

**FINANCIAL REFORM CONFERENCE:
SENATE COUNTEROFFER FOR TITLE VI**

[Page and line numbers refer to Conference Base Text]

1 Strike section 619 and insert the following:

2 **SEC. 619. PROHIBITIONS ON PROPRIETARY TRADING AND**
3 **CERTAIN RELATIONSHIPS WITH HEDGE**
4 **FUNDS AND PRIVATE EQUITY FUNDS.**

5 The Bank Holding Company Act of 1956 (12 U.S.C.
6 1841 et seq.) is amended by adding at the end the fol-
7 lowing:

8 **"SEC. 13. PROHIBITIONS ON PROPRIETARY TRADING AND**
9 **CERTAIN RELATIONSHIPS WITH HEDGE**
10 **FUNDS AND PRIVATE EQUITY FUNDS.**

11 **"(a) IN GENERAL.—**

12 **"(1) PROHIBITION.—**Unless otherwise provided
13 in this section, a banking entity shall not—

14 **"(A)** engage in proprietary trading; or

15 **"(B)** acquire or retain any equity, partner-
16 ship, or other ownership interest in or sponsor
17 a hedge fund or a private equity fund.

18 **"(2) NONBANK FINANCIAL COMPANIES SUPER-**
19 **VISIONED BY THE BOARD.—**Any nonbank financial com-
20 pany supervised by the Board that engages in pro-

1 proprietary trading or takes or retains any equity, part-
 2 nership, or other ownership interest in or sponsors
 3 a hedge fund or a private equity fund shall be sub-
 4 ject, by rule, as provided in subsection (b)(2), to ad-
 5 ditional capital requirements for and additional
 6 quantitative limits with regards to such proprietary
 7 trading and taking or retaining any equity, partner-
 8 ship, or other ownership interest in or sponsorship
 9 of a hedge fund or a private equity fund, except that
 10 permitted activities as described in subsection (d)
 11 shall ^{not} be subject to the additional capital and addi-
 12 tional quantitative limits ^{except as provided in} ~~as prescribed pursuant to~~
 13 subsection (d)(3), ^{as if the nonbank financial company supervised}

14 "(b) STUDY AND RULEMAKING.—

15 "(1) STUDY.—Not later than 6 months after
 16 the date of enactment of this section, the Financial
 17 Stability Oversight Council shall study and make
 18 recommendations on implementing the provisions of
 19 this section so as to—

20 "(A) promote and enhance the safety and
 21 soundness of banking entities;

22 "(B) protect taxpayers and enhance finan-
 23 cial stability by minimizing the risk that in-
 24 sured depository institutions and the affiliates

by the Board were a banking entity.

1 of insured depository institutions will engage in
2 unsafe and unsound activities;

3 “(C) limit the inappropriate transfer of
4 Federal subsidies from institutions that benefit
5 from deposit insurance and liquidity facilities of
6 the Federal Government to unregulated entities;

7 “(D) reduce conflicts of interest between
8 the self-interest of banking entities and
9 nonbank financial companies supervised by the
10 Board, and the interests of the customers of
11 such entities and companies;

12 “(E) limit activities that have caused
13 undue risk or loss in banking entities and
14 nonbank financial companies supervised by the
15 Board, or that might reasonably be expected to
16 create undue risk or loss in such banking enti-
17 ties and nonbank financial companies super-
18 vised by the Board;

19 “(F) appropriately accommodate the busi-
20 ness of insurance within an insurance company,
21 subject to regulation in accordance with the rel-
22 evant insurance company investment laws, while
23 protecting the safety and soundness of any
24 banking entity with which such insurance com-

1 pany is affiliated and of the United States fi-
2 nancial system; and

3 “(G) appropriately time the divestiture of
4 illiquid assets that are affected by the imple-
5 mentation of the prohibitions under subsection
6 (a).

7 “(2) RULEMAKING.—

8 “(A) IN GENERAL.—Unless otherwise pro-
9 vided in this section, not later than 9 months
10 after the completion of the study under para-
11 graph (1), the appropriate Federal banking
12 agencies, the Securities and Exchange Commis-
13 sion, and the Commodity Futures Trading
14 Commission, shall consider the findings of the
15 study under paragraph (1) and adopt rules to
16 carry out this section, as provided in subpara-
17 graph (B).

18 “(B) COORDINATED RULEMAKING.—

19 “(i) REGULATORY AUTHORITY.—The
20 regulations issued under this paragraph
21 shall be issued by—

22 “(I) the appropriate Federal
23 banking agencies, jointly, with respect
24 to insured depository institutions;

1 “(II) the Board, with respect to
2 any company that controls an insured
3 depository institution, or that is treat-
4 ed as a bank holding company for
5 purposes of section 8 of the Inter-
6 national Banking Act, any nonbank fi-
7 nancial company supervised by the
8 Board, and any subsidiary of any of
9 the foregoing (other than a subsidiary
10 for which an agency described in sub-
11 clause (I), (III), or (IV) is the pri-
12 mary financial regulatory agency);

13 “(III) the Commodity Futures
14 Trading Commission, with respect to
15 any entity for which the Commodity
16 Futures Trading Commission is the
17 primary financial regulatory agency,
18 as defined in section 2 of the Restor-
19 ing American Financial Stability Act
20 of 2010; and

21 “(IV) the Securities and Ex-
22 change Commission, with respect to
23 any entity for which the Securities
24 and Exchange Commission is the pri-
25 mary financial regulatory agency, as

1 defined in section 2 of the Restoring
2 American Financial Stability Act of
3 2010.

4 “(ii) COORDINATION, CONSISTENCY,
5 AND COMPARABILITY.—In developing and
6 issuing regulations pursuant to this sec-
7 tion, the appropriate Federal banking
8 agencies, the Securities and Exchange
9 Commission, and the Commodity Futures
10 Trading Commission shall consult and co-
11 ordinate with each other, as appropriate,
12 for the purposes of assuring, to the extent
13 possible, that such regulations are com-
14 parable and provide for consistent applica-
15 tion and implementation of the applicable
16 provisions of this section to avoid providing
17 advantages or imposing disadvantages to
18 the companies affected by this subsection
19 and to protect the safety and soundness of
20 banking entities and nonbank financial
21 companies supervised by the Board.

22 “(iii) COUNCIL ROLE.—The Chair-
23 person of the Financial Stability Oversight
24 Council shall be responsible for coordina-

1 tion of the regulations issued under this
2 section.

3 “(c) EFFECTIVE DATE.—

4 “(1) IN GENERAL.—Except as provided in para-
5 graphs (2) and (3), this section shall take effect on
6 the earlier of—

7 “(A) 12 months after the date of the
8 issuance of final rules under subsection (b); or

9 “(B) 2 years after the date of enactment
10 of this section.

11 “(2) CONFORMANCE PERIOD FOR DIVESTI-
12 TURE.—A banking entity or nonbank financial com-
13 pany supervised by the Board shall bring its activi-
14 ties and investments into compliance with the re-
15 quirements of this section not later than 2 years
16 after the date on which the requirements become ef-
17 fective pursuant to this section or 2 years after the
18 date on which the entity or company becomes a
19 nonbank financial company supervised by the Board.
20 The Board may, by rule or order, extend this two-
21 year period for not more than one year at a time,
22 if, in the judgment of the Board, such an extension
23 is consistent with the purposes of this section and
24 would not be detrimental to the public interest. The

1 extensions made by the Board under the preceding
2 sentence may not exceed an aggregate of 3 years.

3 “(3) EXTENDED TRANSITION FOR ILLIQUID
4 FUNDS.—

5 “(A) APPLICATION.—The Board may,
6 upon the application of a banking entity ~~or~~
7 ~~nonbank financial company supervised by the~~
8 ~~Board~~, extend the period during which the
9 banking entity or nonbank financial company,
10 to the extent necessary to fulfill a contractual
11 obligation that was in effect on May 1, 2010,
12 may take or retain its equity, partnership, or
13 other ownership interest in, or otherwise pro-
14 vide additional capital to, an illiquid fund.

15 “(B) TIME LIMIT ON APPROVAL.—~~No ex-~~
16 ~~tension granted pursuant to subparagraph (A)~~
17 ~~may exceed a period of 5 years.~~

18 “(4) DIVESTITURE REQUIRED.—Except as oth-
19 erwise provided in subsection (d)(1)(G), a banking
20 entity may not engage in any activity prohibited
21 under subsection (a)(1)(B) after the earlier of—

22 “(A) the date on which the contractual ob-
23 ligation to invest in the illiquid fund terminates;
24 and

*The Board may grant
1 extension
under subparagraph
(A), which may
not exceed 5
years.*

1 “(B) the date on which any extensions
2 granted by the Board under paragraph (3) ex-
3 pire.

4 “(5) ADDITIONAL CAPITAL DURING TRANSITION
5 PERIOD.—Notwithstanding paragraph (2), on the
6 date on which the Commission issues rules under
7 subsection (b)(2) the appropriate Federal banking
8 agencies, the Securities and Exchange Commission,
9 and the Commodity Futures Trading Commission
10 shall issue rules, as provided in subsection (b)(2), to
11 impose additional capital requirements, and any
12 other restrictions, as appropriate, on any equity,
13 partnership, or ownership interest in or sponsorship
14 of a hedge fund or private equity fund by a banking
15 entity.

16 “(6) SPECIAL RULEMAKING.—Not later than 6
17 months after the date of enactment of this section,
18 the Board shall issues rules to implement paragraph
19 (2) and (3).

20 “(d) PERMITTED ACTIVITIES.—

21 “(1) IN GENERAL.—Notwithstanding the re-
22 strictions under subsection (a), to the extent per-
23 mitted by any other provision of Federal or State
24 law, and subject to the limitations under paragraph
25 (2) and any restrictions or limitations that the ap-

1 appropriate Federal banking agencies, the Securities
2 and Exchange Commission, and the Commodity Fu-
3 tures Trading Commission, may determine, the fol-
4 lowing activities (in this section referred to as 'per-
5 mitted activities') are permitted:

6 “(A) The purchase, sale, acquisition, or
7 disposition of obligations of the United States
8 or any agency thereof, obligations, participa-
9 tions, or other instruments of or issued by the
10 Government National Mortgage Association, the
11 Federal National Mortgage Association, the
12 Federal Home Loan Mortgage Corporation, a
13 Federal Home Loan Bank, the Federal Agricul-
14 tural Mortgage Corporation, or a Farm Credit
15 System institution chartered under and subject
16 to the provisions of the Farm Credit Act of
17 1971 (12 U.S.C. 2001 et seq.), and obligations
18 of any State or of any political subdivision
19 thereof.

20 “(B) The purchase, sale, acquisition, or
21 disposition of securities and other instruments
22 described in subsection (h)(4) in connection
23 with underwriting or market-making-related ac-
24 tivities, to the extent that any such activities
25 permitted by this subparagraph are designed

1 not to exceed the reasonably expected near term
2 demands of clients, customers, or counterpar-
3 ties.

4 “(C) Risk-mitigating hedging activities in
5 connection with and related to individual or ag-
6 gregated positions, contracts, or other holdings
7 of the banking entity or ~~nonbank financial com-~~
8 ~~pany supervised by the Board~~ that are designed
9 to reduce the specific risks to a banking entity
10 or ~~nonbank financial company supervised by the~~
11 ~~Board~~ in connection with and related to such
12 positions, contracts, or other holdings.

13 “(D) The purchase, sale, acquisition, or
14 disposition of securities and other instruments
15 described in subsection (h)(4) on behalf of cus-
16 tomers.

17 “(E) Investments in one or more small
18 business investment companies, as defined in
19 section 102 of the Small Business Investment
20 Act of 1958 (15 U.S.C. 662), or investments
21 designed primarily to promote the public wel-
22 fare, of the type permitted under paragraph
23 (11) of section 5136 of the Revised Statutes of
24 the United States (12 U.S.C. 24).

1 “(F) The purchase, sale, acquisition, or
2 disposition of securities and other instruments
3 described in subsection (h)(4) by a regulated in-
4 surance company directly engaged in the busi-
5 ness of insurance for the general account of the
6 company and by any affiliate of such regulated
7 insurance company, provided that such activi-
8 ties by any affiliate are solely for the general
9 account of the regulated insurance company,
10 if—

11 “(i) the purchase, sale, acquisition, or
12 disposition is conducted in compliance
13 with, and subject to, the insurance com-
14 pany investment laws, regulations, and
15 written guidance of the State or jurisdic-
16 tion in which each such insurance company
17 is domiciled; and

18 “(ii) the appropriate Federal banking
19 agencies, after consultation with the Fi-
20 nancial Stability Oversight Council and the
21 relevant insurance commissioners of the
22 States and territories of the United States,
23 have not jointly determined, after notice
24 and comment, that a particular law, regu-
25 lation, or written guidance described in

1 clause (i) is insufficient to protect the safe-
2 ty and soundness of the banking entity or
3 ~~nonbank financial company supervised by~~
4 ~~the Board,~~ or of the financial stability of
5 the United States.

6 “(G) Organizing and offering a private eq-
7 uity or hedge fund, including serving as a gen-
8 eral partner, managing member, or trustee of
9 the fund and in any manner selecting or con-
10 trolling (or having employees, officers, directors,
11 or agents who constitute) a majority of the di-
12 rectors, trustees, or management of the fund,
13 including any necessary expenses for the fore-
14 going, only if—

15 “(i) the banking entity or ~~nonbank fi-~~
16 ~~nancial company supervised by the Board~~
17 provides bona fide trust, fiduciary, or in-
18 vestment advisory services;

19 “(ii) the fund is organized and offered
20 only in connection with the provision of
21 bona fide trust, fiduciary, or investment
22 advisory services and only to persons that
23 are customers of such services of the bank-
24 ~~ing entity or nonbank financial company~~
25 ~~supervised by the Board;~~

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~~"(iii) the banking entity or nonbank financial company supervised by the Board does not acquire or retain an equity interest, partnership interest, or other ownership interest in the funds except for a de minimis investment subject to and in compliance with paragraph (4);~~

(iv) the banking entity complies with the restrictions under paragraphs (1) and (2) of subparagraph (f).

^(v)
~~"(iv) the banking entity or nonbank financial company supervised by the Board does not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of the hedge fund or private equity fund or of any hedge fund or private equity fund in which such hedge fund or private equity fund invests;~~

^(vi)
~~"(v) the banking entity or nonbank financial company supervised by the Board does not share with the hedge fund or private equity fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name;~~

^(vii)
~~"(vi) no director or employee of the banking entity or nonbank financial company supervised by the Board takes or retains an equity interest, partnership inter-~~

1 est, or other ownership interest in the
2 hedge fund or private equity fund, except
3 for any director or employee of the bank-
4 ing entity who is directly engaged in pro-
5 viding investment advisory or other serv-
6 ices to the hedge fund or private equity
7 fund; and

8 "(vii) the banking entity ~~or nonbank~~
9 ~~financial company supervised by the Board~~
10 discloses to prospective and actual inves-
11 tors in the fund, in writing, that any losses
12 in such hedge fund or private equity fund
13 are borne solely by investors in the fund
14 and not by the banking entity, and other-
15 wise complies with any additional rules of
16 the appropriate Federal banking agencies,
17 the Securities and Exchange Commission,
18 or the Commodity Futures Trading Com-
19 mission, as provided in subsection (b)(2),
20 designed to ensure that losses in such
21 hedge fund or private equity fund are
22 borne solely by investors in the fund and
23 not by the banking entity.

24 "(H) Proprietary trading conducted by a
25 banking entity ~~or nonbank financial company~~

1 supervised by the Board pursuant to paragraph
2 (9) or (13) of section 4(c), provided that the
3 trading occurs solely outside of the United
4 States and that the banking entity or nonbank
5 financial company supervised by the Board is
6 not directly or indirectly controlled by a bank-
7 ing entity or nonbank financial company super-
8 vised by the Board that is organized under the
9 laws of the United States or of one or more
10 States.

11 "(I) The acquisition or retention of any eq-
12 uity, partnership, or other ownership interest
13 in, or the sponsorship of, a hedge fund or a pri-
14 vate equity fund by a banking entity or
15 nonbank financial company supervised by the
16 Board pursuant to paragraph (9) or (13) of
17 section 4(c) solely outside of the United States,
18 provided that no ownership interest in such
19 hedge fund or private equity fund is offered for
20 sale or sold to a resident of the United States
21 and that the banking entity or nonbank finan-
22 cial company supervised by the Board is not di-
23 rectly or indirectly controlled by a banking enti-
24 ty or nonbank financial company supervised by

1 the Board that is organized under the laws of
2 the United States or of one or more States.

3 “(J) Such other activity as the appropriate
4 Federal banking agencies, the Securities and
5 Exchange Commission, and the Commodity Fu-
6 tures Trading Commission determine, by rule,
7 as provided in subsection (b)(2), would promote
8 and protect the safety and soundness of the
9 banking entity or ~~nonbank financial company~~
10 ~~supervised by the Board~~ and the financial sta-
11 bility of the United States.

12 “(2) LIMITATION ON PERMITTED ACTIVITIES.—

13 “(A) IN GENERAL.—No transaction, class
14 of transactions, or activity may be deemed a
15 permitted activity under paragraph (1) if the
16 transaction, class of transactions, or activity—

17 “(i) would involve or result in a mate-
18 rial conflict of interest (as such term shall
19 be defined by rule as provided in sub-
20 section (b)(2)) between the banking entity
21 ~~or the nonbank financial company super-~~
22 ~~vised by the Board~~ and its clients, cus-
23 tomers, or counterparties;

24 “(ii) would result, directly or indi-
25 rectly, in an ~~unsafe and unsound~~ exposure
a material

1 by the banking entity ~~or nonbank financial~~
2 ~~company supervised by the Board~~ to high-
3 risk assets or high-risk trading strategies
4 (as such terms shall be defined by rule as
5 provided in subsection (b)(2));

6 “(iii) would pose a threat to the safety
7 and soundness of such banking entity or
8 ~~nonbank financial company supervised by~~
9 ~~the Board; or~~

10 “(iv) would pose a threat to the finan-
11 cial stability of the United States.

12 “(B) RULEMAKING.—The appropriate
13 Federal banking agencies, the Securities and
14 Exchange Commission, and the Commodity Fu-
15 tures Trading Commission shall issue regula-
16 tions to implement subparagraph (A), as part
17 of the regulations issued under subsection
18 (b)(2).

19 “(3) CAPITAL AND QUANTITATIVE LIMITA-
20 TIONS.—The appropriate Federal banking agencies,
21 the Securities and Exchange Commission, and the
22 Commodity Futures Trading Commission shall, as
23 provided in subsection (b)(2), adopt rules imposing
24 additional capital requirements and quantitative lim-
25 itations regarding the activities permitted under this

L, including diversification requirements,

1 section if the appropriate Federal banking agencies,
2 the Securities and Exchange Commission, and the
3 Commodity Futures Trading Commission determine
4 that additional capital and quantitative limitations
5 are appropriate to protect the safety and soundness
6 of banking entities and ~~nonbank financial companies~~
7 ~~supervised by the Board~~ engaged in such activities.

8 “(4) DE MINIMIS INVESTMENT.—

9 “(A) IN GENERAL.—A banking entity may
10 make and retain an investment in a hedge fund
11 or private equity fund that the banking entity
12 organizes and offers, subject to the limitations
13 and restrictions in subparagraph (B) for the
14 purposes of—

15 “(i) establishing the fund and pro-
16 viding the fund with sufficient initial eq-
17 uity for investment to permit the fund to
18 attract unaffiliated investors; or

19 “(ii) making a de minimis investment.

20 “(B) LIMITATIONS AND RESTRICTIONS ON
21 INVESTMENTS.—

22 “(i) REQUIREMENT TO SEEK OTHER
23 INVESTORS.—A banking entity shall ac-
24 tively seek unaffiliated investors to reduce
25 or dilute the investment of the banking en-

1 tity to the amount permitted under clause
2 (ii).

3 “(ii) LIMITATIONS ON SIZE OF IN-
4 VESTMENTS.—Notwithstanding any other
5 provision of law, investments by a banking
6 entity in a hedge fund or private equity
7 fund shall—

8 “(I) not later than 1 year after
9 the date of establishment of the fund,
10 be reduced through redemption, sale,
11 or dilution to an amount that is not
12 more than 3 percent of the total own-
13 ership interests of the fund;

14 “(II) be immaterial to the bank-
15 ing entity, as defined, by rule, pursu-
16 ant to subsection (b)(2), but in no
17 case may the aggregate of all of the
18 interests of the banking entity in all
19 such funds exceed 3 percent of its
20 ~~tangible common equity~~ ^{the Tier 1 capital} of the bank-
21 ing entity.

22 “(iii) CAPITAL.—For purposes of de-
23 termining compliance with applicable cap-
24 ital standards under paragraph (3), the ag-
25 gregate amount of the outstanding invest-

1 ments by a banking entity under this para-
 2 graph, including retained earnings, shall be
 3 deducted from the assets and tangible eq-
 4 uity of the banking entity,

5 “(C) EXTENSION.—Upon an application by
 6 a banking entity, the Board may extend the pe-
 7 riod of time to meet the requirements under
 8 subparagraph (B)(i)(I) for 2 additional years, if
 9 the Board finds that an extension would be con-
 10 sistent with safety and soundness and in the
 11 public interest.

12 “(e) ANTI-EVASION.—

13 “(1) RULEMAKING.—The appropriate Federal
 14 banking agencies, the Securities and Exchange Com-
 15 mission, and the Commodity Futures Trading Com-
 16 mission shall issue regulations, as part of the rule-
 17 making provided for in subsection (b)(2), regarding
 18 internal controls and recordkeeping, in order to in-
 19 sure compliance with this section.

20 “(2) TERMINATION OF ACTIVITIES OR INVEST-
 21 MENT.—Notwithstanding any other provision of law,
 22 whenever an appropriate Federal banking agency,
 23 the Securities and Exchange Commission, or the
 24 Commodity Futures Trading Commission, as appro-
 25 priate, has reasonable cause to believe that a bank-

and the amount of the deduction shall increase commensurate with the leverage of the hedge fund or private equity fund.

1 ing entity or nonbank financial company supervised
2 by the Board under the respective agency's jurisdic-
3 tion has made an investment or engaged in an activ-
4 ity in a manner that functions as an evasion of the
5 requirements of this section (including through an
6 abuse of any permitted activity) or otherwise violates
7 the restrictions under this section, the appropriate
8 Federal banking agency, the Securities and Ex-
9 change Commission, or the Commodity Futures
10 Trading Commission, as appropriate, shall order,
11 after due notice and opportunity for hearing, the
12 banking entity or nonbank financial company super-
13 vised by the Board to terminate the activity and, as
14 relevant, dispose of the investment. Nothing in this
15 paragraph shall be construed to limit the inherent
16 authority of any Federal agency or State regulatory
17 authority to further restrict any investments or ac-
18 tivities under otherwise applicable provisions of law.

19 “(f) LIMITATIONS ON RELATIONSHIPS WITH HEDGE
20 FUNDS AND PRIVATE EQUITY FUNDS.—

21 “(1) IN GENERAL.—No banking entity that
22 serves, directly or indirectly, as the investment man-
23 ager, investment adviser, or sponsor to a hedge fund
24 or private equity fund, or that organizes and offers
25 a hedge fund or private equity fund pursuant to

1 paragraph (d)(1)(G), and no affiliate of such entity,
2 may enter into a transaction with the fund, or with
3 any other hedge fund or private equity fund that is
4 controlled by such fund, that would be a covered
5 transaction, as defined in section 23A of the Federal
6 Reserve Act (12 U.S.C. 371c), with the hedge fund
7 or private equity fund, as if such banking entity and
8 the affiliate thereof were a member bank and the
9 hedge fund or private equity fund were an affiliate
10 thereof.

11 “(2) TREATMENT AS MEMBER BANK.—A bank-
12 ing entity that serves, directly or indirectly, as the
13 investment manager or investment adviser to a
14 hedge fund or private equity fund, or that organizes
15 and offers a hedge fund or private equity fund pur-
16 suant to paragraph (d)(1)(G), shall be subject to
17 section 23B of the Federal Reserve Act (12 U.S.C.
18 371c-1), as if such banking entity were a member
19 bank and such hedge fund or private equity fund
20 were an affiliate thereof.

21 “(3) PERMITTED SERVICES.—

22 “(A) IN GENERAL.—Notwithstanding para-
23 graph (1), the Board may permit a banking en-
24 tity or nonbank financial company supervised
25 by the Board to enter into any prime brokerage

1 transaction with any hedge fund or private eq-
2 uity fund in which a hedge fund or private eq-
3 uity fund managed, sponsored, or advised by
4 such banking entity or nonbank financial com-
5 pany supervised by the Board has taken an eq-
6 uity, partnership, or other ownership interest,
7 if—

8 “(i) the banking entity or nonbank fi-
9 nancial company supervised by the Board
10 is in compliance with each of the limita-
11 tions set forth in subsection (d)(1)(G) with
12 regard to a hedge fund or private equity
13 fund organized and offered by such bank-
14 ing entity or nonbank financial company
15 supervised by the Board;

16 “(ii) the banking entity or nonbank fi-
17 nancial company supervised by the Board
18 provides an enforceable undertaking that
19 such transaction will not be used under
20 any circumstance to avoid losses to any in-
21 vestor in any such fund;

22 “(iii) the Board has determined that
23 such transaction is consistent with the safe-
24 and sound operation and condition of the

INSERT
A

INSERT A

(ii) the

certifies

~~(viii)~~ The chief executive officer (or equivalent officer) of the banking entity shall ~~certify~~ in writing annually (with a duty to update the certification if the information in the certification materially changes) that the conditions specified in ~~(iv)~~ are satisfied;

[Subsection (d)(1)(G) ~~(H)~~]

1 banking entity or nonbank financial com-
2 pany supervised by the Board.

3 “(B) TREATMENT OF PRIME BROKERAGE
4 TRANSACTIONS.—For purposes of subparagraph
5 (A), a prime brokerage transaction described in
6 subparagraph (A) shall be subject to section
7 23B of the Federal Reserve Act (12 U.S.C.
8 371c-1) as if the counterparty were an affiliate
9 of the banking entity.

10 “(4) APPLICATION TO NONBANK FINANCIAL
11 COMPANIES SUPERVISED BY THE BOARD.—The ap-
12 propriate Federal banking agencies, the Securities
13 and Exchange Commission, and the Commodity Fu-
14 tures Trading Commission shall adopt rules, as pro-
15 vided in subsection (b)(2), imposing additional cap-
16 ital charges or other restrictions for nonbank finan-
17 cial companies supervised by the Board to address
18 the risks to and conflicts of interest of banking enti-
19 ties described in paragraphs (1), (2), and (3) of this
20 subsection.

21 “(g) RULES OF CONSTRUCTION.—

22 “(1) LIMITATION ON CONTRARY AUTHORITY.—
23 Except as provided in this section, notwithstanding
24 any other provision of law, the prohibitions and re-
25 strictions under this section shall apply to activities

1 of a banking entity or nonbank financial company
2 supervised by the Board, even if such activities are
3 authorized for a banking entity or nonbank financial
4 company supervised by the Board.

5 “(2) SALE OR SECURITIZATION OF LOANS.—
6 Nothing in this section shall be construed to limit or
7 restrict the ability of a banking entity or nonbank fi-
8 nancial company supervised by the Board to sell or
9 securitize loans in a manner otherwise permitted by
10 law.

11 “(3) AUTHORITY OF FEDERAL AGENCIES AND
12 STATE REGULATORY AUTHORITIES.—Nothing in this
13 section shall be construed to limit the inherent au-
14 thority of any Federal agency or State regulatory
15 authority under otherwise applicable provisions of
16 law.

17 “(h) DEFINITIONS.—In this section, the following
18 definitions shall apply:

19 “(1) BANKING ENTITY.—The term ‘banking en-
20 tity’ means any insured depository institution (as de-
21 fined in section 3 of the Federal Deposit Insurance
22 Act (12 U.S.C. 1813)), any company that controls
23 an insured depository institution, or that is treated
24 as a bank holding company for purposes of section
25 8 of the International Banking Act of 1978, and any

1 affiliate or subsidiary of any such entity. For pur-
2 poses of this paragraph, the term 'insured depository
3 institution' does not include an institution that func-
4 tions solely in a trust or fiduciary capacity, if—

5 “(A) all or substantially all of the deposits
6 of such institution are in trust funds and are
7 received in a bona fide fiduciary capacity;

8 “(B) no deposits of such institution which
9 are insured by the Federal Deposit Insurance
10 Corporation are offered or marketed by or
11 through an affiliate of such institution;

12 “(C) such institution does not accept de-
13 mand deposits or deposits that the depositor
14 may withdraw by check or similar means for
15 payment to third parties or others or make
16 commercial loans; and

17 “(D) such institution does not—

18 “(i) obtain payment or payment re-
19 lated services from any Federal Reserve
20 bank, including any service referred to in
21 section 11(a) of the Federal Reserve Act
22 (12 U.S.C. 248a); or

23 “(ii) exercise discount or borrowing
24 privileges pursuant to section 19(b)(7) of

1 the Federal Reserve Act (12 U.S.C.
2 461(b)(7)).

3 “(2) HEDGE FUND; PRIVATE EQUITY FUND.—

4 The terms ‘hedge fund’ and ‘private equity fund’
5 mean an issuer that would be an investment com-
6 pany, as defined in the Investment Company Act of
7 1940 (15 U.S.C. 80a-1 et seq.), but for section
8 3(e)(1) or 3(e)(7) of that Act, or such similar funds
9 as the appropriate Federal banking agencies, the Se-
10 curities and Exchange Commission, and the Com-
11 modity Futures Trading Commission may, by rule,
12 as provided in subsection (b)(2), determine.

13 “(3) NONBANK FINANCIAL COMPANY SUPER-
14 VISED BY THE BOARD.—The term ‘nonbank finan-
15 cial company supervised by the Board’ means a
16 nonbank financial company supervised by the Board
17 of Governors, as defined in section 102 of the Fi-
18 nancial Stability Act of 2010.

19 “(4) PROPRIETARY TRADING.—The term ‘pro-
20 prietary trading’, when used with respect to a bank-
21 ing entity or nonbank financial company supervised
22 by the Board, means engaging as a principal for the
23 trading account of the banking entity or nonbank fi-
24 nancial company supervised by the Board in any
25 transaction to purchase or sell, or otherwise acquire

1 or dispose of, any security, any derivative, any con-
2 tract of sale of a commodity for future delivery, any
3 option on any such security, derivative, or contract,
4 or any other security or financial instrument that
5 the appropriate Federal banking agencies, the Secu-
6 rities and Exchange Commission, and the Com-
7 modity Futures Trading Commission may, by rule
8 as provided in subsection (b)(2), determine.

9 “(5) SPONSOR.—The term to ‘sponsor’ a fund
10 means—

11 “(A) to serve as a general partner, man-
12 aging member, or trustee of a fund;

13 “(B) in any manner to select or to control
14 (or to have employees, officers, or directors, or
15 agents who constitute) a majority of the direc-
16 tors, trustees, or management of a fund; or

17 “(C) to share with a fund, for corporate,
18 marketing, promotional, or other purposes, the
19 same name or a variation of the same name.

20 “(6) TRADING ACCOUNT.—The term ‘trading
21 account’ means any account used for acquiring or
22 taking positions in the securities and instruments
23 described in paragraph (4) principally for the pur-
24 pose of selling in the near term (or otherwise with
25 the intent to resell in order to profit from short-term

1 price movements), and any such other accounts as
2 the appropriate Federal banking agencies, the Secu-
3 rities and Exchange Commission, and the Com-
4 modity Futures Trading Commission may, by rule
5 as provided in subsection (b)(2), determine.

6 “(7) ILLIQUID FUND.—

7 “(A) IN GENERAL.—The term ‘illiquid
8 fund’ means a hedge fund or private equity
9 fund that—

10 “(i) as of May 1, 2010, was prin-
11 cipally invested in, or was invested and
12 contractually committed to principally in-
13 vest in, illiquid assets, such as portfolio
14 companies, real estate investments, and
15 venture capital investments; and

16 “(ii) makes all investments pursuant
17 to, and consistent with, an investment
18 strategy to principally invest in illiquid as-
19 sets. In issuing rules regarding this sub-
20 paragraph, the Board shall take into con-
21 sideration the terms of investment for the
22 hedge fund or private equity fund, includ-
23 ing contractual obligations, the ability of
24 the fund to divest of assets held by the

1 fund, and any other factors that the Board
2 determines are appropriate.

3 “(B) HEDGE FUND.—For the purposes of
4 this paragraph, the term ‘hedge fund’ means
5 any fund identified under subsection (h)(2), and
6 does not include a private equity fund, as such
7 term is used in section 203(m) of the Invest-
8 ment Advisers Act of 1940 (15 U.S.C. 80b-
9 3(m)).”.

10 **SEC. 619A. STUDY OF BANK INVESTMENT ACTIVITIES.**

11 (a) STUDY.—

12 (1) IN GENERAL.—Not later than 18 months
13 after the date of enactment of this Act, the appro-
14 priate Federal banking agencies shall jointly review
15 and prepare a report on the activities that a banking
16 entity, as such term is defined in the Bank Holding
17 Company Act of 1956 (12 U.S.C. 1841 et. seq.),
18 may engage in under Federal and State law, includ-
19 ing activities authorized by statute and by order, in-
20 terpretation and guidance.

21 (2) CONTENT.—In carrying out the study
22 under paragraph (1), the appropriate Federal bank-
23 ing agencies shall review and consider—

24 (A) the type of activities or investments;

1 (B) any financial, operational, managerial,
2 or reputation risks associated with or presented
3 as a result of the banking entity engaged in the
4 activity or making the investment; and

5 (C) risk mitigation activities undertaken by
6 the banking entity with regard to the risks.

7 (b) REPORT AND RECOMMENDATIONS TO THE COUN-
8 CIL AND TO CONGRESS.—The appropriate Federal bank-
9 ing agencies shall submit to the Council, the Committee
10 on Financial Services of the House of Representatives,
11 and the Committee on Banking, Housing, and Urban Af-
12 fairs of the Senate the study conducted pursuant to sub-
13 section (a) no later than 2 months after its completion.
14 In addition to the information described in subsection (a),
15 the report shall include recommendations regarding—

16 (1) whether each activity or investment has or
17 could have a negative effect on the safety and sound-
18 ness of the banking entity or the United States fi-
19 nancial system;

20 (2) the appropriateness of the conduct of each
21 activity or type of investment by banking entities;
22 and

23 (3) additional restrictions as may be necessary
24 to address risks to safety and soundness arising

1 from the activities or types of investments described
2 in subsection (a).

3 **SEC. 819B. CONFLICTS OF INTEREST.**

4 (a) **IN GENERAL.**—The Securities Act of 1933 (15
5 U.S.C. 77a et seq.) is amended by inserting after section
6 27A the following:

7 **“SEC. 27B. CONFLICTS OF INTEREST RELATING TO CER-**
8 **TAIN SECURITIZATIONS.**

9 “(a) **IN GENERAL.**—An underwriter, placement
10 agent, initial purchaser, or sponsor, or any affiliate or sub-
11 sidiary of any such entity, of an asset-backed security (as
12 such term is defined in section 3 of the Securities and
13 Exchange Act of 1934 (15 U.S.C. 78c), which for the pur-
14 poses of this section shall include a synthetic asset-backed
15 security), shall not, at any time for a period ending on
16 the date that is one year after the date of the first closing
17 of the sale of the asset-backed security, engage in any
18 transaction that would involve or result in any material
19 conflict of interest with respect to any investor in a trans-
20 action arising out of such activity.

21 “(b) **RULEMAKING.**—Not later than 270 days after
22 the date of enactment of this section, the Commission
23 shall issue rules for the purpose of implementing sub-
24 section (a).

1 “(c) EXCEPTION.—The prohibitions of subsection (a)
2 shall not apply to—

3 “(1) risk-mitigating hedging activities in con-
4 nection with positions or holdings arising out of the
5 underwriting, placement, initial purchase, or spon-
6 sorship of an asset-backed security, provided that
7 such activities are designed to reduce the specific
8 risks to the underwriter, placement agent, initial
9 purchaser, or sponsor associated with positions or
10 holdings arising out of such underwriting, place-
11 ment, initial purchase, or sponsorship; or

12 “(2) purchases or sales of asset-backed securi-
13 ties made pursuant to and consistent with—

14 “(A) commitments of the underwriter,
15 placement agent, initial purchaser, or sponsor,
16 or any affiliate or subsidiary of any such entity,
17 to provide liquidity for the asset-backed secu-
18 rity, or

19 “(B) bona fide market-making in the asset
20 backed security.

21 “(d) RULE OF CONSTRUCTION.—This subsection
22 shall not otherwise limit the application of section 15G
23 of the Securities Exchange Act of 1934.”.

24 “(b) EFFECTIVE DATE.—Section 27B of the Securi-
25 ties Act of 1933, as added by this section, shall take effect

1 on the effective date of final rules issued by the Commis-
2 sion under subsection (b) of such section 27B, except that
3 subsections (b) and (d) of such section 27B shall take ef-
4 fect on the date of enactment of this Act.

