3 stay of certification has been issued under section
4 745(b)(3) of the Wall Street Transparency and Ac-
5 countability Act of 2010; and

6 (3) prior to exercising its rulemaking authori-
7 ties under section 728 of the Wall Street Trans-
8 parency and Accountability Act of 2010.

9 (b) SEC.—The Commission shall consult with the
10 Board of Governors—

11 (1) prior to exercising its authorities under sec-
12 tions 3C(a)(2)(C), 3C(a)(3)(A), 3C(a)(3)(C),
13 3C(a)(4)(A) and 3C(a)(4)(B) of the Securities Ex-
14 change Act of 1934, as amended by the Wall Street
15 Transparency and Accountability Act of 2010;

16 (2) with respect to any proposed rule change of
17 a clearing agency for which an extension of the time
18 for review has been designated under section
19 19(b)(2) of the Securities Exchange Act of 1934;
20 and

21 (3) prior to exercising its rulemaking authori-
22 ties under section 13(n) of the Securities Exchange
23 Act of 1934, as added by section 763(i) of the Wall
24 Street Transparency and Accountability Act of
25 2010.

*Passed by Senate
Conference As Modified
by Voice Vote*

Restoring American Financial Stability Conference Amendment

For Senate Counteroffer to Title VIII

Offered by Senator Gregg

1 At the end of the Senate Counteroffer to Title VIII
2 insert the following (and redesignate section 813 as sec-
3 tion 814):

4 **SEC. 813. COMMON FRAMEWORK FOR DESIGNATED CLEAR-**
5 **ING ENTITY RISK MANAGEMENT.**

6 (a) **COMMON FRAMEWORK FOR RISK MANAGE-**
7 **MENT.**—The Commodity Futures Trading Commission
8 and the Securities and Exchange Commission shall coordi-
9 nate with the Board of Governors to jointly develop risk
10 management supervision programs for designated clearing
11 entities. Not later than 1 year after the date of enactment
12 of this Act, the Commodity Futures Trading Commission,
13 the Securities and Exchange Commission, and the Board
14 of Governors shall submit a joint report to the Committee
15 on Banking, Housing, and Urban Affairs and the Com-
16 mittee on Agriculture, Nutrition, and Forestry of the Sen-
17 ate, and the Committee on Financial Services and the
18 Committee on Agriculture of the House of Representatives
19 recommendations for—

1 (1) improving consistency in the designated
2 clearing entity oversight programs of the Securities
3 and Exchange Commission and the Commodity Fu-
4 tures Trading Commission;

5 (2) promoting robust risk management by des-
6 ignated clearing entities;

7 (3) promoting robust risk management over-
8 sight by regulators of designated clearing entities;
9 and

10 (4) improving regulators' ability to monitor the
11 potential effects of designated clearing entity risk
12 management on the stability of the financial system
13 of the United States.

14 ~~(b) DUALY REGISTERED PERSONS.—~~

15 ~~(1) IN GENERAL.—The Commodity Futures~~
16 ~~Trading Commission and the Securities and Ex-~~
17 ~~change Commission shall develop and, subject to ap-~~
18 ~~proval by the Council, implement an oversight plan~~
19 ~~with respect to each person that is subject to reg-~~
20 ~~istration as—~~

21 ~~(A) both a derivatives clearing organization~~
22 ~~and a clearing agency; or~~

23 ~~(B) both a swap data repository and a se-~~
24 ~~curity-based swap data repository.~~

1 (2) CONTENT OF PLANS.—Each plan developed
2 pursuant to paragraph (1) shall identify—

3 (A) recordkeeping, reporting, and other re-
4 quirements imposed on the person by the Com-
5 modity Futures Trading Commission and the
6 Securities and Exchange Commission that are
7 inconsistent;

8 (B) an approach for eliminating such in-
9 consistencies where appropriate; and

10 (C) ways in which the Commissions, in co-
11 ordination with the Board, can coordinate their
12 inspection and examination of the person.

13 (3) SUBMISSION OF PLANS.—The Commissions
14 shall submit each plan developed pursuant to para-
15 graph (1), including any recommended legislative
16 changes to facilitate the plan, to the Committee on
17 Agriculture, Nutrition, and Forestry and the Com-
18 mittee on Banking, Housing, and Urban Affairs of
19 the Senate and the Committee on Agriculture and
20 the Committee on Financial Services of the House of
21 Representatives on or before 1 year after the date on
22 which the person becomes dually registered.

