

**SENATE RESOLUTION 533—RECOGNIZING NATIONAL FOSTER CARE MONTH AS AN OPPORTUNITY TO RAISE AWARENESS ABOUT THE CHALLENGES OF CHILDREN IN THE FOSTER CARE SYSTEM AND ENCOURAGING CONGRESS TO IMPLEMENT POLICY TO IMPROVE THE LIVES OF CHILDREN IN THE FOSTER CARE SYSTEM**

Ms. LANDRIEU (for herself, Mr. GRASSLEY, Mrs. LINCOLN, Mr. LEVIN, Mr. CARDIN, Mr. BEGICH, Mr. KERRY, Mr. INHOFE, Ms. COLLINS, Ms. SNOWE, Mr. BAYH, Mr. FRANKEN, Mr. AKAKA, Mrs. MURRAY, Mrs. GILLIBRAND, Mr. NELSON of Nebraska, Mr. CASEY, Mrs. BOXER, Mr. SPECTER, Mr. COCHRAN, and Mr. LAUTENBERG) submitted the following resolution; which was considered and agreed to:

S. RES. 533

Whereas all children deserve a safe, loving, and permanent home;

Whereas approximately 500,000 children in the United States live in foster care each year;

Whereas children enter the foster care system for a variety of reasons, including inadequate care, abuse, or neglect by a parent or guardian;

Whereas the major factors that contribute to the placement of a child in the foster care system include substance abuse, mental illness, poverty, and a lack of education of a parent or guardian of the child;

Whereas a child entering the foster care system must confront the widespread misperception that children in foster care are disruptive, unruly, and dangerous, even though placement in the foster care system is based on the actions of a parent or guardian, not the child;

Whereas States and communities should be provided with the resources to invest in preventative and reunification services and post-permanency programs to ensure that more children in the foster care system are provided safe, loving, permanent placements;

Whereas the foster care system is intended to be a temporary solution, yet children remain in the foster care system for an average of 3 years;

Whereas children of color are disproportionately represented in the foster care system and are less likely to be reunited with their biological families;

Whereas the average child in the foster care system—

(1) is 10 years old; and

(2) will be placed in 3 different homes, leading to disruptive transfers to new schools, separation from siblings, and unfamiliar surroundings;

Whereas most children “age out” of the foster care system at the age of 18;

Whereas the number of children who enter the foster care system each year has declined over the decade preceding the date of the agreement to this resolution, but the number of children who “age out” of the foster care system without placement with a permanent family has increased substantially, rising from 20,000 children in 2002 to 29,000 children in 2008;

Whereas children who “age out” of the foster care system lack the security or support of a biological or adoptive family and frequently struggle to secure affordable housing, obtain health insurance, pursue higher education, and acquire adequate employment;

Whereas, of the children who have “aged out” of the foster care system—

(1) 25 percent have been homeless;

(2) 51 percent have been unemployed for significant stretch of time, and

(3) only 2 percent have obtained a bachelor's degree or higher;

Whereas, by age 19, approximately 50 percent of young women who have been in the foster care system have been pregnant, compared to only 20 percent of young women who have been not in the foster care system;

Whereas research reveals that children born to teen parents are exposed to serious and high risks;

Whereas National Foster Care Month is an opportunity to raise awareness about the special needs of children in the foster care system and to recognize the important role that foster parents, social workers, and advocates have in the lives of children in foster care throughout the United States;

Whereas the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351; 122 Stat. 3949) provides for new investments and services to improve the outcomes of children and families in the foster care system; and

Whereas much remains to be done to ensure that all children have a safe, loving, nurturing, and permanent family, regardless of age or special needs: Now, therefore, be it Resolved, That the Senate—

(1) recognizes National Foster Care Month as an opportunity to raise awareness about the challenges of children in the foster care system;

(2) encourages Congress to implement policy to improve the lives of children in the foster care system;

(3) supports the designation of a “National Foster Care Month”;

(4) acknowledges the needs of the children in the foster care system;

(5) honors the commitment and dedication of those individuals who work tirelessly to provide assistance and services to children in the foster care system; and

(6) recognizes the need to continue working to improve the outcomes of all children in the foster care system through title IV of the Social Security Act (42 U.S.C. 601 et seq.) and other programs designed to help children in the foster care system—

(A) reunite with their biological parents; or

(B) if the children cannot be reunited with their biological parents, find permanent, safe, and loving homes.

#### AMENDMENTS SUBMITTED AND PROPOSED

SA 4048. Mrs. FEINSTEIN (for herself, Mr. LEVIN, Ms. CANTWELL, Ms. SNOWE, and Mrs. SHAHEEN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail”, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table.

SA 4049. Mr. HARKIN (for himself and Mr. CASEY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4050. Mr. CARDIN (for himself, Mr. LUGAR, Mr. DURBIN, Mr. SCHUMER, Mr. FEINGOLD, Mr. MERKLEY, Mr. JOHNSON, and Mr. WHITEHOUSE) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for him-

self and Mrs. LINCOLN)) to the bill S. 3217, supra.

SA 4051. Mr. GREGG submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4052. Mr. CORKER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4053. Ms. STABENOW (for herself and Mr. BROWN of Ohio) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4054. Mr. CORKER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4055. Mrs. HUTCHISON (for herself, Mrs. HAGAN, and Mr. CORNYN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4056. Mr. BOND (for himself, Mr. DODD, Mr. WARNER, Mr. BROWN of Massachusetts, Ms. CANTWELL, Mr. BEGICH, Mrs. MURRAY, Mr. CORKER, Mr. TESTER, Mr. BROWNBACK, Mr. BAUCUS, and Mr. REID) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra.

SA 4057. Mr. ENZI (for himself and Mr. CORKER) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4058. Mr. SHELBY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4059. Mr. REID (for Mrs. LINCOLN (for herself, Mr. CHAMBLISS, Mr. COCHRAN, and Mr. BROWN of Ohio)) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4060. Mr. BROWN of Massachusetts submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4061. Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4062. Mr. WARNER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

#### TEXT OF AMENDMENTS

SA 4048. Mrs. FEINSTEIN (for herself, Mr. LEVIN, Ms. CANTWELL, and Ms. SNOWE) submitted an amendment intended to be proposed to amendment

SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end "too big to fail", to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 699, strike line 20 and all that follows through page 704, line 13, and insert the following:

"(A) REGISTRATION.—The Commission may adopt rules and regulations requiring registration with the Commission for a foreign board of trade that provides the members of the foreign board of trade or other participants located in the United States with direct access to the electronic trading and order matching system of the foreign board of trade, including rules and regulations prescribing procedures and requirements applicable to the registration of such foreign boards of trade. For purposes of this paragraph, 'direct access' refers to an explicit grant of authority by a foreign board of trade to an identified member or other participant located in the United States to enter trades directly into the trade matching system of the foreign board of trade.

"(B) LINKED CONTRACTS.—It shall be unlawful for a foreign board of trade to provide to the members of the foreign board of trade or other participants located in the United States direct access to the electronic trading and order-matching system of the foreign board of trade with respect to an agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, unless the Commission determines that—

"(i) the foreign board of trade makes public daily trading information regarding the agreement, contract, or transaction that is comparable to the daily trading information published by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

"(ii) the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade)—

"(I) adopts position limits (including related hedge exemption provisions) for the agreement, contract, or transaction that are comparable to the position limits (including related hedge exemption provisions) adopted by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles;

"(II) has the authority to require or direct market participants to limit, reduce, or liquidate any position the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade) determines to be necessary to prevent or reduce the threat of price manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process;

"(III) agrees to promptly notify the Commission, with regard to the agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, of any change regarding—

"(aa) the information that the foreign board of trade will make publicly available;

"(bb) the position limits that the foreign board of trade or foreign futures authority will adopt and enforce;

"(cc) the position reductions required to prevent manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process; and

"(dd) any other area of interest expressed by the Commission to the foreign board of trade or foreign futures authority;

"(IV) provides information to the Commission regarding large trader positions in the agreement, contract, or transaction that is comparable to the large trader position information collected by the Commission for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

"(V) provides the Commission such information as is necessary to publish reports on aggregate trader positions for the agreement, contract, or transaction traded on the foreign board of trade that are comparable to such reports on aggregate trader positions for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles.

"(C) EXISTING FOREIGN BOARDS OF TRADE.—Subparagraphs (A) and (B) shall not be effective with respect to any foreign board of trade to which, prior to the date of enactment of this paragraph, the Commission granted direct access permission until the date that is 180 days after that date of enactment."

(b) LIABILITY OF REGISTERED PERSONS TRADING ON A FOREIGN BOARD OF TRADE.—Section 4 of the Commodity Exchange Act (7 U.S.C. 6) is amended—

(1) in subsection (a), in the matter preceding paragraph (1), by inserting "or by subsection (e)" after "Unless exempted by the Commission pursuant to subsection (c)"; and

(2) by adding at the end the following:

"(e) LIABILITY OF REGISTERED PERSONS TRADING ON A FOREIGN BOARD OF TRADE.—A person registered with the Commission, or exempt from registration by the Commission, under this Act may not be found to have violated subsection (a) with respect to a transaction in, or in connection with, a contract of sale of a commodity for future delivery if the person has reason to believe that the transaction and the contract is made on or subject to the rules of a foreign board of trade that has complied with subparagraphs (A) and (B) of subsection (b)(1)."

**SA 4049.** Mr. HARKIN (for himself and Mr. CASEY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end "too big to fail", to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 656, strike line 20 and all that follows through page 657, line 12, and insert the following:

"(2) SPECIAL RULE; DUTY TO PROTECTED CUSTOMERS.—

"(A) DEFINITION OF PROTECTED CUSTOMER.—In this paragraph, the term 'protected customer' means any entity that is—

"(i) a Federal agency;

"(ii) a State, State agency, city, county, municipality, or other political subdivision of a State;

"(iii) any employee benefit plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);

"(iv) any governmental plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002); or

"(v) any endowment that is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986.

"(B) PROHIBITION.—

"(i) IN GENERAL.—It shall be unlawful for a swap dealer that provides advice regarding, offers to enter into, or enters into, a swap with a protected customer—

"(I) to employ any device, scheme, or artifice to defraud any protected customer or prospective protected customer;

"(II) to engage in any transaction, practice, or course of business that operates as a fraud or deceit on any protected customer or prospective protected customer;

"(III) if the swap dealer acts as a principal for the account of the swap dealer, to knowingly sell any swap to, or purchase any swap from, a protected customer, or if the swap dealer acts as a broker for a person other than the protected customer, to knowingly effect any sale or purchase of any swap for the account of the protected customer, without—

"(aa) before the completion of the transaction, disclosing to the protected customer in writing the capacity in which the swap dealer is acting; and

"(bb) obtaining the consent of the protected customer in writing with respect to the transaction; and

"(IV) to engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative.

"(ii) REGULATIONS.—As soon as practicable after the date of enactment of this subparagraph, the Commission shall issue rules and promulgate regulations to prescribe requirements that are reasonably designed to prevent acts, practices, and courses of business that are fraudulent, deceptive, or manipulative.

"(C) REQUIREMENTS.—

"(i) IN GENERAL.—A swap dealer that recommends a swap with a protected customer shall comply with clauses (ii) and (iii).

"(ii) REASONABLE GROUNDS.—In recommending to a protected customer the purchase, sale, or exchange of any swap, a swap dealer shall have reasonable grounds for believing that the recommendation is in the best interests of the protected customer.

"(iii) REASONABLE EFFORTS.—Before the execution of a transaction recommended to a protected customer under clause (ii), a swap dealer shall make reasonable efforts to obtain such information as is necessary to determine whether the transaction is in the best interests of the protected customer, including—

"(I) information relating to—

"(aa) the financial status of the protected customer;

"(bb) the tax status of the protected customer; and

"(cc) the stated investment objectives of the protected customer; and

"(II) such other information that—

"(aa) is used or considered to be reasonable by the swap dealer in making recommendations to the protected customer; and

"(bb) the Commission may prescribe by rule or regulation.

"(iv) BUSINESS CONDUCT REQUIREMENTS.—A swap dealer shall satisfy each business conduct requirement described in paragraph (3).

"(D) WRITTEN REPRESENTATIONS.—

“(i) IN GENERAL.—Before entering into a swap with a protected customer, a swap dealer shall receive in writing a representation from the protected customer confirming that the swap transaction has been expressly authorized—

“(I) by an advisor that is independent of the swap dealer; and

“(II) in the case of an employee benefit plan subject to the fiduciary duty requirements under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), by a representative independent of the swap dealer that is a fiduciary, as defined in section 3 of that Act (29 U.S.C. 1002).

“(ii) REGULATIONS.—Not later than December 31, 2010, the Commission shall issue rules or promulgate regulations to provide guidelines to determine qualifications for advisors that are authorized to provide advice under clause (i)(I).

Beginning on page 863, strike line 22 and all that follows through page 864, line 16, and insert the following:

“(2) SPECIAL RULE; DUTY TO PROTECTED CUSTOMERS.—

“(A) DEFINITION OF PROTECTED CUSTOMER.—In this paragraph, the term ‘protected customer’ means any entity that is—

“(i) a Federal agency;

“(ii) a State, State agency, city, county, municipality, or other political subdivision of a State;

“(iii) any employee benefit plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);

“(iv) any governmental plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002); or

“(v) any endowment that is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986.

“(B) PROHIBITION.—

“(i) IN GENERAL.—It shall be unlawful for a security-based swap dealer that provides advice regarding, offers to enter into, or enters into, a security-based swap with a protected customer—

“(I) to employ any device, scheme, or artifice to defraud any protected customer or prospective protected customer;

“(II) to engage in any transaction, practice, or course of business that operates as a fraud or deceit on any protected customer or prospective protected customer;

“(III) if the security-based swap dealer acts as a principal for the account of the security-based swap dealer, to knowingly sell any security-based swap to, or purchase any security-based swap from, a protected customer, or if the security-based swap dealer acts as a broker for a person other than the protected customer, to knowingly effect any sale or purchase of any security-based swap for the account of the protected customer, without—

“(aa) before the completion of the transaction, disclosing to the protected customer in writing the capacity in which the security-based swap dealer is acting; and

“(bb) obtaining the consent of the protected customer in writing with respect to the transaction; and

“(IV) to engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative.

“(ii) REGULATIONS.—As soon as practicable after the date of enactment of this subparagraph, the Commission shall issue rules and promulgate regulations to prescribe requirements that are reasonably designed to prevent acts, practices, and courses of business that are fraudulent, deceptive, or manipulative.

“(C) REQUIREMENTS.—

“(i) IN GENERAL.—A security-based swap dealer that recommends a security-based

swap with a protected customer shall comply with clauses (ii) and (iii).

“(ii) REASONABLE GROUNDS.—In recommending to a protected customer the purchase, sale, or exchange of any security-based swap, a security-based swap dealer shall have reasonable grounds for believing that the recommendation is in the best interests of the protected customer.

“(iii) REASONABLE EFFORTS.—Before the execution of a transaction recommended to a protected customer under clause (ii), a security-based swap dealer shall make reasonable efforts to obtain such information as is necessary to determine whether the transaction is in the best interests of the protected customer, including—

“(I) information relating to—

“(aa) the financial status of the protected customer;

“(bb) the tax status of the protected customer; and

“(cc) the stated investment objectives of the protected customer; and

“(II) such other information that—

“(aa) is used or considered to be reasonable by the security-based swap dealer in making recommendations to the protected customer; and

“(bb) the Commission may prescribe by rule or regulation.

“(iv) BUSINESS CONDUCT REQUIREMENTS.—A security-based swap dealer shall satisfy each business conduct requirement described in paragraph (3).

“(D) WRITTEN REPRESENTATIONS.—

“(i) IN GENERAL.—Before entering into a security-based swap with a protected customer, a security-based swap dealer shall receive in writing a representation from the protected customer confirming that the security-based swap transaction has been expressly authorized—

“(I) by an advisor that is independent of the security-based swap dealer; and

“(II) in the case of an employee benefit plan subject to the fiduciary duty requirements under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), by a representative independent of the security-based swap dealer that is a fiduciary, as defined in section 3 of that Act (29 U.S.C. 1002).

“(ii) REGULATIONS.—Not later than December 31, 2010, the Commission shall issue rules or promulgate regulations to provide guidelines to determine qualifications for advisors that are authorized to provide advice under clause (i)(I).

**SA 4050.** Mr. CARDIN (for himself, Mr. LUGAR, Mr. DURBIN, Mr. SCHUMER, Mr. FEINGOLD, Mr. MERKLEY, Mr. JOHNSON, and Mr. WHITEHOUSE) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail,” to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1187, line 9, strike “effective.” insert the following: “effective.”

**Subtitle K—Resource Extraction Issuers**

**SEC. 995. FINDINGS.**

Congress finds the following:

(1) It is in the interest of the United States to promote good governance in the extrac-

tive industries sector. Transparency in revenue payments benefits oil, gas, and mining companies, because it improves the business climate in which such companies work, increases the reliability of commodity supplies upon which businesses and people in the United States rely, and promotes greater energy security.

(2) Companies in the extractive industries sector face unique tax and reputational risks, in the form of country-specific taxes and regulations. Exposure to these risks is heightened by the substantial capital employed in the extractive industries, and the often opaque and unaccountable management of natural resource revenues by foreign governments, which in turn creates unstable and high-cost operating environments for multinational companies. The effects of these risks are material to investors.

**SEC. 996. DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS.**

Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by this Act, is amended by adding at the end the following:

“(p) DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS.—

“(1) DEFINITIONS.—In this subsection—

“(A) the term ‘commercial development of oil, natural gas, or minerals’ includes exploration, extraction, processing, export, and other significant actions relating to oil, natural gas, or minerals, or the acquisition of a license for any such activity, as determined by the Commission;

“(B) the term ‘foreign government’ means a foreign government, a department, agency, or instrumentality of a foreign government, or a company owned by a foreign government, as determined by the Commission;

“(C) the term ‘payment’—

“(i) means a payment that is—

“(I) made to further the commercial development of oil, natural gas, or minerals; and

“(II) not de minimis; and

“(ii) includes taxes, royalties, fees (including license fees), production entitlements, bonuses, and other material benefits, that the Commission, consistent with the guidelines of the Extractive Industries Transparency Initiative (to the extent practicable), determines are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals;

“(D) the term ‘resource extraction issuer’ means an issuer that—

“(i) is required to file an annual report with the Commission; and

“(ii) engages in the commercial development of oil, natural gas, or minerals;

“(E) the term ‘interactive data format’ means an electronic data format in which pieces of information are identified using an interactive data standard; and

“(F) the term ‘interactive data standard’ means standardized list of electronic tags that mark information included in the annual report of a resource extraction issuer.

“(2) DISCLOSURE.—

“(A) INFORMATION REQUIRED.—Not later than 270 days after the date of enactment of the Restoring American Financial Stability Act of 2010, the Commission shall issue final rules that require each resource extraction issuer to include in an annual report of the resource extraction issuer information relating to any payment made by the resource extraction issuer, a subsidiary of the resource extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals, including—

“(i) the type and total amount of such payments made for each project of the resource

extraction issuer relating to the commercial development of oil, natural gas, or minerals; and

“(ii) the type and total amount of such payments made to each government.

“(B) CONSULTATION IN RULEMAKING.—In issuing rules under subparagraph (A), the Commission may consult with any agency or entity that the Commission determines is relevant.

“(C) INTERACTIVE DATA FORMAT.—The rules issued under subparagraph (A) shall require that the information included in the annual report of a resource extraction issuer be submitted in an interactive data format.

“(D) INTERACTIVE DATA STANDARD.—

“(i) IN GENERAL.—The rules issued under subparagraph (A) shall establish an interactive data standard for the information included in the annual report of a resource extraction issuer.

“(ii) ELECTRONIC TAGS.—The interactive data standard shall include electronic tags that identify, for any payments made by a resource extraction issuer to a foreign government or the Federal Government—

“(I) the total amounts of the payments, by category;

“(II) the currency used to make the payments;

“(III) the financial period in which the payments were made;

“(IV) the business segment of the resource extraction issuer that made the payments;

“(V) the government that received the payments, and the country in which the government is located;

“(VI) the project of the resource extraction issuer to which the payments relate; and

“(VII) such other information as the Commission may determine is necessary or appropriate in the public interest or for the protection of investors.

“(E) INTERNATIONAL TRANSPARENCY EFFORTS.—To the extent practicable, the rules issued under subparagraph (A) shall support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals.

“(F) EFFECTIVE DATE.—With respect to each resource extraction issuer, the final rules issued under subparagraph (A) shall take effect on the date on which the resource extraction issuer is required to submit an annual report relating to the fiscal year of the resource extraction issuer that ends not earlier than 1 year after the date on which the Commission issues final rules under subparagraph (A).

“(3) PUBLIC AVAILABILITY OF INFORMATION.—

“(A) IN GENERAL.—To the extent practicable, the Commission shall make available online, to the public, a compilation of the information required to be submitted under the rules issued under paragraph (2)(A).

“(B) OTHER INFORMATION.—Nothing in this paragraph shall require the Commission to make available online information other than the information required to be submitted under the rules issued under paragraph (2)(A).

“(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission such sums as may be necessary to carry out this subsection.”.

**SA 4051.** Mr. GREGG submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the finan-

cial system, to end “too big to fail”, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 18, between lines 17 and 18, insert the following:

**SEC. 5. PROHIBITION ON THE USE OF FEDERAL FUNDS TO PAY STATE OBLIGATIONS.**

(a) IN GENERAL.—Notwithstanding any other provision of law, no Federal funds may be used to purchase or guarantee obligations of, issue lines of credit to or provide direct or indirect grants-and-aid to, any State government, municipal government, local government, or county government which has defaulted on its obligations, is at risk of defaulting, or is likely to default, absent such assistance from the United States Government.

(b) LIMIT ON USE OF BORROWED FUNDS.—The Secretary shall not, directly or indirectly, use general fund revenues or funds borrowed pursuant to title 31, United States Code, to purchase or guarantee any asset or obligation of any State government, municipal government, local government, or county government or to otherwise assist such governments, in any instance in which the State government, municipal government, or county government has defaulted on its obligations, is at risk of defaulting, or is likely to default, absent such assistance from the United States Government.

(c) LIMIT ON FEDERAL RESERVE FUNDS.—The Board of Governors shall not, directly or indirectly, lend against, purchase, or guarantee any asset or obligation of any State government, municipal government, local government, or county government or to otherwise assist such governments, in any instance in which the State government, municipal government, local government, or county government has defaulted on its obligations, is at risk of defaulting, or is likely to default, absent such assistance from the United States Government. Notwithstanding any other provision of law, no Federal funds may be used to pay the obligations of any State, or to issue a line of credit to any State.

**SA 4052.** Mr. CORKER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail”, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1056, line 17, strike the second period and insert the following: “.

**SEC. 946. REPRESENTATIONS AND WARRANTIES FOR POOL ASSETS.**

(a) REPRESENTATIONS AND WARRANTIES.—

(1) DEFINITIONS.—In this subsection—

(A) the terms “asset-backed security”, “servicer”, and “sponsor” have the meanings given those terms under Regulation AB; and

(B) the term “Regulation AB” means subpart 229.1100 of title 17, Code of Federal Regulations, or any successor thereto.

(2) RULES REQUIRED.—

(A) COMPLIANCE.—Not later than 270 days after the date of enactment of this Act, the

Commission shall issue rules, as the Commission determines is necessary and appropriate consistent with the protection of investors, that require any issuance of an asset-backed security to comply with paragraph (3).

(B) DEFINITION.—The Commission shall, by rule, define the term “pool assets” for purposes of this subsection.

(3) PERIODIC INDEPENDENT EVALUATION.—The pooling and servicing agreement for an asset-backed security shall contain provisions requiring the sponsor of the asset-backed security to furnish to the trustee of the asset-backed security, on a quarterly basis, a certificate or opinion from an independent evaluator that—

(A) identifies any pool assets that in the prior quarter, the trustee notified, or had the right to notify, the obligor that it had an obligation to repurchase or substitute under the terms of the pooling and servicing agreement because of a breach or violation of a representation or warranty; and

(B) includes facts supporting a finding as to whether any representation or warranty made with respect to any pool asset has been breached or violated.

(4) INDEPENDENT EVALUATOR.—For purposes of paragraph (3), an independent evaluator shall—

(A) be subject to removal upon the vote of 25 percent of the holders of outstanding shares of the asset-backed security; and

(B) have access to the pool asset records and related documents of any party to the pooling and servicing agreement and any person performing work on behalf of any party to the pooling and servicing agreement.

(5) EXEMPTIONS.—The Commission may, by rule, exempt a class of asset-backed securities from the rules issued under this subsection, if the Commission determines that the application of such rules to the class of asset-backed securities would cause undue disruption to a segment of the market affected by the class of asset-backed securities.

(b) DIRECT REVIEW.—An investor or group of investors that holds not less than 20 percent of the outstanding securities of an asset-backed security (including an asset-backed security that is not subject to the requirements under subpart 229.1100 of title 17, Code of Federal Regulations) that is issued or outstanding on or before the date of enactment of this Act shall have access to all loan documents and related documents of any servicer of the asset-backed security (including servicing records), unless otherwise prohibited in a contract with respect to the asset-backed security.

(c) ENFORCEMENT.—The Commission may enforce the rules issued under this section in the same manner as the Commission enforces rules issued under the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

**SA 4053.** Ms. STABENOW (for herself and Mr. BROWN of Ohio) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail”, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 540, line 16, strike “purchase” and insert “purchase or lease”.

On page 580, line 20, insert “and involved in hedging activities related to” after “engaged in”.

On page 580, line 21, strike “purchase” and insert “purchase or lease”.

On page 580, line 23, strike “user” and insert “user (including any subsidiary of the commercial end user)”.

On page 580, lines 24 and 25, strike “only if the affiliate” and insert “as can affiliates”.

On page 581, line 1, strike “uses” and insert “using”.

On page 582, between lines 6 and 7, insert the following:

“(iii) **TRANSITION RULE.**—An affiliate or a wholly owned entity of a commercial end user that is predominantly engaged in providing financing for the purchase or lease of merchandise or manufactured goods of the commercial end user affiliate (including any subsidiary of the commercial end user) shall be exempt from the margin requirement described in section 4s(e) and the clearing requirement described in paragraph (1) with regard to swaps entered into to mitigate the risk of the financing activities for not less than a 3-year period beginning on the date of enactment of this clause.

“(iv) **AUTHORITY OF COMMISSION.**—On or prior to the date on which the 3-year period described in clause (iii) ends, the Commission may extend the exemption described in that clause for an additional 1-year period if the Commission—

“(I) determines the extension to be in the public interest; and

“(II) publishes in the Federal Register the order granting the extension (including the reasons for the extension).”

**SA 4054.** Mr. CORKER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail”, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1052, line 3, strike “**SEC. 942.**” and insert the following:

**SEC. 942. RESIDENTIAL MORTGAGE UNDERWRITING STANDARDS.**

(a) **STANDARDS ESTABLISHED.**—Notwithstanding any other provision of this Act or any other provision of Federal, State, or local law, the Federal banking agencies, in consultation with the Federal Housing Finance Agency and the Department of Housing and Urban Development, shall jointly establish specific minimum standards for mortgage underwriting, including—

(1) a requirement that the mortgagee verify and document the income and assets relied upon to qualify the mortgagor on the residential mortgage, including the previous employment and credit history of the mortgagor;

(2) a down payment requirement that—

(A) is equal to not less than 5 percent of the purchase price of the property securing the residential mortgage; and

(B) in the case of a first lien residential mortgage loan with an initial loan to value ratio that is more than 80 percent and not more than 95 percent, includes a requirement for credit enhancements, as defined by the Federal banking agencies, until the loan to

value ratio of the residential mortgage loan amortizes to a value that is less than 80 percent of the purchase price;

(3) a method for determining the ability of the mortgagor to repay the residential mortgage that is based on factors including—

(A) all terms of the residential mortgage, including principal payments that fully amortize the balance of the residential mortgage over the term of the residential mortgage; and

(B) the debt to income ratio of the mortgagor; and

(4) any other specific standards the Federal banking agencies jointly determine are appropriate to ensure prudent underwriting of residential mortgages.

(b) **UPDATES TO STANDARDS.**—The Federal banking agencies, in consultation with the Federal Housing Finance Agency and the Department of Housing and Urban Development—

(1) shall review the standards established under this section not less frequently than every 5 years; and

(2) based on the review under paragraph (1), may revise the standards established under this section, as the Federal banking agencies, in consultation with the Federal Housing Finance Agency and the Department of Housing and Urban Development, determine to be necessary.

(c) **COMPLIANCE.**—It shall be a violation of Federal law—

(1) for any mortgage loan originator to fail to comply with the minimum standards for mortgage underwriting established under subsection (a) in originating a residential mortgage loan;

(2) for any company to maintain an extension of credit on a revolving basis to any person to fund a residential mortgage loan, unless the company reasonably determines that the residential mortgage loan funded by such credit was subject to underwriting standards no less stringent than the minimum standards for mortgage underwriting established under subsection (a); or

(3) for any company to purchase, fund by assignment, or guarantee a residential mortgage loan, unless the company reasonably determines that the residential mortgage loan was subject to underwriting standards no less stringent than the minimum standards for mortgage underwriting established under subsection (a).

(d) **IMPLEMENTATION.**—

(1) **REGULATIONS REQUIRED.**—The Federal banking agencies, in consultation with the Federal Housing Finance Agency, shall issue regulations to implement subsections (a) and (c), which shall take effect not later than 270 days after the date of enactment of this Act.

(2) **REPORT REQUIRED.**—If the Federal banking agencies have not issued final regulations under subsections (a) and (c) before the date that is 270 days after the date of enactment of this Act, the Federal banking agencies shall jointly 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 that—

(A) explains why final regulations have not been issued under subsections (a) and (c); and

(B) provides a timeline for the issuance of final regulations under subsections (a) and (c).

(e) **ENFORCEMENT.**—Compliance with the rules issued under this section shall be enforced by—

(1) the primary financial regulatory agency of an entity, with respect to an entity subject to the jurisdiction of a primary financial regulatory agency, in accordance with the statutes governing the jurisdiction of the primary financial regulatory agency over the entity and as if the action of the primary fi-

nancial regulatory agency were taken under such statutes; and

(2) the Bureau, with respect to a company that is not subject to the jurisdiction of a primary financial regulatory agency.

(f) **EXEMPTIONS FOR CERTAIN NONPROFIT MORTGAGE LOAN ORIGINATORS.**—

(1) **IN GENERAL.**—Not later than 180 days after the date of enactment of this Act, the Federal banking agencies, in consultation with the Secretary of Housing and Urban Development and the Secretary of the Treasury, may jointly issue rules to exempt from the requirements under subsection (a)(2), mortgage loan originators that—

(A) are exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986; and

(B) were in existence on January 1, 2009.

(2) **DETERMINING FACTORS.**—The Federal banking agencies shall ensure that—

(A) the lending activities of a mortgage loan originator that receives an exemption under this subsection do not threaten the safety and soundness of the banking system of the United States; and

(B) a mortgage loan originator that receives an exemption under this subsection—

(i) is not compensated based on the number or value of residential mortgage loan applications accepted, offered, or negotiated by the mortgage loan originator;

(ii) does not offer residential mortgage loans that have an interest rate greater than zero percent;

(iii) does not gain a monetary profit from any residential mortgage product or service provided;

(iv) has the primary purpose of serving low income housing needs;

(v) has not been specifically prohibited, by statute, from receiving Federal funding; and

(vi) meets any other requirements that the Federal banking agencies jointly determine are appropriate for ensuring that a mortgage loan originator that receives an exemption under this subsection does not threaten the safety and soundness of the banking system of the United States.

(3) **REPORTS REQUIRED.**—Before the issuance of final rules under subsection (a), and annually thereafter, the Federal banking agencies shall jointly 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 that—

(A) identifies the mortgage loan originators that receive an exemption under this subsection; and

(B) for each mortgage loan originator identified under subparagraph (A), the rationale for providing an exemption.

(4) **UPDATES TO EXEMPTIONS.**—The Federal banking agencies, in consultation with the Secretary of Housing and Urban Development and the Secretary of the Treasury—

(A) shall review the exemptions established under this subsection not less frequently than every 2 years; and

(B) based on the review under subparagraph (A), may revise the standards established under this subsection, as the Federal banking agencies, in consultation with the Secretary of Housing and Urban Development and the Secretary of the Treasury, determine to be necessary.

(g) **RULES OF CONSTRUCTION.**—Nothing in this section may be construed to permit—

(1) the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation to make or guarantee a residential mortgage loan that does not meet the minimum underwriting standards established under this section; or

(2) the Federal banking agencies to issue an exemption under subsection (f) that is not on a case-by-case basis.

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

(1) COMPANY.—The term “company”—

(A) has the same meaning as in section 2(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(b)); and

(B) includes a sole proprietorship.

(2) MORTGAGE LOAN ORIGINATOR.—The term “mortgage loan originator” means any company that takes residential mortgage loan applications and offers or negotiates terms of residential mortgage loans.

(3) RESIDENTIAL MORTGAGE LOAN.—The term “residential mortgage loan”—

(A) means any extension of credit primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent security interest in a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling; and

(B) does not include a mortgage loan for which mortgage insurance is provided by the Department of Veterans Affairs or the Rural Housing Administration.

(4) EXTENSION OF CREDIT; DWELLING.—The terms “extension of credit” and “dwelling” shall have the same meaning as in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

#### SEC. 943. STUDY ON FEDERAL HOUSING ADMINISTRATION UNDERWRITING STANDARDS.

(a) STUDY.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study evaluating whether the underwriting criteria used by the Federal Housing Administration are sufficient to ensure the solvency of the Mutual Mortgage Insurance Fund of the Federal Housing Administration and the safety and soundness of the banking system of the United States.

(2) ISSUES TO BE STUDIED.—In conducting the study under paragraph (1), the Comptroller General shall evaluate—

(A) down payment requirements for Federal Housing Administration borrowers;

(B) default rates of mortgages insured by the Federal Housing Administration;

(C) characteristics of Federal Housing Administration borrowers who are most likely to default;

(D) taxpayer exposure to losses incurred by the Federal Housing Administration;

(E) the impact of the market share of the Federal Housing Administration on efforts to sustain a viable private mortgage market; and

(F) any other factors that Comptroller General determines are appropriate.

(b) REPORT.—Not later than 6 months after the date of enactment of this Act, the Comptroller General shall submit to Congress a report on the study conducted under subsection (a) that includes recommendations for statutory improvements to be made to the underwriting criteria used by the Federal Housing Administration, to ensure the solvency of the Mutual Mortgage Insurance Fund of the Federal Housing Administration and the safety and soundness of the banking system of the United States.

#### SEC. 944.

**SA 4055.** Mrs. HUTCHISON (for herself, Mrs. HAGAN, and Mr. CORNYN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail”, to protect the American taxpayer

by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 485, line 14, strike “and” and all that follows through line 25 and insert the following:

(B) subject to such restrictions as the Federal banking agencies may determine, does not include purchasing or selling, or otherwise acquiring or disposing of, stocks, bonds, options, commodities, derivatives, or other financial instruments on behalf of a customer, as part of market making activities, or otherwise in connection with or in facilitation of customer relationships, including risk-mitigating hedging activities related to such a purchase, sale, acquisition, or disposal; and

(C) does not include the investments of a regulated insurance company, or a regulated insurance affiliate or regulated insurance subsidiary thereof, if—

(i) such investments are in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

(ii) the Federal banking agencies, after consultation with the Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a law, a regulation, or written guidance described in clause (i) is insufficient to accomplish the purposes of this section; and

**SA 4056.** Mr. BOND (for himself, Mr. DODD, Mr. WARNER, Mr. BROWN of Massachusetts, Ms. CANTWELL, Mr. BEGICH, Mrs. MURRAY, Mr. CORKER, Mr. TESTER, Mr. BROWNBACK, Mr. BAUCUS, and Mr. REID) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail”, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; as follows:

On page 387, strike line 13 and all that follows through page 388, line 3, and insert the following:

#### SEC. 412. ADJUSTING THE ACCREDITED INVESTOR STANDARD.

(a) IN GENERAL.—The Commission shall adjust any net worth standard for an accredited investor, as set forth in the rules of the Commission under the Securities Act of 1933, so that the individual net worth of any natural person, or joint net worth with the spouse of that person, at the time of purchase, is more than \$1,000,000 (as such amount is adjusted periodically by rule of the Commission), excluding the value of the primary residence of such natural person, except that during the 4-year period that begins on the date of enactment of this Act, any net worth standard shall be \$1,000,000, excluding the value of the primary residence of such natural person.

(b) REVIEW AND ADJUSTMENT.—

(1) INITIAL REVIEW AND ADJUSTMENT.—

(A) INITIAL REVIEW.—The Commission may undertake a review of the definition of the term “accredited investor”, as such term applies to natural persons, to determine wheth-

er the requirements of the definition, excluding the requirement relating to the net worth standard described in subsection (a), should be adjusted or modified for the protection of investors, in the public interest, and in light of the economy.

(B) ADJUSTMENT OR MODIFICATION.—Upon completion of a review under subparagraph (A), the Commission may, by notice and comment rulemaking, make such adjustments to the definition of the term “accredited investor”, excluding adjusting or modifying the requirement relating to the net worth standard described in subsection (a), as such term applies to natural persons, as the Commission may deem appropriate for the protection of investors, in the public interest, and in light of the economy.

(2) SUBSEQUENT REVIEWS AND ADJUSTMENT.—

(A) SUBSEQUENT REVIEWS.—Not earlier than 4 years after the date of enactment of this Act, and not less frequently than once every 4 years thereafter, the Commission shall undertake a review of the definition, in its entirety, of the term “accredited investor”, as defined in section 230.215 of title 17, Code of Federal Regulations, or any successor thereto, as such term applies to natural persons, to determine whether the requirements of the definition should be adjusted or modified for the protection of investors, in the public interest, and in light of the economy.

(B) ADJUSTMENT OR MODIFICATION.—Upon completion of a review under subparagraph (A), the Commission may, by notice and comment rulemaking, make such adjustments to the definition of the term “accredited investor”, as defined in section 230.215 of title 17, Code of Federal Regulations, or any successor thereto, as such term applies to natural persons, as the Commission may deem appropriate for the protection of investors, in the public interest, and in light of the economy.

On page 388, line 14, strike “1 year” and insert “3 years”.

On page 998, strike line 12 and all that follows through page 1001, line 25, and insert the following:

#### SEC. 926. DISQUALIFYING FELONS AND OTHER “BAD ACTORS” FROM REGULATION D OFFERINGS.

Not later than 1 year after the date of enactment of this Act, the Commission shall issue rules for the disqualification of offerings and sales of securities made under section 230.506 of title 17, Code of Federal Regulations, that—

(1) are substantially similar to the provisions of section 230.262 of title 17, Code of Federal Regulations, or any successor thereto; and

(2) disqualify any offering or sale of securities by a person that—

(A) is subject to a final order of a State securities commission (or an agency or officer of a State performing like functions), a State authority that supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency or officer of a State performing like functions), an appropriate Federal banking agency, or the National Credit Union Administration, that—

(i) bars the person from—

(I) association with an entity regulated by such commission, authority, agency, or officer;

(II) engaging in the business of securities, insurance, or banking; or

(III) engaging in savings association or credit union activities; or

(ii) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within the 10-year period ending on the date of the filing of the offer or sale; or



(B) has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission.

**SA 4057.** Mr. ENZI (for himself and Mr. CORKER) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail,” to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 956, strike line 10 and all that follows through page 957, line 11, and insert the following:

**SEC. 978. FUNDING FOR GOVERNMENTAL ACCOUNTING STANDARDS BOARD.**

(a) AMENDMENT TO SECURITIES ACT OF 1933.—Section 19 of the Securities Act of 1933 (15 U.S.C. 77s), as amended by section 912, is further amended by adding at the end the following:

“(g)(1) The Commission may, subject to the limitations imposed by section 15B of the Securities Exchange Act (15 U.S.C. 78o-4) require a national securities association registered under the Securities Exchange Act of 1934 to establish—

“(A) a reasonable annual accounting support fee to adequately fund the annual budget of the Governmental Accounting Standards Board (hereafter referred to in this subsection as the ‘GASB’); and

“(B) rules and procedures, in consultation with the principal organizations representing State governors, legislators, local elected officials, and State and local finance officers, to provide for the equitable allocation, assessment, and collection of the accounting support fee established under subparagraph (A) from the members of the association, and the remittance of all such accounting support fees to the Financial Accounting Foundation.

“(2) ANNUAL BUDGET.—For purpose of this subsection, the annual budget of the GASB is the annual budget reviewed and approved according to the FAF’s internal procedures.

“(3) USE OF FUNDS.—Any funds collected under this subsection shall be used to support the efforts of the GASB to establish standards of financial accounting and reporting recognized as generally accepted accounting principles applicable to State and local governments of the United States.

“(4) LIMITATION ON FEE.—The annual accounting support fees collected under this subsection for a fiscal year shall not exceed the recoverable annual budgeted expenses of the GASB (which may include operating expenses, capital, and accrued items).

“(5) RULES OF CONSTRUCTION.—

“(A) FEES NOT PUBLIC MONIES.—Accounting support fees collected pursuant to this subsection and other receipts of the GASB shall not be considered public monies of the United States.

“(B) LIMITATION ON AUTHORITY OF THE COMMISSION.—Nothing in this subsection shall be construed to—

“(i) provide the Commission or any national securities association direct or indirect oversight of GASB’s budget or technical agenda; or

“(ii) affect the GASB’s setting of generally accepted accounting principles.

“(C) NONINTERFERENCE WITH STATES.—Nothing in this subsection shall be construed

to impair or limit the authority of a State or local government to establish accounting and financial reporting standards.”.

(b) STUDY OF FUNDING FOR GOVERNMENTAL ACCOUNTING STANDARDS BOARD.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study that evaluates—

(A) the role and importance of the Governmental Accounting Standards Board in the municipal securities markets;

(B) the manner and the level at which the Governmental Accounting Standards Board has been funded;

(2) CONSULTATION.—In conducting the study required under paragraph (1), the Comptroller General shall consult with the principal organizations representing State governors, legislators, and local elected officials and State and local finance officers.

(3) REPORT.—Not later than 180 days after the date of enactment of this Act, the Comptroller General 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 on the study required under paragraph (1).

**SA 4058.** Mr. SHELBY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail,” to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1223, line 5, strike “and” and all that follows through line 7, and insert the following:

(8) an Office of Management and Budget (hereafter in this section referred to as “OMB”) analysis of the economic impact of all rules and orders adopted by the Bureau, as well as other initiatives conducted by the Bureau, during the preceding year, which shall include—

(A) the total costs of such rules, orders, and initiatives;

(B) the annual impact on employment, both nationally and by State;

(C) the estimated time for covered persons to comply with such rules, orders, and initiatives, both on average and by size of business covered; and

(D) the number of persons affected by each such rule, order, and initiative;

(9) an OMB analysis of the economic impact of all statutes, rules, regulations, and orders related to this Act, which shall include—

(A) a statement of the need for the proposed action and an analysis of whether there exists a market failure;

(B) an examination of alternative approaches, including a baseline case of not taking the regulatory action;

(C) a statement of the plausible scenarios for which the proposed action could lead to a Government failure;

(D) the total costs of all such rules and orders;

(E) the annual impact on employment nationally, by State, and by industry;

(F) the estimated time for covered persons to comply with all such rules, orders, and initiatives both on average and by size of business covered;

(G) the number of persons affected by each such rule, order, and initiative;

(H) an analysis of estimated effects on market efficiency and market competition, including a Regulatory Flexibility Act (5 U.S.C. chapter 6) analysis to assess the impact on small business and other small entities;

(I) an analysis of estimated effects on United States economic growth, United States economic competitiveness, and international trade;

(J) a Paperwork Reduction Act (44 U.S.C. chapter 35) analysis;

(K) a report of the precision of estimates and a statement of the key assumptions;

(L) a sensitivity analysis, based on plausible alternative assumptions for data, methodologies, and assumed levels of compliance and enforcement;

(M) any other economic analysis of regulatory actions required by Executive Order by the President of the United States;

(10) the annual compensation received by employees of the Bureau, including the total, the average, and the number of employees receiving salaries in excess of \$100,000 and \$200,000 and such calculation of compensation shall include the value of all non-salary compensation (including flex-time, vacation time, retirement benefits, and collective bargaining benefits);

(11) a copy of any collective bargaining agreements, or amendments to such agreements, entered into between the Bureau and its union during the preceding year;

(12) an analysis of the effectiveness of the Bureau, including evidence on whether each rule and regulation it has adopted during the preceding 10 years have produced a reduction in consumer complaints;

(13) a copy of any agreements with State attorneys, State regulators, private attorneys, or any other person or entity relating to the enforcement of consumer financial protection laws; and

(14) an analysis of the efforts of the Bureau to fulfill the fair lending mission of the Bureau.

(d) ANNUAL REVIEW OF RULES AND REGULATIONS.—

(1) IN GENERAL.—OMB shall review, on a rolling-basis each statute, rule, regulation, and order related to this Act, to determine whether such statute, rule, regulation, order has achieved its intended result and whether such statute, rule, regulation, or order should be modified or repealed based on changes in the marketplace. Each such statute, rule, regulation, and order shall be reviewed not less frequently than once every 8 years.

(2) REPORT.—In connection with the review required under paragraph (1), OMB shall annually produce a report discussing its findings, including—

(A) providing evidence on whether each statute, rule, regulation, or order under review should be retained, modified, or repealed;

(B) a discussion of the original intent of each statute, rule, regulation, and order;

(C) an analysis of whether each such statute, rule, regulation, and order achieved its intended results; and

(D) a cost benefit analysis of such statute, rule, regulation, and order that estimates the actual costs imposed on the private sector, compared to the actual benefits to the private sector attained, which cost benefit analysis shall include the costs of complying with such statute, rule, regulation, and order, the impact on innovation, and actual litigation costs incurred by private and governmental parties in litigating such statute and regulation.

(3) NOTICE TO BUREAU.—If OMB determines under paragraph (2) that any regulation has

not yielded a positive cost-benefit result, the Bureau shall be promptly repealed such regulation or modify such regulation so that it is estimated to produce a positive cost-benefit result.

(4) NOTICE TO CONGRESS.—If OMB determines under paragraph (2) that any statute has not yielded a positive cost-benefit result, OMB shall notify Congress and provide a recommendation on whether the statute should be repealed or modified to produce a positive cost-benefit result.

**SA 4059.** Mr. REID (for Mrs. LINCOLN (for herself, Mr. CHAMBLISS, Mr. COCHRAN, and Mr. BROWN of Ohio)) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail”, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 565, between lines 2 and 3, insert the following:

(e) PRESERVATION OF OTHER REGULATORY AUTHORITY.—Section 2(a)(1)(C) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(C)) (as amended by section 717(a)) is amended by adding at the end the following:

“(vi) No provision of this Act shall be construed—

“(I) to supersede or limit the authority of the Federal Energy Regulatory Commission under the Federal Power Act (16 U.S.C. 791a et seq.) or the Natural Gas Act (15 U.S.C. 717 et seq.);

“(II) to restrict the Federal Energy Regulatory Commission from carrying out the duties and responsibilities of the Federal Energy Regulatory Commission under the Acts described in subclause (I);

“(III) to affect the authority of the Federal Energy Regulatory Commission to approve, deny, or otherwise permit any rate or charge made, demanded, or received by any public utility or natural gas company for the transportation or sale of electric energy or natural gas subject to the jurisdiction of the Federal Energy Regulatory Commission; or

“(IV) to supersede or limit the authority of a State regulatory commission that has jurisdiction to regulate rates and charges for the transmission or sale of electric energy within the State, or restrict that State regulatory commission from carrying out the duties and responsibilities of the State regulatory commission pursuant to the jurisdiction of the State regulatory commission to regulate rates and charges for the transmission or sale of electric energy.

“(vii) Nothing in clause (vi) shall affect the Commission’s exclusive jurisdiction under subparagraph (A) with respect to the trading, execution, or clearing of any agreement, contract, or transaction on or subject to the rules of a registered entity, including a designated contract market, derivatives clearing organization, or swap execution facility.”.

(f) PUBLIC INTEREST WAIVER.—Section 4(c) of the Commodity Exchange Act (7 U.S.C. 6(c)) (as amended by section 721(d)) is amended by adding at the end the following:

“(6) If the Commission determines that the exemption would be consistent with the public interest and the purposes of this Act, the Commission shall, in accordance with para-

graphs (1) and (2), exempt from the requirements of this Act an agreement, contract, or transaction that is entered into—

“(A) pursuant to a tariff or rate schedule approved or permitted to take effect by the Federal Energy Regulatory Commission;

“(B) pursuant to a tariff or rate schedule establishing rates or charges for, or protocols governing, the sale of electric energy approved or permitted to take effect by the regulatory body of the State or municipality having jurisdiction to regulate rates and charges for the sale of electric energy within the State or municipality; or

“(C) between entities described in section 201(f) of the Federal Power Act (16 U.S.C. 824(f)).

“(7)(A) Any person may apply to the Commission for an exemption from the requirements of this Act with respect to an agreement, contract, or transaction described in paragraph (6).

“(B) Not later than 1 business day after the date of receipt of an application described in subparagraph (A), the Commission shall notify, and provide a copy of the application to—

“(i) the Federal Energy Regulatory Commission; and

“(ii) with respect to an application filed with respect to paragraph (6)(B), the relevant State regulatory body or municipality.

“(C) The Commission shall provide not less than a 30-day period for public comment with respect to any application described in subparagraph (A).

“(D)(i) Not later than the date on which the public comment period described in subparagraph (C) expires, the Federal Energy Regulatory Commission (and the relevant State regulatory body or municipality with respect to an application filed with respect to paragraph (6)(B)) may provide to the Commission a recommendation regarding the application for exemption.

“(ii) The Commission shall give due consideration to any recommendation described in clause (i).

“(E) Not later than 120 days after the date of receipt of an application described in subparagraph (A), the Commission shall, by order—

“(i) grant an exemption in accordance with paragraph (6); or

“(ii) provide to the applicant a document that contains a description of each reason relied on by the Commission for not granting an exemption.”.

**SA 4060.** Mr. BROWN of Massachusetts submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail”, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 485, strike line 1 and all that follows through page 489, line 13, and insert the following:

(2) the term “insured depository institution” does not include an institution described in section 2(c)(2)(D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(D));

(3) the term “proprietary trading”—

(A) means purchasing or selling, or otherwise acquiring or disposing of, stocks, bonds, options, commodities, derivatives, or other

financial instruments by an insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), and any subsidiary of such institution or company, for the trading book (or such other portfolio as the Federal banking agencies may determine) of such institution, company, or subsidiary;

(B) subject to such restrictions as the Federal banking agencies may determine, does not include purchasing or selling, or otherwise acquiring or disposing of, stocks, bonds, options, commodities, derivatives, or other financial instruments on behalf of a customer, as part of market making activities, or otherwise in connection with or in facilitation of customer relationships, including risk-mitigating hedging activities related to such a purchase, sale, acquisition, or disposal; and

(C) does not include the investments of a regulated insurance company, or a regulated insurance affiliate or regulated insurance subsidiary thereof, if—

(i) such investments are in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

(ii) the Federal banking agencies, after consultation with the Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a law, a regulation, or written guidance described in clause (i) is insufficient to accomplish the purposes of this section; and

(4) the term “sponsoring”, when used with respect to a hedge fund or private equity fund, means—

(A) serving as a general partner, managing member, or trustee of the fund;

(B) in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund; or

(C) sharing with the fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

(b) PROHIBITION ON PROPRIETARY TRADING.—

(1) IN GENERAL.—Subject to the recommendations and modifications of the Council under subsection (g), and except as provided in paragraph (2) or (3), the appropriate Federal banking agencies shall, through a rulemaking under subsection (g), jointly prohibit proprietary trading by an insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), and any subsidiary of such institution or company.

(2) EXCEPTED OBLIGATIONS.—

(A) IN GENERAL.—The prohibition under this subsection shall not apply with respect to an investment that is otherwise authorized by Federal law in—

(i) obligations of the United States or any agency of the United States, including obligations fully guaranteed as to principal and interest by the United States or an agency of the United States;

(ii) obligations, participations, or other instruments of, or issued by, the Government National Mortgage Association, the Federal



National Mortgage Association, or the Federal Home Loan Mortgage Corporation, including obligations fully guaranteed as to principal and interest by such entities; and

(iii) obligations of any State or any political subdivision of a State.

(B) CONDITIONS.—The appropriate Federal banking agencies may impose conditions on the conduct of investments described in subparagraph (A).

(C) RULE OF CONSTRUCTION.—Nothing in subparagraph (A) may be construed to grant any authority to any person that is not otherwise provided in Federal law.

(3) FOREIGN ACTIVITIES.—An investment or activity conducted by a company pursuant to paragraph (9) or (13) of section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) solely outside of the United States shall not be subject to the prohibition under paragraph (1), provided that the company is not directly or indirectly controlled by a company that is organized under the laws of the United States or of a State.

(c) PROHIBITION ON SPONSORING AND INVESTING IN HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

(1) IN GENERAL.—Except as provided in paragraph (2), and subject to the recommendations and modifications of the Council under subsection (g), the appropriate Federal banking agencies shall, through a rulemaking under subsection (g), jointly prohibit an insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or any subsidiary of such institution or company, from sponsoring or investing in a hedge fund or a private equity fund.

(2) APPLICATION TO FOREIGN ACTIVITIES OF FOREIGN FIRMS.—An investment or activity conducted by a company pursuant to paragraph (9) or (13) of section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) solely outside of the United States shall not be subject to the prohibitions and restrictions under paragraph (1), provided that the company is not directly or indirectly controlled by a company that is organized under the laws of the United States or of a State.

(3) EXCEPTION.—Notwithstanding paragraph (1), an insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or any subsidiary of such institution or company may sponsor or invest in a hedge fund or a private equity fund, if—

(A) such institution, company, or subsidiary provides trust, fiduciary, or advisory services to the fund;

(B) the fund is sponsored and offered in connection with the provision of trust, fiduciary, or advisory services by such institution, company, or subsidiary to persons who are, or may be, customers or clients of such institution, company, or subsidiary;

(C) such institution, company, or subsidiary—

(i) does not acquire or retain an equity, partnership, or ownership interest in the fund; or

(ii) acquires or retains an equity, partnership, or ownership interest, if—

(I) on the date that is 12 months after the date on which the fund is established, the equity, partnership, or ownership interest is not greater than 5 percent of the total equity of the fund; and

(II) the aggregate equity investments by such institution, company, or subsidiary in the fund do not exceed 5 percent of Tier 1

capital of such institution, company, or subsidiary;

(D) such institution, company, or subsidiary does not enter into or otherwise engage in any transaction with the fund that is a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c), except on terms and under circumstances specified in section 23B of the Federal Reserve Act (12 U.S.C. 371c-1);

(E) the obligations of the fund are not guaranteed, directly or indirectly, by such institution, company, or subsidiary any affiliate of such institution, company, or subsidiary; and

(F) such institution, company, or subsidiary does not share with the fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

**SA 4061.** Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail”, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 539, strike line 14 and all that follows through page 584, line 7, and insert the following:

“(33) MAJOR SWAP PARTICIPANT.—

“(A) IN GENERAL.—The term ‘major swap participant’ means any person who is not a swap dealer, and—

“(i)(I) maintains a substantial net position in swaps for any of the major swap categories as determined by the Commission, excluding—

“(aa) positions held for hedging or mitigating commercial risk, including operating risk and balance sheet risk, of such person or its affiliates; and

“(bb) positions maintained by any employee benefit plan (or any contract held by such a plan) as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan; and

“(II) whose outstanding swaps create substantial net counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets; or

“(ii)(I) is a financial entity, other than an entity predominantly engaged in providing customer financing for the purchase of an affiliate’s merchandise or manufactured goods, that is highly leveraged relative to the amount of capital it holds;

“(II) maintains a substantial net position in outstanding swaps in any major swap category as determined by the Commission; and

“(III) whose outstanding swaps create substantial net counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets.

“(B) DEFINITION OF SUBSTANTIAL NET POSITION.—For purposes of subparagraph (A), the Commission shall define by rule or regulation the term ‘substantial net position’ to mean a position after application of legally enforceable netting or collateral arrangements that meets a threshold the Commission determines to be prudent for the effective

monitoring, management, and oversight of entities that are systemically important or can significantly impact the financial system of the United States.

“(C) SCOPE OF DESIGNATION.—For purposes of subparagraph (A), a person may be designated as a major swap participant for 1 or more categories of swaps without being classified as a major swap participant for all classes of swaps.

“(D) CAPITAL.—In setting capital requirements for a person that is designated as a major swap participant for a single type or single class or category of swaps or activities, the prudential regulator and the Commission shall take into account the risks associated with other types of swaps or classes of swaps or categories of swaps engaged in by virtue of the status of the person as a major swap participant.”;

(17) by inserting after paragraph (38) (as redesignated by paragraph (1)) the following:

“(39) PRUDENTIAL REGULATOR.—The term ‘prudential regulator’ means—

“(A) the Office of the Comptroller of the Currency, in the case of—

“(i) any national banking association;

“(ii) any Federal branch or agency of a foreign bank; or

“(iii) any Federal savings association;

“(B) the Federal Deposit Insurance Corporation, in the case of—

“(i) any insured State bank;

“(ii) any foreign bank having an insured branch; or

“(iii) any State savings association;

“(C) the Board of Governors of the Federal Reserve System, in the case of—

“(i) any noninsured State member bank;

“(ii) any branch or agency of a foreign bank with respect to any provision of the Federal Reserve Act (12 U.S.C. 221 et seq.) which is made applicable under the International Banking Act of 1978 (12 U.S.C. 3101 et seq.);

“(iii) any foreign bank which does not operate an insured branch;

“(iv) any agency or commercial lending company other than a Federal agency; or

“(v) supervisory or regulatory proceedings arising from the authority given to the Board of Governors under section 7(c)(1) of the International Banking Act of 1978 (12 U.S.C. 3105(c)(1)), including such proceedings under the Financial Institutions Supervisory Act of 1966 (12 U.S.C. 1464 et seq.); and

“(D) the Farm Credit Administration, in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is an institution chartered under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).”;

(18) in paragraph (40) (as redesignated by paragraph (1))—

(A) by striking subparagraph (B);

(B) by redesignating subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (F), respectively;

(C) in subparagraph (C) (as so redesignated), by striking “and”;

(D) by inserting after subparagraph (C) (as so redesignated) the following:

“(D) a swap execution facility registered under section 5h;

“(E) a swap data repository; and”;

(19) by inserting after paragraph (41) (as redesignated by paragraph (1)) the following:

“(42) SECURITY-BASED SWAP.—The term ‘security-based swap’ has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

“(43) SECURITY-BASED SWAP DEALER.—The term ‘security-based swap dealer’ has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).”;

(20) in paragraph (46) (as redesignated by paragraph (1)), by striking “subject to section 2(h)(7)” and inserting “subject to section 2(h)(5)”;

(21) by inserting after paragraph (46) (as redesignated by paragraph (1)) the following:

“(47) SWAP.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘swap’ means any agreement, contract, or transaction—

“(i) that is a put, call, cap, floor, collar, or similar option of any kind that is for the purchase or sale, or based on the value, of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind;

“(ii) that provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;

“(iii) that provides on an executory basis for the exchange, on a fixed or contingent basis, of 1 or more payments based on the value or level of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset (including any enterprise or investment pool) or liability that incorporates the financial risk so transferred, including any agreement, contract, or transaction commonly known as—

“(I) an interest rate swap;

“(II) a rate floor;

“(III) a rate cap;

“(IV) a rate collar;

“(V) a cross-currency rate swap;

“(VI) a basis swap;

“(VII) a currency swap;

“(VIII) a foreign exchange swap;

“(IX) a total return swap;

“(X) an equity index swap;

“(XI) an equity swap;

“(XII) a debt index swap;

“(XIII) a debt swap;

“(XIV) a credit spread;

“(XV) a credit default swap;

“(XVI) a credit swap;

“(XVII) a weather swap;

“(XVIII) an energy swap;

“(XIX) a metal swap;

“(XX) an agricultural swap;

“(XXI) an emissions swap; and

“(XXII) a commodity swap;

“(iv) that is an agreement, contract, or transaction that is, or in the future becomes commonly known to the trade as a swap;

“(v) including any security-based swap agreement which meets the definition of ‘swap agreement’ as defined in section 206A of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein; or

“(vi) that is any combination or permutation of, or option on, any agreement, contract, or transaction described in any of clauses (i) through (v).

“(B) EXCLUSIONS.—The term ‘swap’ does not include—

“(i) any contract of sale of a commodity for future delivery (or option on such a contract), leverage contract authorized under section 19, security futures product, or

agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);

“(ii) any sale of a nonfinancial commodity or security for deferred shipment or delivery, so long as the transaction is intended to be physically settled;

“(iii) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof, that is subject to—

“(I) the Securities Act of 1933 (15 U.S.C. 77a et seq.); and

“(II) the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

“(iv) any put, call, straddle, option, or privilege relating to a foreign currency entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a));

“(v) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a fixed basis that is subject to—

“(I) the Securities Act of 1933 (15 U.S.C. 77a et seq.); and

“(II) the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

“(vi) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a contingent basis that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), unless the agreement, contract, or transaction predicates the purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;

“(vii) any note, bond, or evidence of indebtedness that is a security, as defined in section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a));

“(viii) any agreement, contract, or transaction that is—

“(I) based on a security; and

“(II) entered into directly or through an underwriter (as defined in section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a))) by the issuer of such security for the purposes of raising capital, unless the agreement, contract, or transaction is entered into to manage a risk associated with capital raising;

“(ix) any agreement, contract, or transaction a counterparty of which is a Federal Reserve bank, the Federal Government, or a Federal agency that is expressly backed by the full faith and credit of the United States; and

“(x) any security-based swap, other than a security-based swap as described in subparagraph (D).

“(C) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—

“(i) IN GENERAL.—Except as provided in clause (ii), the term ‘swap’ includes a master agreement that provides for an agreement, contract, or transaction that is a swap under subparagraph (A), together with each supplement to any master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a swap pursuant to subparagraph (A).

“(ii) EXCEPTION.—For purposes of clause (i), the master agreement shall be considered to be a swap only with respect to each agreement, contract, or transaction covered by the master agreement that is a swap pursuant to subparagraph (A).

“(D) MIXED SWAP.—The term ‘security-based swap’ includes any agreement, contract, or transaction that is as described in section 3(a)(68)(A) of the Securities Exchange

Act of 1934 (15 U.S.C. 78c(a)(68)(A)) and also is based on the value of 1 or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than an event described in subparagraph (A)(iii)).

“(E) TREATMENT OF FOREIGN EXCHANGE SWAPS AND FORWARDS.—

“(i) IN GENERAL.—Foreign exchange swaps and foreign exchange forwards shall be considered swaps under this paragraph unless the Secretary makes a written determination that either foreign exchange swaps or foreign exchange forwards or both—

“(I) should be not be regulated as swaps under this Act; and

“(II) are not structured to evade the Wall Street Transparency and Accountability Act of 2010 in violation of any rule promulgated by the Commission pursuant to section 111(c) of that Act.

“(ii) CONGRESSIONAL NOTICE; EFFECTIVENESS.—The Secretary shall submit any written determination under clause (i) to the appropriate committees of Congress, including the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives. Any such written determination by the Secretary shall not be effective until it is submitted to the appropriate committees of Congress.

“(iii) REPORTING.—Notwithstanding a written determination by the Secretary under clause (i), all foreign exchange swaps and foreign exchange forwards shall be reported to either a swap data repository, or, if there is no swap data repository that would accept such swaps or forwards, to the Commission pursuant to section 4r within such time period as the Commission may by rule or regulation prescribe.

“(iv) BUSINESS STANDARDS.—Notwithstanding clauses (ix) and (x) of subparagraph (B) and clause (ii), any party to a foreign exchange swap or forward that is a swap dealer or major swap participant shall conform to the business conduct standards contained in section 4s(h).

“(v) SECRETARY.—For purposes of this subparagraph only, the term ‘Secretary’ means the Secretary of the Treasury.

“(F) EXCEPTION FOR CERTAIN FOREIGN EXCHANGE SWAPS AND FORWARDS.—

“(i) REGISTERED ENTITIES.—Any foreign exchange swap and any foreign exchange forward that is listed and traded on or subject to the rules of a designated contract market or a swap execution facility, or that is cleared by a derivatives clearing organization shall not be exempt from any provision of this Act or amendments made by the Wall Street Transparency and Accountability Act of 2010 prohibiting fraud or manipulation.

“(ii) RETAIL TRANSACTIONS.—Nothing in subparagraph (E) shall affect, or be construed to affect, the applicability of this Act or the jurisdiction of the Commission with respect to agreements, contracts, or transactions in foreign currency pursuant to section 2(c)(2).

“(48) SWAP DATA REPOSITORY.—The term ‘swap data repository’ means any person that collects, calculates, prepares, or maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties.

“(49) SWAP DEALER.—

“(A) IN GENERAL.—The term ‘swap dealer’ means any person who—

“(i) holds itself out as a dealer in swaps;  
 “(ii) makes a market in swaps;  
 “(iii) regularly engages in the purchase and sale of swaps to customers as its ordinary course of business; and  
 “(iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps.

“(B) INCLUSION.—A person may be designated as a swap dealer for a single type or single class or category of swap or activities and considered not to be a swap dealer for other types, classes, or categories of swaps or activities.

“(C) CAPITAL.—In setting capital requirements for a person that is designated as a swap dealer for a single type or single class or category of swap or activities, the prudential regulator and the Commission shall take into account the risks associated with other types of swaps or classes of swaps or categories of swaps engaged in by virtue of the status of the person as a swap dealer.

“(D) EXCEPTION.—The term ‘swap dealer’ does not include a person that buys or sells swaps for such person’s own account, either individually or in a fiduciary capacity, or on behalf of any affiliates of such person, unless it does so as a market maker and as a part of a regular business.

“(50) SWAP EXECUTION FACILITY.—The term ‘swap execution facility’ means a facility in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by other participants that are open to multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that—

“(A) facilitates the execution of swaps between persons; and

“(B) is not a designated contract market.”; and

(22) in paragraph (51) (as redesignated by paragraph (1)), in subparagraph (A)(i), by striking “participants” and inserting “participants”.

(b) AUTHORITY TO DEFINE TERMS.—The Commodity Futures Trading Commission may adopt a rule to define—

(1) the term “commercial risk”; and

(2) any other term included in an amendment to the Commodity Exchange Act (7 U.S.C. 1 et seq.) made by this subtitle.

(c) MODIFICATION OF DEFINITIONS.—To include transactions and entities that have been structured to evade this subtitle (or an amendment made by this subtitle), the Commodity Futures Trading Commission shall adopt a rule to further define the terms “swap”, “swap dealer”, “major swap participant”, and “eligible contract participant”.

(d) EXEMPTIONS.—Section 4(c)(1) of the Commodity Exchange Act (7 U.S.C. 6(c)(1)) is amended by striking “except that” and all that follows through the period at the end and inserting the following: “except that—

“(A) unless the Commission is expressly authorized by any provision described in this subparagraph to grant exemptions, with respect to amendments made by subtitle A of the Wall Street Transparency and Accountability Act of 2010—

“(i) with respect to—

“(I) paragraphs (2), (3), (4), (5), and (7), clause (vii)(III) of paragraph (17), paragraphs (23), (24), (31), (32), (38), (39), (41), (42), (46), (47), (48), and (49) of section 1a, and sections 2(a)(13), 2(c)(D), 4a(a), 4a(b), 4d(c), 4d(d), 4r, 4s, 5b(a), 5b(b), 5(d), 5(g), 5(h), 5b(c), 5b(i), 8e, and 21; and

“(II) section 206(e) of the Gramm-Leach-Bliley Act (Public Law 106-102; 15 U.S.C. 78c note); and

“(ii) in subsection (c) of section 111 and section 132; and

“(B) the Commission and the Securities and Exchange Commission may by rule, reg-

ulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D)) if the Commission determines that the exemption would be consistent with the public interest.”.

(e) CONFORMING AMENDMENTS.—

(1) Section 2(c)(2)(B)(i)(II) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(B)(i)(II)) is amended—

(A) in item (cc)—

(i) in subitem (AA), by striking “section 1a(20)” and inserting “section 1a”; and

(ii) in subitem (BB), by striking “section 1a(20)” and inserting “section 1a”; and

(B) in item (dd), by striking “section 1a(12)(A)(ii)” and inserting “section 1a(18)(A)(ii)”.

(2) Section 4m(3) of the Commodity Exchange Act (7 U.S.C. 6m(3)) is amended by striking “section 1a(6)” and inserting “section 1a”.

(3) Section 4q(a)(1) of the Commodity Exchange Act (7 U.S.C. 6o-1(a)(1)) is amended by striking “section 1a(4)” and inserting “section 1a(9)”.

(4) Section 5(e)(1) of the Commodity Exchange Act (7 U.S.C. 7(e)(1)) is amended by striking “section 1a(4)” and inserting “section 1a(9)”.

(5) Section 5a(b)(2)(F) of the Commodity Exchange Act (7 U.S.C. 7a(b)(2)(F)) is amended by striking “section 1a(4)” and inserting “section 1a(9)”.

(6) Section 5b(a) of the Commodity Exchange Act (7 U.S.C. 7a-1(a)) is amended, in the matter preceding paragraph (1), by striking “section 1a(9)” and inserting “section 1a”.

(7) Section 5c(c)(2)(B) of the Commodity Exchange Act (7 U.S.C. 7a-2(c)(2)(B)) is amended by striking “section 1a(4)” and inserting “section 1a(9)”.

(8) Section 6(g)(5)(B)(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(g)(5)(B)(i)) is amended—

(A) in subclause (I), by striking “section 1a(12)(B)(ii)” and inserting “section 1a(18)(B)(ii)”;

(B) in subclause (II), by striking “section 1a(12)” and inserting “section 1a(18)”.

(9) The Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27 et seq.) is amended—

(A) in section 402—

(i) in subsection (a)(7), by striking “section 1a(20)” and inserting “section 1a”; and

(ii) in subsection (b)(2), by striking “section 1a(12)” and inserting “section 1a”; and

(iii) in subsection (c), by striking “section 1a(4)” and inserting “section 1a”; and

(iv) in subsection (d)—

(I) in the matter preceding paragraph (1), by striking “section 1a(4)” and inserting “section 1a(9)”;

(II) in paragraph (1)—

(aa) in subparagraph (A), by striking “section 1a(12)” and inserting “section 1a”; and

(bb) in subparagraph (B), by striking “section 1a(33)” and inserting “section 1a”;

(III) in paragraph (2)—

(aa) in subparagraph (A), by striking “section 1a(10)” and inserting “section 1a”; and

(bb) in subparagraph (B), by striking “section 1a(12)(B)(ii)” and inserting “section 1a(18)(B)(ii)”;

(cc) in subparagraph (C), by striking “section 1a(12)” and inserting “section 1a(18)”;

and

(dd) in subparagraph (D), by striking “section 1a(13)” and inserting “section 1a”; and

(B) in section 404(1), by striking “section 1a(4)” and inserting “section 1a”.

SEC. 722. JURISDICTION.

(a) EXCLUSIVE JURISDICTION.—Section 2(a)(1)(A) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(A)) is amended in the first sentence—

(1) by inserting “the Wall Street Transparency and Accountability Act of 2010 (in-

cluding an amendment made by that Act) and” after “otherwise provided in”;

(2) by striking “(c) through (i) of this section” and inserting “(c) and (f)”;

(3) by striking “contracts of sale” and inserting “swaps or contracts of sale”; and

(4) by striking “or derivatives transaction execution facility registered pursuant to section 5 or 5a” and inserting “pursuant to section 5”.

(b) REGULATION OF SWAPS UNDER FEDERAL AND STATE LAW.—Section 12 of the Commodity Exchange Act (7 U.S.C. 16) is amended by adding at the end the following:

“(h) REGULATION OF SWAPS AS INSURANCE UNDER STATE LAW.—A swap—

“(1) shall not be considered to be insurance; and

“(2) may not be regulated as an insurance contract under the law of any State.”.

(c) AGREEMENTS, CONTRACTS, AND TRANSACTIONS TRADED ON AN ORGANIZED EXCHANGE.—Section 2(c)(2)(A) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(A)) is amended—

(1) in clause (i), by striking “or” at the end;

(2) by redesignating clause (ii) as clause (iii); and

(3) by inserting after clause (i) the following:

“(ii) a swap; or”.

(d) APPLICABILITY.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) (as amended by section 723(a)(3)) is amended by adding at the end the following:

“(i) APPLICABILITY.—The provisions of this Act relating to swaps that were enacted by the Wall Street Transparency and Accountability Act of 2010 (including any rule prescribed or regulation promulgated under that Act), shall not apply to activities outside the United States unless those activities—

“(1) have a direct and significant connection with activities in, or effect on, commerce of the United States; or

“(2) contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of this Act that was enacted by the Wall Street Transparency and Accountability Act of 2010.”.

SEC. 723. CLEARING.

(a) CLEARING REQUIREMENT.—

(1) IN GENERAL.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended—

(A) by striking subsections (d), (e), (g), and (h); and

(B) by redesignating subsection (i) as subsection (g).

(2) SWAPS; LIMITATION ON PARTICIPATION.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) (as amended by paragraph (1)) is amended by inserting after subsection (c) the following:

“(d) SWAPS.—Nothing in this Act (other than subparagraphs (A), (B), (C), and (D) of subsection (a)(1), subsections (f) and (g), sections 1a, 2(c)(2)(A)(ii), 2(e), 2(h), 4(c), 4a, 4b, and 4b-1, subsections (a), (b), and (g) of section 4c, sections 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4l, 4m, 4n, 4o, 4p, 4r, 4s, 4t, 5, 5b, 5c, 5e, and 5h, subsections (c) and (d) of section 6, sections 6c, 6d, 8, 8a, and 9, subsections (e)(2) and (f) of section 12, subsections (a) and (b) of section 13, sections 17, 20, 21, and 22(a)(4), and any other provision of this Act that is applicable to registered entities and Commission registrants) governs or applies to a swap.

“(e) LIMITATION ON PARTICIPATION.—It shall be unlawful for any person, other than an eligible contract participant, to enter into a swap unless the swap is entered into on, or subject to the rules of, a board of trade designated as a contract market under section 5.”.

(3) MANDATORY CLEARING OF SWAPS.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended by inserting after subsection (g) (as redesignated by paragraph (1)(B)) the following:

“(h) CLEARING REQUIREMENT.—

“(1) OPEN ACCESS.—The rules of a registered derivatives clearing organization shall—

“(A) prescribe that all swaps with the same terms and conditions are economically equivalent and may be offset with each other within the derivatives clearing organization; and

“(B) provide for nondiscriminatory clearing of a swap executed bilaterally or on or through the rules of an unaffiliated designated contract market or swap execution facility, subject to the requirements of section 5b.

“(2) SWAPS SUBJECT TO MANDATORY CLEARING REQUIREMENT.—

“(A) IN GENERAL.—In accordance with subparagraph (B), the Commission shall, jointly with the Securities and Exchange Commission and the Federal Reserve Board of Governors, adopt rules to establish criteria for determining that a swap or group, category, type, or class of swap is required to be cleared.

“(B) FACTORS.—In carrying out subparagraph (A), the following factors shall be considered:

“(i) Whether 1 or more derivatives clearing organizations or clearing agencies accept the swap or group, category, type, or class of swap for clearing.

“(ii) Whether the swap or group, category, type, or class of swap is traded pursuant to standard documentation and terms.

“(iii) The liquidity of the swap or group, category, type, or class of swap and its underlying commodity, security, or index thereof.

“(iv) The ability to value the swap or group, category, type, or class of swap and its underlying commodity, security, or index thereof consistent with an accepted pricing methodology, including the availability of intraday prices.

“(v) The size of the market for the swap or group, category, type, or class of swap and the available capacity, operational expertise, and resources of the derivatives clearing organization or clearing agency that accepts it for clearing.

“(vi) Whether a clearing mandate would mitigate risk to the financial system or whether it would unduly concentrate risk in a clearing participant, derivatives clearing organization, or clearing agency in a manner that could threaten the solvency of that clearing participant, the derivatives clearing organization, or the clearing agency.

“(vii) Such other factors as the Commission, the Securities and Exchange Commission, and the Federal Reserve Board of Governors jointly may determine are relevant.

“(C) SWAPS SUBJECT TO CLEARING REQUIREMENT.—The Commission—

“(i) shall review each swap, or any group, category, type, or class of swap that is currently listed for clearing and those which a derivatives clearing organization notifies the Commission that the derivatives clearing organization plans to list for clearing after the date of enactment of this subsection;

“(ii) except as provided in paragraph (3), may require, pursuant to the rules adopted under subparagraph (A) and through notice-and-comment rulemaking, that a particular swap, group, category, type, or class of swap must be cleared; and

“(iii) shall rely on economic analysis provided by economists of the Commission in making any determination under clause (ii).

“(D) EFFECT.—

“(i) IN GENERAL.—Nothing in this paragraph affects the ability of a derivatives clearing organization to list for permissive clearing any swap, or group, category, type, or class of swaps.

“(ii) PROHIBITION.—The Commission shall not compel a derivatives clearing organization to list a swap, group, category, type, or class of swap for clearing if the derivatives clearing organization determines that the swap, group, category, type, or class of swap would adversely impact its business operations, or impair the financial integrity of the derivatives clearing organization.

“(iii) REQUIRED EXEMPTION.—The Commission shall exempt a swap from the requirements of subparagraph (C), if no derivatives clearing organization registered under this Act or no derivatives clearing organization that is exempt from registration under section 5b(j) of this Act will accept the swap for clearing.

“(E) PREVENTION OF EVASION.—The Commission may prescribe rules, or issue interpretations of such rules, as necessary to prevent evasions of any requirement to clear under subparagraph (C). In issuing such rules or interpretations, the Commission shall consider—

“(i) the extent to which the terms of the swap, group, category, type, or class of swap are similar to the terms of other swaps, groups, categories, types, or classes of swap that are required to be cleared by swap participants under subparagraph (C); and

“(ii) whether there is an economic purpose for any differences in the terms of the swap or group, category, type, or class of swap that are required to be cleared by swap participants under subparagraph (C).

“(F) ELIMINATION OF REQUIREMENT TO CLEAR.—The Commission may, pursuant to the rules adopted under subparagraph (A) and through notice-and-comment rulemaking, rescind a requirement imposed under subparagraph (C) with respect to a swap, group, category, type, or class of swap.

“(G) PETITION FOR RULEMAKING.—Any person may file a petition, pursuant to the rules of practice of the Commission, requesting that the Commission use its authority under subparagraph (C) to require clearing of a particular swap, group, category, type, or class of swap or to use its authority under subparagraph (F) to rescind a requirement for swap participants to clear a particular swap, group, category, type, or class of swap.

“(H) FOREIGN EXCHANGE FORWARDS, SWAPS, AND OPTIONS.—Foreign exchange forwards, swaps, and options shall not be subject to a clearing requirement under subparagraph (C) unless the Department of the Treasury and the Board of Governors determine that such a requirement is appropriate after considering whether there exists an effective settlement system for such foreign exchange forwards, swaps, and options and any other factors that the Department of the Treasury and the Board of Governors deem to be relevant.

“(3) END USER CLEARING EXEMPTION.—

“(A) DEFINITIONS.—In this paragraph:

“(i) COMMERCIAL END USER.—The term ‘commercial end user’ means any person who, as its primary business activity owns, operates, uses, produces, processes, develops, leases, manufactures, distributes, merchandises, provides or markets goods, services, physical assets, or commodities (which shall include but not be limited to coal, natural gas, electricity, biofuels, crude oil, gasoline, propane, distillates, and other hydrocarbons) either individually or in a fiduciary capacity.

“(ii) FINANCIAL ENTITY END USER.—

“(I) IN GENERAL.—The term ‘financial entity end user’ means any person predominantly engaged in activities that are finan-

cial in nature, as determined by the Commission.

“(II) EXCLUSIONS.—The term ‘financial entity end user’ does not include—

“(aa) any person who is a swap dealer, security-based swap dealer, major swap participant, major security-based swap participant;

“(bb) an investment fund that would be an investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3)) but for paragraph (1) or (7) of section 3(c) of that Act (15 U.S.C. 80a-3(c)); and is not a partnership or other entity or any subsidiary that is primarily invested in physical assets (which shall include but not be limited to commercial real estate) directly or through interests in partnerships or limited liability companies that own such assets;

“(cc) entities defined in section 1303(20) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502(20));

“(dd) a commodity pool; or

“(ee) a commercial end user.

“(B) END USER CLEARING EXEMPTION.—

“(i) IN GENERAL.—Subject to clause (ii), in the event that a swap is subject to the mandatory clearing requirement under paragraph (2), and 1 of the counterparties to the swap is a commercial end user or a financial entity end user, that counterparty—

“(I)(aa) may elect not to clear the swap, as required under paragraph (2); or

“(bb) may elect, prior to entering into the swap transaction, to require clearing of the swap; and

“(II) if the end user makes an election under subclause (I)(bb), shall have the sole right to select the derivatives clearing organization at which the swap will be cleared.

“(ii) LIMITATION.—A commercial end user or a financial entity end user may only make an election under clause (i) if the end user is using the swap to hedge commercial risk, including operating risk and balance sheet risk.

“(C) TREATMENT OF AFFILIATES.—

“(i) IN GENERAL.—An affiliate of a commercial end user (including affiliate entities predominantly engaged in providing financing for the purchase of merchandise or manufactured goods of the commercial end user) or a financial entity end user may make an election under subparagraph (B)(i) only if the affiliate uses the swap to hedge or mitigate the commercial risk, including operating risk and balance sheet risk, of the commercial end user or the financial entity end user or other affiliate of the commercial end user or financial entity end user.

“(ii) PROHIBITION RELATING TO CERTAIN AFFILIATES.—An affiliate of a commercial end user or a financial entity end user shall not use the exemption under subparagraph (B) if the affiliate is—

“(I) a swap dealer;

“(II) a security-based swap dealer;

“(III) a major swap participant;

“(IV) a major security-based swap participant;

“(V) an investment fund that would be an investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3)) but for paragraph (1) or (7) of section 3(c) of that Act (15 U.S.C. 80a-3(c)); and is not a partnership or other entity or any subsidiary that is primarily invested in physical assets (which shall include but not be limited to commercial real estate) directly or through interests in partnerships or limited liability companies that own such assets; or

“(VI) a commodity pool.

“(D) ABUSE OF EXEMPTION.—The Commission may prescribe such rules or issue interpretations of the rules as the Commission determines to be necessary to prevent abuse of the exemption described in subparagraph (B). The Commission may also request information from those entities claiming the clearing exemption as necessary to prevent abuse of the exemption described in subparagraph (B).”

“(4) REQUIRED REPORTING.—Each swap that is not cleared by any derivatives clearing organization shall be reported either to a registered swap repository described in section 21 or, if there is no repository that would accept the swap, to the Commission pursuant to section 4r.

“(5) TRANSITION RULES.—

“(A) REPORTING TRANSITION RULES.—The Commission shall provide for the reporting of data, as follows:

“(i) SWAPS ENTERED INTO BEFORE DATE OF ENACTMENT OF THIS SUBSECTION.—Swaps entered into before the date of the enactment of this subsection shall be reported to a registered swap repository or the Commission not later than 180 days after the effective date of this subsection.

“(ii) SWAPS ENTERED INTO ON OR AFTER DATE OF ENACTMENT OF THIS SUBSECTION.—Swaps entered into on or after such date of enactment shall be reported to a registered swap repository or the Commission not later than such time period as the Commission prescribe.

“(B) CLEARING TRANSITION RULES.—Swaps entered into before the effective date of any requirement under paragraph (2)(C) are exempt from the clearing requirements of this subsection.

“(6) REPORTING OBLIGATIONS.—

“(A) SWAPS IN WHICH ONLY 1 COUNTERPARTY IS A SWAP DEALER OR MAJOR SWAP PARTICIPANT.—With respect to a swap in which only 1 counterparty is a swap dealer or major swap participant, the swap dealer or major swap participant shall report the swap as required under paragraphs (4) and (5).

“(B) SWAPS IN WHICH 1 COUNTERPARTY IS A SWAP DEALER AND THE OTHER A MAJOR SWAP PARTICIPANT.—With respect to a swap in which 1 counterparty is a swap dealer and the other a major swap participant, the swap dealer shall report the swap as required under paragraphs (4) and (5).

“(C) OTHER SWAPS.—With respect to any other swap not described in subparagraph (A) or (B), the counterparties to the swap shall select a counterparty to report the swap as required under paragraphs (4) and (5).

“(7) TRADE EXECUTION.—

“(A) IN GENERAL.—With respect to transactions involving swaps subject to the clearing requirement established under paragraph (2), counterparties shall—

“(i) execute the transaction on a board of trade designated as a contract market under section 5; or

“(ii) execute the transaction on a swap execution facility registered under section 5h or a swap execution facility that is exempt from registration under section 5h(f).

“(B) EXCEPTION.—The requirements of clauses (i) and (ii) of subparagraph (A) shall not apply if no board of trade or swap execution facility makes the swap available to trade or in the case of a swap transaction for which a commercial end or financial entity user opts to use the clearing exemption under paragraph (3).

“(8) REQUIRED EXEMPTION.—The Commission shall exempt a swap from the requirements of this subsection and any rules issued under this subsection, if no derivatives clearing organization registered under this Act or no derivatives clearing organization that is exempt from registration under section 5b(j) will accept the swap from clearing.”

**SA 4062.** Mr. WARNER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail”, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1204, line 25, strike “or” and all that follows through page 1205, line 4 and insert the following:

(i) time or space for an advertisement for a consumer financial product or service through print, newspaper, or electronic media;

(iii) information products or services for identity authentication, fraud, or identity theft detection, prevention, or investigation, or anti-money laundering activities, unless such products or services are regulated under the Bank Service Company Act (12 U.S.C. 1861 et seq.); or

(iv) public records information or document retrieval or delivery services, unless such products or services are regulated under the Bank Service Company Act (12 U.S.C. 1861 et seq.).

## NOTICE OF HEARING

### COMMITTEE ON RULES AND ADMINISTRATION

Mr. SCHUMER. Mr. President, I wish to announce that the Committee on Rules and Administration will meet on Wednesday, May 19, 2010, at 10 a.m., to hear testimony on hearing entitled “Examining the Filibuster: The Filibuster Today and Its Consequences.”

For further information regarding this meeting, please contact Lynden Armstrong at the Rules and Administration Committee on 202-224-6352.

## AUTHORITY FOR COMMITTEES TO MEET

### COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on May 17, 2010, at 2:30 p.m. to conduct a hearing entitled “Gulf Coast Catastrophe: Assessing the Nation’s Response to the Deepwater Horizon Oil Spill.”

The PRESIDING OFFICER. Without objection, it is so ordered.

### COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate May 17, 2010, at 5:30 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

## RECOGNIZING NATIONAL FOSTER CARE MONTH CHALLENGES

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 533, submitted early today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 533) recognizing National Foster Care Month as an opportunity to raise awareness about the challenges of children in the foster care system and encouraging Congress to implement policy to improve the lives of children in the foster care system.

There being no objection, the Senate proceeded to consider the resolution.

Mr. DODD. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, with no intervening action or debate, and that any statements related to the resolution be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 533) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

### S. RES. 533

Whereas all children deserve a safe, loving, and permanent home;

Whereas approximately 500,000 children in the United States live in foster care each year;

Whereas children enter the foster care system for a variety of reasons, including inadequate care, abuse, or neglect by a parent or guardian;

Whereas the major factors that contribute to the placement of a child in the foster care system include substance abuse, mental illness, poverty, and a lack of education of a parent or guardian of the child;

Whereas a child entering the foster care system must confront the widespread misperception that children in foster care are disruptive, unruly, and dangerous, even though placement in the foster care system is based on the actions of a parent or guardian, not the child;

Whereas States and communities should be provided with the resources to invest in preventative and reunification services and post-permanency programs to ensure that more children in the foster care system are provided safe, loving, permanent placements;

Whereas the foster care system is intended to be a temporary solution, yet children remain in the foster care system for an average of 3 years;

Whereas children of color are disproportionately represented in the foster care system and are less likely to be reunited with their biological families;

Whereas the average child in the foster care system—

(1) is 10 years old; and

(2) will be placed in 3 different homes, leading to disruptive transfers to new schools, separation from siblings, and unfamiliar surroundings;

Whereas most children “age out” of the foster care system at the age of 18;

Whereas the number of children who enter the foster care system each year has declined over the decade preceding the date of the