(for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4111. Ms. STABENOW 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 4112. Mr. MERKLEY (for himself and Mr. LEVIN) 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 4113. Mrs. FEINSTEIN 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 4114. Mr. DORGAN proposed an amendment to amendment SA 4072 submitted by Mr. GRASSLEY (for himself and Mrs. MCCASKILL) to the amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra.

TEXT OF AMENDMENTS

SA 4063. Mr. WYDEN 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 30, between lines 11 and 12, insert the following:

(3) ADDITIONAL VIEWS.—In the annual report required by paragraph (2)(M), the Secretary shall provide additional views, which shall include—

(A) whether the Secretary agrees with the recommendations of the Council and the views of the Council on the financial markets and potential emerging threats;

(B) if the Secretary disagrees with any aspect of the report of the Council, the Secretary's own views, analysis, and recommendations; and

(C) recommendations regarding whether there should be changes made to the laws and rules in place at the time at which the annual report is delivered to Congress to promote the integrity, efficiency, and stability of the United States financial markets or a determination from the Secretary that the laws and rules in place at the time at which the annual report of the Council is delivered to Congress are optimal to achieve the integrity, efficiency, and stability of the United States financial markets.

SA 4064. Mr. MENENDEZ (for himself, Ms. SNOWE, Mr. SCHUMER, Mr. LEAHY, and Mr. JOHNSON) 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 372, between lines 2 and 3, insert the following:

SEC. 343. GUARANTEES FOR BONDS AND NOTES ISSUED FOR COMMUNITY OR ECONOMIC DEVELOPMENT PURPOSES.

The Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701 et seq.) is amended by inserting after section 114 (12 U.S.C. 4713) the following:

''SEC. 114A. GUARANTEES FOR BONDS AND NOTES ISSUED FOR COMMUNITY OR ECONOMIC DEVELOPMENT PURPOSES.

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

''(1) ELIGIBLE COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION.—The term 'eligible community development financial institution' means a community development financial institution (as described in section 1805.201 of title 12, Code of Federal Regulations, or any successor thereto) certified by the Secretary that has applied to a qualified issuer for, or been granted by a qualified issuer, a loan under the Program.

''(2) ELIGIBLE COMMUNITY OR ECONOMIC DEVELOPMENT PURPOSE.—The term 'eligible community or economic development purpose'—

''(A) means any purpose described in section 108(b); and

''(B) includes the provision of community or economic development in low-income or underserved rural areas.

''(3) GUARANTEE.—The term 'guarantee' means a written agreement between the Secretary and a qualified issuer (or trustee), pursuant to which the Secretary ensures repayment of the verifiable losses of principal, interest, and call premium, if any, on notes or bonds issued by a qualified issuer to finance or refinance loans to eligible community development financial institutions.

''(4) LOAN.—The term 'loan' means any credit instrument that is extended under the Program for any eligible community or economic development purpose.

''(5) MASTER SERVICER.—

''(A) IN GENERAL.—The term 'master servicer' means any entity approved by the Secretary in accordance with subparagraph (B) to oversee the activities of servicers, as provided in subsection (f)(4).

''(B) APPROVAL CRITERIA FOR MASTER SERVICERS.—The Secretary shall approve or deny any application to become a master servicer under the Program not later than 90 days after the date on which all required information is submitted to the Secretary, based on the capacity and experience of the applicant in—

''(i) loan administration, servicing, and loan monitoring;

''(ii) managing regional or national loan intake, processing, or servicing operational systems and infrastructure;

''(iii) managing regional or national originator communication systems and infrastructure;

''(iv) developing and implementing training and other risk management strategies on a regional or national basis; and

''(v) compliance monitoring, investor relations, and reporting.

''(6) PROGRAM.—The term 'Program' means the guarantee Program for bonds and notes issued for eligible community or economic development purposes established under this section.

''(7) PROGRAM ADMINISTRATOR.—The term 'Program administrator' means an entity designated by the issuer to perform administrative duties, as provided in subsection (f)(2).

''(8) QUALIFIED ISSUER.—

''(A) IN GENERAL.—The term 'qualified issuer' means a community development financial institution (or any entity designated to issue notes or bonds on behalf of such community development financial institution) that meets the qualification requirements of this paragraph.

''(B) APPROVAL CRITERIA FOR QUALIFIED ISSUERS.—

''(i) IN GENERAL.—The Secretary shall approve a qualified issuer for a guarantee under the Program in accordance with the requirements of this paragraph, and such additional requirements as the Secretary may establish, by regulation.

''(ii) TERMS AND QUALIFICATIONS.—A qualified issuer shall—

''(I) have appropriate expertise, capacity, and experience, or otherwise be qualified to make loans for eligible community or economic development purposes;

''(II) provide to the Secretary—

''(aa) an acceptable statement of the proposed sources and uses of the funds; and

''(bb) a capital distribution plan that meets the requirements of subsection (c)(1); and

''(III) certify to the Secretary that the bonds or notes to be guaranteed are to be used for eligible community or economic development purposes.

''(C) DEPARTMENT OPINION; TIMING.—

''(i) DEPARTMENT OPINION.—Not later than 30 days after the date of a request by a qualified issuer for approval of a guarantee under the Program, the Secretary shall provide an opinion regarding compliance by the issuer with the requirements of the Program under this section.

''(ii) TIMING.—The Secretary shall approve or deny a guarantee under this section after consideration of the opinion provided to the Secretary under clause (i), and in no case later than 90 days after receipt of all required information by the Secretary with respect to a request for such guarantee.

''(9) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.

''(10) SERVICER.—The term 'servicer' means an entity designated by the issuer to perform various servicing duties, as provided in subsection (f)(3).

''(b) GUARANTEES AUTHORIZED.—The Secretary shall guarantee payments on bonds or notes issued by any qualified issuer, if the proceeds of the bonds or notes are used in accordance with this section to make loans to eligible community development financial institutions—

''(1) for eligible community or economic development purposes; or

''(2) to refinance loans or notes issued for such purposes.

''(c) GENERAL PROGRAM REQUIREMENTS.—

''(1) IN GENERAL.—A capital distribution plan meets the requirements of this subsection, if not less than 90 percent of the principal amount of guaranteed bonds or notes (other than costs of issuance fees) are used to make loans for any eligible community or economic development purpose, measured annually, beginning at the end of the 1-year period beginning on the issuance date of such guaranteed bonds or notes.

''(2) RELENDING ACCOUNT.—Not more than 10 percent of the principal amount of guaranteed bonds or notes, multiplied by an amount equal to the outstanding principal balance of issued notes or bonds, minus the risk-share pool amount under subsection (d), may be held in a relending account and may be made available for new eligible community or economic development purposes.

''(3) LIMITATIONS ON UNPAID PRINCIPAL BALANCES.—The proceeds of guaranteed bonds or

notes under the Program may not be used to pay fees (other than costs of issuance fees), and shall be held in—

''(A) community or economic development loans;

''(B) a relending account, to the extent authorized under paragraph (2); or

''(C) a risk-share pool established under subsection (d).

''(4) REPAYMENT.—If a qualified issuer fails to meet the requirements of paragraph (1) by the end of the 90-day period beginning at the end of the annual measurement period, repayment shall be made on that portion of bonds or notes necessary to bring the bonds or notes that remain outstanding after such repayment into compliance with the 90 percent requirement of paragraph (1).

''(5) PROHIBITED USES.—The Secretary shall, by regulation—

''(A) prohibit, as appropriate, certain uses of amounts from the guarantee of a bond or note under the Program, including the use of such funds for political activities, lobbying, outreach, counseling services, or travel expenses; and

''(B) provide that the guarantee of a bond or note under the Program may not be used for salaries or other administrative costs of—

''(i) the qualified issuer; or

''(ii) any recipient of amounts from the guarantee of a bond or note.

''(d) RISK-SHARE POOL.—Each qualified issuer shall, during the term of a guarantee provided under the Program, establish a risk-share pool, capitalized by contributions from eligible community development financial institution participants an amount equal to 3 percent of the guaranteed amount outstanding on the subject notes and bonds.

''(e) GUARANTEES.—

''(1) IN GENERAL.—A guarantee issued under the Program shall—

''(A) be for the full amount of a bond or note, including the amount of principal, interest, and call premiums;

''(B) be fully assignable and transferable to the capital market, on terms and conditions that are consistent with comparable Government-guaranteed bonds, and satisfactory to the Secretary;

''(C) represent the full faith and credit of the United States; and

''(D) not exceed 30 years.

''(2) LIMITATIONS.—

''(A) ANNUAL NUMBER OF GUARANTEES.—The Secretary shall issue not more than 10 guarantees in any calendar year under the Program.

''(B) GUARANTEE AMOUNT.—The Secretary may not guarantee any amount under the Program equal to less than $100,000,000, but the total of all such guarantees in any fiscal year may not exceed $1,000,000,000.

''(f) SERVICING OF TRANSACTIONS.—

''(1) IN GENERAL.—To maximize efficiencies and minimize cost and interest rates, loans made under this section may be serviced by qualified Program administrators, bond servicers, and a master servicer.

''(2) DUTIES OF PROGRAM ADMINISTRATOR.—The duties of a Program administrator shall include—

''(A) approving and qualifying eligible community development financial institution applications for participation in the Program;

''(B) compliance monitoring;

''(C) bond packaging in connection with the Program; and

''(D) all other duties and related services that are customarily expected of a Program administrator.

''(3) DUTIES OF SERVICER.—The duties of a servicer shall include—

''(A) billing and collecting loan payments;

''(B) initiating collection activities on past-due loans;

''(C) transferring loan payments to the master servicing accounts;

''(D) loan administration and servicing;

''(E) systematic and timely reporting of loan performance through remittance and servicing reports;

''(F) proper measurement of annual outstanding loan requirements; and

''(G) all other duties and related services that are customarily expected of servicers.

''(4) DUTIES OF MASTER SERVICER.—The duties of a master servicer shall include—

''(A) tracking the movement of funds between the accounts of the master servicer and any other servicer;

''(B) ensuring orderly receipt of the monthly remittance and servicing reports of the servicer;

''(C) monitoring the collection comments and foreclosure actions;

''(D) aggregating the reporting and distribution of funds to trustees and investors;

''(E) removing and replacing a servicer, as necessary;

''(F) loan administration and servicing;

''(G) systematic and timely reporting of loan performance compiled from all bond servicers' reports;

''(H) proper distribution of funds to investors; and

''(I) all other duties and related services that are customarily expected of a master servicer.

''(g) FEES.—

''(1) IN GENERAL.—A qualified issuer that receives a guarantee issued under this section on a bond or note shall pay a fee to the Secretary, in an amount equal to 10 basis points of the amount of the unpaid principal of the bond or note guaranteed.

''(2) PAYMENT.—A qualified issuer shall pay the fee required under this subsection on an annual basis.

''(3) USE OF FEES.—Fees collected by the Secretary under this subsection shall be used to reimburse the Department of the Treasury for any administrative costs incurred by the Department in implementing the Program established under this section.

''(h) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Secretary, such sums as are necessary to carry out this section.

''(2) USE OF FEES.—To the extent that the amount of funds appropriated for a fiscal year under paragraph (1) are not sufficient to carry out this section, the Secretary may use the fees collected under subsection (g) for the cost of providing guarantees of bonds and notes under this section.

''(i) INVESTMENT IN GUARANTEED BONDS INELIGIBLE FOR COMMUNITY REINVESTMENT ACT PURPOSES.—Notwithstanding any other provision of law, any investment by a financial institution in bonds or notes guaranteed under the Program shall not be taken into account in assessing the record of such institution for purposes of the Community Reinvestment Act of 1977 (12 U.S.C. 2901).

''(j) ADMINISTRATION.—

''(1) REGULATIONS.—Not later than 1 year after the date of enactment of this section, the Secretary shall promulgate regulations to carry out this section.

''(2) IMPLEMENTATION.—Not later than 2 years after the date of enactment of this section, the Secretary shall implement this section.

''(k) TERMINATION.—This section is repealed, and the authority provided under this section shall terminate, on September 30, 2014.''.

SEC. 344. TAX EXEMPT STATUS OF CERTAIN BONDS.

(a) NO FEDERAL GUARANTEE.—Subparagraph (A) of section 149(b)(3) of the Internal Revenue Code of 1986 is amended—

(1) by striking ''or'' at the end of clause (iii);

(2) by striking the period at the end of clause (iv) and inserting '', or''; and

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

''(v) any guarantee of a qualified community development financial institution bond provided by the Department of the Treasury.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after the date of enactment of this Act.

SA 4065. Mr. MENENDEZ submitted an amendment intended to be proposed by him 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:

At the end of the bill, add the following:

TITLE XIV—EMERGENCY LIQUIDITY FUND

SEC. 1401. SHORT TITLE.

This title may be cited as the ''Emergency Liquidity Fund''.

SEC. 1402. PURPOSES.

The purposes of this title are—

(1) to immediately provide authority and facilities that the Secretary of the Treasury can use to restore liquidity in the community development financial system of the United States;

(2) to ensure that such authority and such facilities are used in a manner that—

(A) promotes access to credit for small businesses;

(B) provides access to jobs, particularly for low and moderate income individuals;

(C) serves investment areas or targeted populations, as those terms are defined under the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701 et seq.); and

(D) provides public accountability for the exercise of such authority; and

(3) to provide grants to eligible entities and the necessary authority to the Secretary of the Treasury to enter into cooperative agreements that—

(A) support small business development;

(B) develop innovative local and regional programs to expand capital access for small businesses; and

(C) support local economic development and business diversification.

SEC. 1403. DEFINITIONS.

In this title, the following definitions shall apply:

(1) ELIGIBLE COMMUNITY OR ECONOMIC DEVELOPMENT PURPOSE.—The term ''eligible community or economic development purpose''—

(A) means any purpose described in section 108(b) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701 et seq.); and

(B) includes the provision of community or economic development in low-income or underserved rural areas.

(2) ELIGIBLE ENTITY.—

(A) IN GENERAL.—The term ''eligible entity'' included community development financial institutions, as such institutions are described in section 1805.201 of title 12, Code of Federal Regulations, or any successor thereto.

(B) ADDITIONAL AUTHORITY OF SECRETARY.—The Secretary may further expand participation in any grant program established under

this title to include entities other than community development financial institutions, if the Secretary, in his discretion, determines that such other entities meet eligible community or economic development purposes.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury.

SEC. 1404. AUTHORIZATION TO MAKE COMMITMENTS TO ASSIST ELIGIBLE ENTITIES.

(a) SPECIAL LIQUIDITY FACILITY.—

(1) IN GENERAL.—The Secretary is authorized to establish a special liquidity facility to make and fund commitments and to purchase assets related to eligible community or economic development purposes in accordance with—

(A) the purposes of this title; and

(B) the policies and procedures developed and published by the Secretary.

(2) RULE OF CONSTRUCTION.—Commitments made under paragraph (1) may include grants, loans, loan commitments, equity investments, agreements, and similar contracts or undertakings or a combination thereof.

(b) APPLICATIONS FOR ASSISTANCE.—An application for assistance under this title shall be submitted in such form and in accordance with such procedures as the Secretary shall establish.

(c) MATCHING REQUIREMENT.—Assistance provided to an eligible entity under this title shall be matched with funds from sources other than the Federal Government on the basis of not less than 1 dollar for every 2 dollars provided by the Secretary.

(d) LIMITATIONS.—

(1) ANNUAL NUMBER OF AWARDS.—The Secretary, acting through the special liquidity facility established under subsection (a), shall not issue more than 5 awards of assistance in any calendar year under the authorities established by this section.

(2) AWARD AMOUNT.—In carrying out the requirements of this section, the Secretary, acting through the special liquidity facility established under subsection (a), may not make an award to an eligible entity of less than $50,000,000.

(3) IMPLEMENTATION.—Not later than 1 year after the date of enactment of this title the Secretary shall issue rules and regulations implementing this section.

(e) FUNDING.—There are hereby appropriated to the Secretary, out of funds in the Treasury not otherwise appropriated, $250,000,000 to carry out this section, to remain available until expended, for fiscal years 2010 through 2014.

SEC. 1405. APPROVAL CRITERIA FOR ELIGIBLE ENTITIES.

(a) IN GENERAL.—The Secretary shall approve an eligible entity for participation in the assistance program established under section 1404 in accordance with the requirements of this section, and such additional requirements as the Secretary may establish, by regulation.

(b) TERMS AND QUALIFICATIONS.—Recipients of amounts under section 1404 shall—

(1) have appropriate expertise, capacity, and experience, or otherwise be qualified to make loans for eligible community or economic development purposes;

(2) provide to the Secretary—

(A) an acceptable statement of the proposed sources and uses of the funds; and

(B) a capital distribution plan for eligible community and economic development purposes that details the following:

(i) Management Capacity, by providing the following:

(I) Experience deploying capital.

(II) Experience raising capital.

(III) Financial capacity and asset management capabilities.

(IV) Program compliance track-record.

(V) Community accountability.

(ii) Capitalization Strategy, by providing the following:

(I) Capital raising experience and track-record.

(II) Experience deploying capital.

(III) Strategy for raising investor capital.

(IV) Relationships with investors.

(V) Prospective sources and uses of capital.

(iii) Business strategy, by providing the following:

(I) Products, services ,and investment criteria.

(II) Community and economic development investment track-record.

(III) Financial projections or projected business activity.

(iv) Community impact, by providing the following:

(I) Ability to target areas of high unemployment.

(II) Ability to support job creation or job retention.

(III) Ability to further community revitalization.

(IV) Ancillary community benefits.

(v) Capacity, by demonstrating the following:

(I) Ability to distribute and utilize 25 percent of amounts received under this title not later than 1 year after receipt of such amounts.

(II) Ability to distribute and utilize 50 percent of amounts received under this title not later than 2 years after receipt of such amounts.

(III) Ability to distribute and utilize 80 percent of amounts received under this title not later than 5 years after receipt of such amounts.

SEC. 1406. BUSINESS-TO-BUSINESS GRANTS AND COOPERATIVE AGREEMENTS.

(a) IN GENERAL.—In accordance with this section, the Secretary may make grants to and enter into cooperative agreements with any coalition of private entities, public entities, or any combination of private and public entities—

(1) to expand business-to-business relationships between large and small businesses;

(2) to develop innovative local and regional programs to expand access to capital for small businesses;

(3) to provide businesses, directly or indirectly, with online information and a database of—

(A) public sector programs or private companies that are interested in mentor-protege programs or supplier diversity programs; and

(B) State-wide, local, or community-based business development programs;

(4) to collect, analyze, and publish data that tracks the impact of the coalition's programs on revenue and employment at participating businesses, including disadvantaged business enterprises;

(5) to foster communication and collaboration within and among the coalitions; and

(6) to support efforts to enhance the long-term financial stability of employees, the economic viability of communities, and business diversification within locales and regions.

(b) MATCHING REQUIREMENT.—The Secretary may make a grant to a coalition described under subsection (a) only if the grant shall be matched with funds from sources other than the Federal Government on the basis of not less than 1 dollar for each dollar provided by the Secretary under this section.

(c) FUNDING.—There are hereby appropriated to the Secretary, out of funds in the Treasury not otherwise appropriated, $50,000,000, to carry out this section, including to pay the reasonable costs of administering the grant program established under this section, for each of fiscal years 2010 through 2015.

SEC. 1407. IMPLEMENTATION AND ADMINISTRATION.

(a) GENERAL AUTHORITIES AND DUTIES.—The Secretary shall—

(1) establish minimum standards for approved use of amounts made available under this title;

(2) provide technical assistance to eligible entities receiving amounts under this title;

(3) manage, administer, and perform necessary integrity functions for the grant programs established under this title; and

(4) ensure adequate oversight of the eligible entities that received amounts under this title.

(b) ADMINISTRATIVE FUNDING.—There are hereby appropriated to the Secretary, out of funds in the Treasury not otherwise appropriated, $15,000,000 to carry out the administrative expenses associated with the grant programs established under title, including to pay reasonable costs of administering such programs. In administering this title and the grant programs established by this title, the Secretary is authorized to use the staff and resources of the Department of the Treasury.

(c) EXPEDITED CONTRACTING.—During the 1-year period beginning on the date of enactment of this title, the Secretary may enter into contracts without regard to any other provision of law regarding public contracts, for purposes of carrying out this title.

(d) TERMINATION OF SECRETARY'S PROGRAM ADMINISTRATION FUNCTIONS.—The authorities and duties of the Secretary to implement and administer this title shall terminate at the end of the 5-year period beginning on the date of enactment of this title.

SEC. 1408. REGULATIONS.

The Secretary may issue such regulations and other guidance as the Secretary determines necessary or appropriate to implement this title including, to define terms, to establish compliance and reporting requirements, and such other terms and conditions necessary to carry out the purposes of this title.

SA 4066. Mr. FEINGOLD 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 1290, strike line 5 and all that follows through page 1291, line 9, and insert the following:

SEC. 1028. AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.

(a) STUDY AND REPORT.—Not later than 1 year after the designated transfer date, the Bureau shall conduct a study and submit a report to Congress concerning the use of agreements providing for arbitration of any future dispute between covered persons and consumers in connection with the offering or providing of consumer financial products or services.

(b) FURTHER AUTHORITY.—The Bureau, by regulation, may prohibit or impose conditions or limitations on the use of an agreement between a covered person and a consumer for a consumer financial product or

service providing for arbitration of any future dispute between the parties, if the Bureau determines that such a prohibition or imposition of conditions or limitations is in the public interest and for the protection of consumers. The determination of the Bureau under this subsection shall be consistent with the study conducted under subsection (a).

(c) LIMITATION.—The authority described in subsection (b) may not be construed to prohibit or restrict a consumer from entering into a voluntary arbitration agreement with a covered person after a dispute has arisen.

(d) RULE OF CONSTRUCTION.—No other provision of Federal law shall be construed to preempt or otherwise affect the applicability of any regulation prescribed by the Bureau under subsection (b).

SA 4067. Mr. FEINGOLD 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 1455, after line 25, insert the following:

SEC. 1077. MANDATORY PREDISPUTE ARBITRATION RULEMAKING.

(a) SECTION 921.—Section 921 of this Act is amended to read as follows:

''SEC. 921. AUTHORITY TO ISSUE RULES RELATED TO MANDATORY PREDISPUTE ARBITRATION.

''(a) AMENDMENT TO SECURITIES EXCHANGE ACT OF 1934.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o), as amended by section 918, is amended by adding at the end the following:

'''(i) AUTHORITY TO RESTRICT MANDATORY PREDISPUTE ARBITRATION.—The Commission shall—

'''(1) conduct a rulemaking on the use of agreements that require customers or clients of any broker, dealer, or municipal securities dealer to arbitrate any dispute between such customers or clients and such broker, dealer, or municipal securities dealer that arises under the securities laws or the rules of a self-regulatory organization; and

'''(2) if the Commission finds that prohibition of, or imposition of conditions or limitations on, the use of agreements described in paragraph (1) is in the public interest and for the protection of investors, promulgate rules or regulations to establish such prohibitions, conditions, or limitations.'.

''(b) AMENDMENT TO THE INVESTMENT ADVISERS ACT OF 1940.—Section 205 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–5) is amended by adding at the end the following:

'''(f) AUTHORITY TO ISSUE RULES RELATED TO MANDATORY PREDISPUTE ARBITRATION.—The Commission shall—

'''(1) conduct a rulemaking on the use of agreements that require customers or clients of any investment adviser to arbitrate any dispute between such customers or clients and such investment adviser that arises under the securities laws, as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), or the rules of a self-regulatory organization; and

'''(2) if the Commission finds that prohibition of, or imposition of conditions or limitations on, the use of agreements described in paragraph (1) is in the public interest and for the protection of investors, promulgate rules or regulations to establish such prohibitions, conditions, or limitations.'.''

(b) SECTION 1028.—Section 1028 of this Act is amended to read as follows:

''SEC. 1028. AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.

''(a) STUDY AND REPORT.—Not later than 1 year after the designated transfer date, the Bureau shall conduct a study and submit a report to Congress concerning the use of agreements providing for arbitration of any future dispute between covered persons and consumers in connection with the offering or providing of consumer financial products or services.

''(b) FURTHER AUTHORITY.—The Bureau, by regulation, may prohibit or impose conditions or limitations on the use of an agreement between a covered person and a consumer for a consumer financial product or service providing for arbitration of any future dispute between the parties, if the Bureau determines that such a prohibition or imposition of conditions or limitations is in the public interest and for the protection of consumers. The determination of the Bureau under this subsection shall be consistent with the study conducted under subsection (a).

''(c) LIMITATION.—The authority described in subsection (b) may not be construed to prohibit or restrict a consumer from entering into a voluntary arbitration agreement with a covered person after a dispute has arisen.

''(d) RULE OF CONSTRUCTION.—No other provision of Federal law shall be construed to preempt or otherwise affect the applicability of any regulation prescribed by the Bureau under subsection (b).''.

SA 4068. Mr. LEAHY 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 89, after line 23, insert the following:

(5) HART-SCOTT-RODINO FILING REQUIREMENT.—Solely for purposes of section 7A(c)(8) of the Clayton Act (15 U.S.C. 18a(c)(8)), the transactions subject to the requirements of paragraph (1) shall be treated as if Board of Governors approval is not required.

On page 153, line 4, strike ''and''.

On page 153, line 16, strike the period and insert ''; and''.

On page 153, after line 16, insert the following:

(IV) if the Secretary, in consultation with the Chairman of the Board of Governors, has found that the Corporation must act immediately with regard to the covered financial company (including any covered financial company that is an insurance company) to preserve financial stability, the approval and prior notification referred to in subclauses (II) and (III) shall not be required and the transaction may be consummated immediately by the Corporation, provided that nothing in this subclause shall otherwise modify, impair, or supersede the operation of any of the antitrust laws (as defined in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section relates to unfair methods of competition).

On page 264, strike line 6, and insert the following:

REVIEW.—

(A) IN GENERAL.—If a transaction involving the merger or

On page 264, after line 25, insert the following:

(B) EMERGENCY.—If the Secretary, in consultation with the Chairman of the Board of Governors, has found that the Corporation must act immediately with regard to the bridge financial company (including any bridge financial company that is an insurance company) to preserve financial stability, the approval and prior notification referred to in subparagraph (A) shall not be required and the transaction may be consummated immediately by the Corporation. The preceding sentence shall not otherwise modify, impair, or supersede the operation of any of the antitrust laws (as defined in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section relates to unfair methods of competition).

On page 296, after line 15, insert the following:

(d) ANTITRUST SAVINGS CLAUSE.—Unless otherwise provided, nothing in this Act, or any amendment made by this Act, shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For the purposes of this Act, the term ''antitrust laws'' has the meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

On page 441, after line 12, insert the following:

''(iii) HART-SCOTT-RODINO FILING REQUIREMENT.—Solely for purposes of section 7A(c)(8) of the Clayton Act (15 U.S.C. 18a(c)(8)), the transactions subject to the requirements of this paragraph shall be treated as if Board of Governors approval is not required.''.

On page 567, lines 7 and 8, strike '', subject to the requirements of section 5(b)''.

SA 4069. Mrs. GILLIBRAND 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 1219, line 25, strike the second period and insert the following: ''.

(7) STUDY AND REPORT ON PAPER STATEMENT CHARGES.—Not later than 6 months after the designated transfer date, the Office of Financial Literacy shall submit a report to Congress—

(A) on the charging of fees for paper copies of statements related to a consumer financial product or service by covered persons under this title;

(B) on the charging of fees for the use of paper checks as payment to financial institutions;

(C) on the impact of the imposition of such fees on financial literacy, particularly among—

(i) the elderly;

(ii) low-income individuals; and

(iii) individuals that lack computer access; and

(D) that includes recommendations on how to ensure that the individuals described in subparagraph (C) are not negatively impacted by the imposition of fees to receive paper statements, including recommendations—

(i) on whether covered persons under this title should be—

(I) prohibited from charging fees for paper statements;

(II) prohibited from automatically enrolling individuals in e-statement or other electronic delivery programs without the express consent of the individual, in the manner described in section 101(c)(1) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001(c)(1)); and

(III) prevented from charging fees for the use of paper checks as payment; and

(ii) for proposed regulatory or statutory changes to ensure that such individuals are able to access paper copies of financial statements without fees or unnecessary hindrance.

SA 4070. 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 1304, strike line 10 and all that follows through page 1310, line 16, and insert the following:

SEC. 1036. PROHIBITED ACTS.

It shall be unlawful for any covered person—

(1) to—

(A) advertise, market, offer, or sell a consumer financial product or service not in conformity with this title or applicable rules or orders issued by the Bureau;

(B) enforce, or attempt to enforce, any agreement with a consumer (including any term or change in terms in respect of such agreement), or impose, or attempt to impose, any fee or charge on a consumer in connection with a consumer financial product or service that is not in conformity with this title or applicable rules or orders issued by the Bureau; or

(C) engage in any unfair, deceptive, or abusive act or practice that violates this title or applicable rules or orders issued by the Bureau,

except that no person shall be held to have violated this paragraph solely by virtue of providing or selling time or space to a person placing an advertisement;

(2) to fail or refuse, as required by Federal consumer financial law, or any rule or order issued by the Bureau thereunder—

(A) to permit access to or copying of records;

(B) to establish or maintain records; or

(C) to make reports or provide information to the Bureau; or

(3) knowingly or recklessly to provide substantial assistance to another person in violation of the provisions of section 1031, or any rule or order issued thereunder, and notwithstanding any provision of this title, the provider of such substantial assistance shall be deemed to be in violation of that section to the same extent as the person to whom such assistance is provided.

SEC. 1037. EFFECTIVE DATE.

This subtitle shall take effect on the designated transfer date.

Subtitle D—Preservation of State Law

SEC. 1041. RELATION TO STATE LAW.

(a) IN GENERAL.—

(1) RULE OF CONSTRUCTION.—This title, other than sections 1044 through 1048, may not be construed as annulling, altering, or affecting, or exempting any person subject to the provisions of this title from complying with, the statutes, regulations, orders, or interpretations in effect in any State, except to the extent that any such provision of law is inconsistent with the provisions of this title, and then only to the extent of the inconsistency.

(2) GREATER PROTECTION UNDER STATE LAW.—For purposes of this subsection, a statute, regulation, order, or interpretation in effect in any State is not inconsistent with the provisions of this title if the protection that such statute, regulation, order, or interpretation affords to consumers is greater than the protection provided under this title. A determination regarding whether a statute, regulation, order, or interpretation in effect in any State is inconsistent with the provisions of this title may be made by the Bureau on its own motion or in response to a nonfrivolous petition initiated by any interested person.

(b) RELATION TO OTHER PROVISIONS OF ENUMERATED CONSUMER LAWS THAT RELATE TO STATE LAW.—No provision of this title, except as provided in section 1083, shall be construed as modifying, limiting, or superseding the operation of any provision of an enumerated consumer law that relates to the application of a law in effect in any State with respect to such Federal law.

(c) ADDITIONAL CONSUMER PROTECTION REGULATIONS IN RESPONSE TO STATE ACTION.—

(1) NOTICE OF PROPOSED RULE REQUIRED.—The Bureau shall issue a notice of proposed rulemaking whenever a majority of the States has enacted a resolution in support of the establishment or modification of a consumer protection regulation by the Bureau.

(2) BUREAU CONSIDERATIONS REQUIRED FOR ISSUANCE OF FINAL REGULATION.—Before prescribing a final regulation based upon a notice issued pursuant to paragraph (1), the Bureau shall take into account whether—

(A) the proposed regulation would afford greater protection to consumers than any existing regulation;

(B) the intended benefits of the proposed regulation for consumers would outweigh any increased costs or inconveniences for consumers, and would not discriminate unfairly against any category or class of consumers; and

(C) a Federal banking agency has advised that the proposed regulation is likely to present an unacceptable safety and soundness risk to insured depository institutions.

(3) EXPLANATION OF CONSIDERATIONS.—The Bureau—

(A) shall include a discussion of the considerations required in paragraph (2) in the Federal Register notice of a final regulation prescribed pursuant to this subsection; and

(B) whenever the Bureau determines not to prescribe a final regulation, shall publish an explanation of such determination in the Federal Register, and provide a copy of such explanation to each State that enacted a resolution in support of the proposed regulation, the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(4) RESERVATION OF AUTHORITY.—No provision of this subsection shall be construed as limiting or restricting the authority of the Bureau to enhance consumer protection standards established pursuant to this title in response to its own motion or in response to a request by any other interested person.

(5) RULE OF CONSTRUCTION.—No provision of this subsection shall be construed as exempting the Bureau from complying with subchapter II of chapter 5 of title 5, United States Code.

(6) DEFINITION.—For purposes of this subsection, the term ''consumer protection regulation'' means a regulation that the Bureau is authorized to prescribe under the Federal consumer financial laws.

SEC. 1042. PRESERVATION OF ENFORCEMENT POWERS OF STATES.

(a) IN GENERAL.—

(1) ACTION BY STATE.—The attorney general (or the equivalent thereof) of any State may bring a civil action in the name of such State, as parens patriae on behalf of natural persons residing in such State, in any district court of the United States in that State or in State court having jurisdiction over the defendant, to enforce provisions of this title or regulations issued thereunder and to secure remedies under provisions of this title or remedies otherwise provided under other law. A State regulator may bring a civil action or other appropriate proceeding to enforce the provisions of this title or regulations issued thereunder with respect to any entity that is State-chartered, incorporated, licensed, or otherwise authorized to do business under State law, and to secure remedies under provisions of this title or remedies otherwise provided under other provisions of law with respect to a State-chartered entity.

(2) RULE OF CONSTRUCTION.—Except as provided in paragraph (3), no provision of this title shall be construed as modifying, limiting, or superseding the operation of any provision of an enumerated consumer law that relates to the authority of a State attorney general or State regulator to enforce such Federal law.

(3) FEE STRUCTURE.—

(A) IN GENERAL.—Neither an attorney general of a State nor a State regulator may enter into a contingency fee agreement for legal services relating to a civil action or other proceeding under this section.

(B) DEFINITION.—For purposes of this paragraph, the term ''contingency fee agreement'' means a contract or other agreement to provide services under which the amount or the payment of the fee for the services is contingent in whole or in part on the outcome of the matter for which the services were obtained.

SA 4071. Mr. CARPER (for himself, Mr. BAYH, Mr. JOHNSON, and 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; as follows:

On page 1309, strike line 15, and all that follows through page 1325, line 20 and insert the following:

SEC. 1042. PRESERVATION OF ENFORCEMENT POWERS OF STATES.

(a) IN GENERAL.—

(1) ACTION BY STATE.—Except as provided in paragraph (2), the attorney general (or the equivalent thereof) of any State may bring a civil action in the name of such State in any district court of the United States in that State or in State court that is located in that State and that has jurisdiction over the defendant, to enforce provisions of this title or regulations issued under this title, and to secure remedies under provisions of this title or remedies otherwise provided under other law. A State regulator may bring a civil action or other appropriate proceeding to enforce the provisions of this title or regulations issued under this title with respect to any entity that is State-chartered, incorporated, licensed, or otherwise authorized to do business under State law (except as provided in paragraph (2)), and to secure remedies under provisions of this title or remedies otherwise provided under other provisions of law with respect to such an entity.

(2) ACTION BY STATE AGAINST NATIONAL BANK OR FEDERAL SAVINGS ASSOCIATION TO ENFORCE RULES.—

(A) IN GENERAL.—Except as permitted under subparagraph (B), the attorney general (or equivalent thereof) of any State may not bring a civil action in the name of such State against a national bank or Federal savings association with respect to an act or omission that would be a violation of a provision of this title.

(B) ENFORCEMENT OF RULES PERMITTED.—The attorney general (or the equivalent thereof) of any State may bring a civil action in the name of such State against a national bank or Federal savings association in any district court of the United States in the State or in State court that is located in that State and that has jurisdiction over the defendant to enforce a regulation prescribed by the Bureau under a provision of this title and to secure remedies under provisions of this title or remedies otherwise provided under other law.

(3) RULE OF CONSTRUCTION.—No provision of this title shall be construed as modifying, limiting, or superseding the operation of any provision of an enumerated consumer law that relates to the authority of a State attorney general or State regulator to enforce such Federal law.

(b) CONSULTATION REQUIRED.—

(1) NOTICE.—

(A) IN GENERAL.—Before initiating any action in a court or other administrative or regulatory proceeding against any covered person as authorized by subsection (a) to enforce any provision of this title, including any regulation prescribed by the Bureau under this title, a State attorney general or State regulator shall timely provide a copy of the complete complaint to be filed and written notice describing such action or proceeding to the Bureau and the prudential regulator, if any, or the designee thereof.

(B) EMERGENCY ACTION.—If prior notice is not practicable, the State attorney general or State regulator shall provide a copy of the complete complaint and the notice to the Bureau and the prudential regulator, if any, immediately upon instituting the action or proceeding.

(C) CONTENTS OF NOTICE.—The notification required under this paragraph shall, at a minimum, describe—

(i) the identity of the parties;

(ii) the alleged facts underlying the proceeding; and

(iii) whether there may be a need to coordinate the prosecution of the proceeding so as not to interfere with any action, including any rulemaking, undertaken by the Bureau, a prudential regulator, or another Federal agency.

(2) BUREAU RESPONSE.—In any action described in paragraph (1), the Bureau may—

(A) intervene in the action as a party;

(B) upon intervening—

(i) remove the action to the appropriate United States district court, if the action was not originally brought there; and

(ii) be heard on all matters arising in the action; and

(C) appeal any order or judgment, to the same extent as any other party in the proceeding may.

(c) REGULATIONS.—The Bureau shall prescribe regulations to implement the requirements of this section and, from time to time, provide guidance in order to further coordinate actions with the State attorneys general and other regulators.

(d) PRESERVATION OF STATE AUTHORITY.—

(1) STATE CLAIMS.—No provision of this section shall be construed as altering, limiting, or affecting the authority of a State attorney general or any other regulatory or enforcement agency or authority to bring an action or other regulatory proceeding arising solely under the law in effect in that State.

(2) STATE SECURITIES REGULATORS.—No provision of this title shall be construed as altering, limiting, or affecting the authority of a State securities commission (or any agency or office performing like functions) under State law to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by such commission or authority.

(3) STATE INSURANCE REGULATORS.—No provision of this title shall be construed as altering, limiting, or affecting the authority of a State insurance commission or State insurance regulator under State law to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by such commission or regulator.

SEC. 1043. PRESERVATION OF EXISTING CONTRACTS.

This title, and regulations, orders, guidance, and interpretations prescribed, issued, or established by the Bureau, shall not be construed to alter or affect the applicability of any regulation, order, guidance, or interpretation prescribed, issued, and established by the Comptroller of the Currency or the Director of the Office of Thrift Supervision regarding the applicability of State law under Federal banking law to any contract entered into on or before the date of enactment of this Act, by national banks, Federal savings associations, or subsidiaries thereof that are regulated and supervised by the Comptroller of the Currency or the Director of the Office of Thrift Supervision, respectively.

SEC. 1044. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND SUBSIDIARIES CLARIFIED.

(a) IN GENERAL.—Chapter one of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.) is amended by inserting after section 5136B the following new section:

"SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND SUBSIDIARIES CLARIFIED.

''(a) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

''(1) NATIONAL BANK.—The term 'national bank' includes—

''(A) any bank organized under the laws of the United States; and

''(B) any Federal branch established in accordance with the International Banking Act of 1978.

''(2) STATE CONSUMER FINANCIAL LAWS.—The term 'State consumer financial law' means a State law that does not directly or indirectly discriminate against national banks and that directly and specifically regulates the manner, content, or terms and conditions of any financial transaction (as may be authorized for national banks to engage in), or any account related thereto, with respect to a consumer.

''(3) OTHER DEFINITIONS.—The terms 'affiliate', 'subsidiary', 'includes', and 'including' have the same meanings as in section 3 of the Federal Deposit Insurance Act.

''(b) PREEMPTION STANDARD.—

''(1) IN GENERAL.—State consumer financial laws are preempted, only if—

''(A) application of a State consumer financial law would have a discriminatory effect on national banks, in comparison with the effect of the law on a bank chartered by that State;

''(B) the State consumer financial law is preempted in accordance with the legal standard of the decision of the Supreme Court of the United States in Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al., 517 U.S. 25 (1996), and any preemption determination under this subparagraph may be made by a court, or by regulation or order of the Comptroller of the Currency on a case-by-case basis, in accordance with applicable law; or

''(C) the State consumer financial law is preempted by a provision of Federal law other than this title.

''(2) SAVINGS CLAUSE.—This title and section 24 of the Federal Reserve Act (12 U.S.C. 371) do not preempt, annul, or affect the applicability of any State law to any subsidiary or affiliate of a national bank (other than a subsidiary or affiliate that is chartered as a national bank).

''(3) CASE-BY-CASE BASIS.—

''(A) DEFINITION.—As used in this section the term 'case-by-case basis' refers to a determination pursuant to this section made by the Comptroller concerning the impact of a particular State consumer financial law on any national bank that is subject to that law, or the law of any other State with substantively equivalent terms.

''(B) CONSULTATION.—When making a determination on a case-by-case basis that a State consumer financial law of another State has substantively equivalent terms as one that the Comptroller is preempting, the Comptroller shall first consult with the Bureau of Consumer Financial Protection and shall take the views of the Bureau into account when making the determination.

''(4) RULE OF CONSTRUCTION.—This title does not occupy the field in any area of State law.

''(5) STANDARDS OF REVIEW.—

''(A) PREEMPTION.—A court reviewing any determinations made by the Comptroller regarding preemption of a State law by this title or section 24 of the Federal Reserve Act (12 U.S.C. 371) shall assess the validity of such determinations, depending upon the thoroughness evident in the consideration of the agency, the validity of the reasoning of the agency, the consistency with other valid determinations made by the agency, and other factors which the court finds persuasive and relevant to its decision.

''(B) SAVINGS CLAUSE.—Except as provided in subparagraph (A), nothing in this section shall affect the deference that a court may afford to the Comptroller in making determinations regarding the meaning or interpretation of title LXII of the Revised Statutes of the United States or other Federal laws.

''(6) COMPTROLLER DETERMINATION NOT DELEGABLE.—Any regulation, order, or determination made by the Comptroller of the Currency under paragraph (1)(B) shall be made by the Comptroller, and shall not be delegable to another officer or employee of the Comptroller of the Currency.

''(c) SUBSTANTIAL EVIDENCE.—No regulation or order of the Comptroller of the Currency prescribed under subsection (b)(1)(B), shall be interpreted or applied so as to invalidate, or otherwise declare inapplicable to a national bank, the provision of the State consumer financial law, unless substantial evidence, made on the record of the proceeding, supports the specific finding regarding the preemption of such provision in accordance with the legal standard of the decision of the Supreme Court of the United States in Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al., 517 U.S. 25 (1996).

''(d) PERIODIC REVIEW OF PREEMPTION DETERMINATIONS.—

''(1) IN GENERAL.—The Comptroller of the Currency shall periodically conduct a review, through notice and public comment, of each determination that a provision of Federal law preempts a State consumer financial law. The agency shall conduct such review within the 5-year period after prescribing or otherwise issuing such determination, and at least once during each 5-year period thereafter. After conducting the review of, and inspecting the comments made on, the determination, the agency shall publish a notice in the Federal Register announcing the decision to continue or rescind the determination or a proposal to amend the determination. Any such notice of a proposal to amend a determination and the subsequent resolution of such proposal shall comply with the procedures set forth in subsections (a) and (b) of section 5244 of the Revised Statutes of the United States (12 U.S.C. 43 (a), (b)).

''(2) REPORTS TO CONGRESS.—At the time of issuing a review conducted under paragraph (1), the Comptroller of the Currency shall submit a report regarding such review to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate. The report submitted to the respective committees shall address whether the agency intends to continue, rescind, or propose to amend any determination that a provision of Federal law preempts a State consumer financial law, and the reasons therefor.

''(e) APPLICATION OF STATE CONSUMER FINANCIAL LAW TO SUBSIDIARIES AND AFFILIATES.—Notwithstanding any provision of this title or section 24 of Federal Reserve Act (12 U.S.C. 371), a State consumer financial law shall apply to a subsidiary or affiliate of a national bank (other than a subsidiary or affiliate that is chartered as a national bank) to the same extent that the State consumer financial law applies to any person, corporation, or other entity subject to such State law.

''(f) PRESERVATION OF POWERS RELATED TO CHARGING INTEREST.—No provision of this title shall be construed as altering or otherwise affecting the authority conferred by section 5197 of the Revised Statutes of the United States (12 U.S.C. 85) for the charging of interest by a national bank at the rate allowed by the laws of the State, territory, or district where the bank is located, including with respect to the meaning of 'interest' under such provision.

''(g) TRANSPARENCY OF OCC PREEMPTION DETERMINATIONS.—The Comptroller of the Currency shall publish and update no less frequently than quarterly, a list of preemption determinations by the Comptroller of the Currency then in effect that identifies the activities and practices covered by each determination and the requirements and constraints determined to be preempted.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter one of title LXII of the Revised Statutes of the United States is amended by inserting after the item relating to section 5136B the following new item:

''Sec. 5136C. State law preemption standards for national banks and subsidiaries clarified.''.

SEC. 1045. CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES.

Section 5136C of the Revised Statutes of the United States (as added by this subtitle) is amended by adding at the end the following:

''(h) CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILIATES OF NATIONAL BANKS.—

''(1) DEFINITIONS.—For purposes of this subsection, the terms 'depository institution', 'subsidiary', and 'affiliate' have the same meanings as in section 3 of the Federal Deposit Insurance Act.

''(2) RULE OF CONSTRUCTION.—No provision of this title or section 24 of the Federal Reserve Act (12 U.S.C. 371) shall be construed as preempting, annulling, or affecting the applicability of State law to any subsidiary, affiliate, or agent of a national bank (other than a subsidiary, affiliate, or agent that is chartered as a national bank).''.

SEC. 1046. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS AND SUBSIDIARIES CLARIFIED.

(a) IN GENERAL.—The Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is amended by inserting after section 5 the following new section:

''SEC. 6. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS CLARIFIED.

''(a) IN GENERAL.—Any determination by a court or by the Director or any successor officer or agency regarding the relation of State law to a provision of this Act or any regulation or order prescribed under this Act shall be made in accordance with the laws and legal standards applicable to national banks regarding the preemption of State law.

''(b) PRINCIPLES OF CONFLICT PREEMPTION APPLICABLE.—Notwithstanding the authorities granted under sections 4 and 5, this Act does not occupy the field in any area of State law.''.

(b) CLERICAL AMENDMENT.—The table of sections for the Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is amended by striking the item relating to section 6 and inserting the following new item:

''Sec. 6. State law preemption standards for Federal savings associations and subsidiaries clarified.''.

SEC. 1047. VISITORIAL STANDARDS FOR NATIONAL BANKS AND SAVINGS ASSOCIATIONS.

(a) NATIONAL BANKS.—Section 5136C of the Revised Statutes of the United States (as added by this subtitle) is amended by adding at the end the following:

''(i) VISITORIAL POWERS.—

''(1) IN GENERAL.—In accordance with the decision of the Supreme Court of the United States in Cuomo v. Clearing House Assn., L. L. C. (129 S. Ct. 2710 (2009)), no provision of this title which relates to visitorial powers or otherwise limits or restricts the visitorial authority to which any national bank is subject shall be construed as limiting or restricting the authority of any attorney general (or other chief law enforcement officer) of any State to bring an action against a national bank in a court of appropriate jurisdiction to enforce an applicable law and to seek relief as authorized by such law.

''(j) ENFORCEMENT ACTIONS.—The ability of the Comptroller of the Currency to bring an enforcement action under this title or section 5 of the Federal Trade Commission Act does not preclude any private party from enforcing rights granted under Federal or State law in the courts.''.

(b) SAVINGS ASSOCIATIONS.—Section 6 of the Home Owners' Loan Act (as added by this title) is amended by adding at the end the following:

''(c) VISITORIAL POWERS.—The provisions of sections 5136C(i) of the Revised Statutes of the United States shall apply to Federal savings associations, and any subsidiary thereof, to the same extent and in the same manner as if such savings associations, or subsidiaries thereof, were national banks or subsidiaries of national banks, respectively.

SA 4072. Mr. GRASSLEY (for himself and Mrs. MCCASKILL) 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:

Strike 989B, insert the following:

SEC. 989B. DESIGNATED FEDERAL ENTITY INSPECTORS GENERAL INDEPENDENCE.

Section 8G of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in subsection (a)(4)—

(A) in the matter preceding subparagraph (A), by inserting ''the board or commission of the designated Federal entity, or in the event the designated Federal entity does not have a board or commission,'' after ''means'';

(B) in subparagraph (A), by striking ''and'' after the semicolon; and

(C) by adding after subparagraph (B) the following:

''(C) with respect to the Federal Labor Relations Authority, such term means the members of the Authority (described under section 7104 of title 5, United States Code);

''(D) with respect to the National Archives and Records Administration, such term means the Archivist of the United States;

''(E) with respect to the National Credit Union Administration, such term means the National Credit Union Administration Board (described under section 102 of the Federal Credit Union Act (12 U.S.C. 1752a);

''(F) with respect to the National Endowment of the Arts, such term means the National Council on the Arts;

''(G) with respect to the National Endowment for the Humanities, such term means the National Council on the Humanities; and

''(H) with respect to the Peace Corps, such term means the Director of the Peace Corps;''; and

(2) in subsection (h), by inserting ''if the designated Federal entity is not a board or commission, include'' after ''designated Federal entities and''.

SEC. 989C. STRENGTHENING INSPECTOR GENERAL ACCOUNTABILITY.

Section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (12), by striking ''and'' after the semicolon;

(2) in paragraph (13), by striking the period and inserting a semicolon; and

(3) by adding at the end the following:

''(14)(A) an appendix containing the results of any peer review conducted by another Office of Inspector General during the reporting period; or

''(B) if no peer review was conducted within that reporting period, a statement identifying the date of the last peer review conducted by another Office of Inspector General;

''(15) a list of any outstanding recommendations from any peer review conducted by another Office of Inspector General that have not been fully implemented, including a statement describing the status of the implementation and why implementation is not complete; and

''(16) a list of any peer reviews conducted by the Inspector General of another Office of the Inspector General during the reporting period, including a list of any outstanding recommendations made from any previous peer review (including any peer review conducted before the reporting period) that remain outstanding or have not been fully implemented.''.

SEC. 989D. REMOVAL OF INSPECTORS GENERAL OF DESIGNATED FEDERAL ENTITIES.

Section 8G(e) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating the sentences following ''(e)'' as paragraph (2); and

(2) by striking ''(e)'' and inserting the following:

''(e)(1) In the case of a designated Federal entity for which a board or commission is the head of the designated Federal entity, a removal under this subsection may only be made upon the written concurrence of a ⅔ majority of the board or commission.''.

SEC. 989E. ADDITIONAL OVERSIGHT OF FINANCIAL REGULATORY SYSTEM.

(a) COUNCIL OF INSPECTORS GENERAL ON FINANCIAL OVERSIGHT.—

(1) ESTABLISHMENT AND MEMBERSHIP.—There is established a Council of Inspectors General on Financial Oversight (in this section referred to as the ''Council of Inspectors General'') chaired by the Inspector General of the Department of the Treasury and composed of the inspectors general of the following:

(A) The Board of Governors of the Federal Reserve System.

(B) The Commodity Futures Trading Commission.

(C) The Department of Housing and Urban Development.

(D) The Department of the Treasury.

(E) The Federal Deposit Insurance Corporation.

(F) The Federal Housing Finance Agency.

(G) The National Credit Union Administration.

(H) The Securities and Exchange Commission.

(I) The Troubled Asset Relief Program (until the termination of the authority of the Special Inspector General for such program under section 121(k) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5231(k))).

(2) DUTIES.—

(A) MEETINGS.—The Council of Inspectors General shall meet not less than once each quarter, or more frequently if the chair considers it appropriate, to facilitate the sharing of information among inspectors general and to discuss the ongoing work of each inspector general who is a member of the Council of Inspectors General, with a focus on concerns that may apply to the broader financial sector and ways to improve financial oversight.

(B) ANNUAL REPORT.—Each year the Council of Inspectors General shall submit to the Council and to Congress a report including—

(i) for each inspector general who is a member of the Council of Inspectors General, a section within the exclusive editorial control of such inspector general that highlights the concerns and recommendations of such inspector general in such inspector general's ongoing and completed work, with a focus on issues that may apply to the broader financial sector; and

(ii) a summary of the general observations of the Council of Inspectors General based on the views expressed by each inspector general as required by clause (i), with a focus on measures that should be taken to improve financial oversight.

(3) WORKING GROUPS TO EVALUATE COUNCIL.—

(A) CONVENING A WORKING GROUP.—The Council of Inspectors General may, by majority vote, convene a Council of Inspectors General Working Group to evaluate the effectiveness and internal operations of the Council.

(B) PERSONNEL AND RESOURCES.—The inspectors general who are members of the Council of Inspectors General may detail staff and resources to a Council of Inspectors General Working Group established under this paragraph to enable it to carry out its duties.

(C) REPORTS.—A Council of Inspectors General Working Group established under this paragraph shall submit regular reports to the Council and to Congress on its evaluations pursuant to this paragraph.

(b) RESPONSE TO REPORT BY COUNCIL.—The Council shall respond to the concerns raised in the report of the Council of Inspectors General under subsection (a)(2)(B) for such year.

SA 4073. Mr. ENZI (for himself and 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 1290, line 4, strike ''respectively.'' insert the following: ''respectively.

(s) CONSUMER PRIVACY.—Notwithstanding any other provision of this Act, the Bureau may not investigate an individual transaction to which a consumer is a party without the written permission of the consumer.

SA 4074. Mr. KOHL submitted an amendment intended to be proposed to amendment SA 3962 submitted by Mr. MERKLEY (for himself, Ms. KLOBUCHAR, Mr. SCHUMER, Ms. SNOWE, Mr. BROWN of Massachusetts, Mr. BEGICH, Mrs. BOXER, Mr. DODD, Mr. KERRY, Mr. FRANKEN, and Mr. LEVIN) to the 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 9, line 7, insert ''private mortgage insurance (as defined in section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901)) and'' after ''premium for''.

SA 4075. Ms. LANDRIEU (for herself, Mr. DODD, and Mr. KERRY) submitted an amendment intended to be proposed by her 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:

At the end of subtitle A of title X, add the following:

SEC. ___. SMALL BUSINESS CONSULTATION.

(a) SMALL BUSINESS ADVISORY BOARD.—

(1) ESTABLISHMENT REQUIRED.—The Director shall establish a Small Business Advisory Board, which shall be responsible for advising and consulting with the Bureau regarding the effects of actions by the Bureau on small businesses. The Small Business Advisory Board may provide information on emerging practices in consumer financial products or services, including regional trends, and other matters of interest to small businesses.

(2) MEMBERSHIP.—In appointing the members of the Small Business Advisory Board, the Director shall seek representation of the interests of small businesses operating in various markets for consumer financial products and services, including depository institutions, credit unions, and non-depository institutions.

(3) MEETINGS.—The Small Business Advisory Board shall meet from time to time, at the call of the Director, but not less frequently than 4 times in each year.

(4) COMPENSATION AND TRAVEL EXPENSES.—Members of the Small Business Advisory Board who are not full time employees of the United States shall—

(A) be entitled to receive compensation at a rate fixed by the Director while attending meetings of the Small Business Advisory Board, including travel time; and

(B) be allowed travel expenses, including transportation and subsistence, while away from their homes or regular places of business.

(b) CONSIDERATION OF IMPACT ON SMALL BUSINESSES.—

(1) ANALYSIS.—When conducting an initial regulatory flexibility analysis or final regulatory flexibility analysis, as required under chapter 6 of part I of title 5, United States Code (commonly referred to as the ''Regulatory Flexibility Act'') regarding compliance burden on small entities, the Bureau shall provide a description of any increase in the cost of credit to small entities projected as a result of the proposed or final rule, as applicable, and any significant alternatives to the proposed or final rule which would accomplish the stated objectives of applicable statutes and which would minimize any increase in the cost of credit to small entities.

(2) REVIEW PANELS.—

(A) IN GENERAL.—If the Bureau prepares an initial regulatory flexibility analysis for a proposed rule, the Bureau, after publishing notice of the proposed rulemaking, shall follow the procedures specified in section 609(b) of title 5, United States Code, as if the Bureau were a covered agency.

(B) CONSIDERATION OF REVIEW PANEL REPORT.—The Bureau shall consider the report of the review panel issued under this paragraph and include in the adopting release of the final rule a description of the basis for any determination by the Bureau concerning any issues raised by the panel and any issue concerning the cost of credit to small entities, as required in paragraph (1).

(C) DEADLINE.—Notwithstanding any other provision of chapter 6 of part I of title 5, United States Code, the report of the review panel shall be submitted not later than 90 days after the date on which the Bureau notifies the Chief Counsel of Advocacy of the Small Business Administration concerning the proposed rule, and the Bureau may proceed with its rulemaking if such report is not timely submitted.

SA 4076. Mr. REED (for himself and Mr. AKAKA) 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 1455, after line 25, insert the following:

SEC. 1077. OVERSIGHT OF EFFORTS TO REDUCE MORTGAGE DEFAULTS AND FORECLOSURES.

(a) DEFINITIONS.—In this section—

(1) the term ''heads of appropriate agencies'' means the Secretary of the Treasury, Comptroller of the Currency, the Board of Governors, the Corporation, the National Credit Union Administration, the Council, the Director of the Bureau, the Office of Financial Research, the Federal Housing Finance Agency, and a representative of State banking regulators selected by the Secretary;

(2) the term ''mortgagee'' means—

(A) an original lender under a mortgage or the holder of a residential mortgage at the time at which that mortgage transaction is consummated;

(B) any affiliate, agent, subsidiary, successor, or assignee of an original lender under a mortgage or the holder of a residential mortgage at the time at which that mortgage transaction is consummated;

(C) any servicer of a mortgage; and

(D) any subsequent purchaser, trustee, or transferee of any mortgage or credit instrument issued by an original lender;

(3) the term ''Secretary'' means the Secretary of Housing and Urban Development;

(4) the term ''servicer'' means the person or entity responsible for servicing of a loan (including the person or entity who makes or holds a loan if such person or entity also services the loan); and

(5) the term ''servicing'' has the meaning given the term in section 6(i) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(i)).

(b) MONITORING OF HOME LOANS.—

(1) IN GENERAL.—The Secretary, in consultation with the heads of appropriate agencies, shall develop and implement a plan to monitor—

(A) conditions and trends in homeownership and the mortgage industry, in order to predict trends in foreclosures and to better understand other critical aspects of the mortgage market; and

(B) the effectiveness of public efforts to reduce mortgage defaults and foreclosures.

(2) REPORT TO CONGRESS.—Not later than 1 year after the development of the plan under paragraph (1), and each year thereafter, the Secretary shall submit a report to Congress that—

(A) summarizes and describes the findings of the monitoring required under paragraph (1); and

(B) includes recommendations or proposals for legislative or administrative action necessary—

(i) to increase the authority of the Secretary to levy penalties against any mortgagee, or other person or entity, who fails to comply with the requirements described in this section;

(ii) to improve coordination between public and private initiatives to reduce the overall rate of mortgage defaults and foreclosures; and

(iii) to improve coordination between initiatives undertaken by Federal, State, and local governments.

(c) NATIONAL DATABASE ON DEFAULTS AND FORECLOSURES.—

(1) IN GENERAL.—The Secretary, in consultation with the heads of appropriate agencies, shall develop recommendations for a national database on mortgage defaults and foreclosures that—

(A) provides information to Federal regulatory agencies on—

(i) mortgagees that generate home loans that go into default or foreclosure at a rate significantly higher than the national average for such mortgagees;

(ii) the factors associated with such higher rates; and

(iii) other factors and indicators that the Secretary determines are critical to monitoring the mortgage markets; and

(B) provides information to Federal, State, and local governments on loans, delinquencies, defaults, foreclosures, deeds in lieu of foreclosure, short sales, and sheriff sales that—

(i) is not otherwise readily available;

(ii) would allow for a better understanding of local, regional, and national trends; and

(iii) helps improve public policies that reduce defaults and foreclosures.

(2) CONSIDERATIONS.—In developing the recommendations under paragraph (1), the Secretary shall take into consideration privacy concerns and legal issues relating to such concerns, including the advisability of establishing rules relating to access, including public access, to information obtained under subsection (d).

(3) REPORT TO CONGRESS ON NATIONAL DATABASE.—Not later than 6 months after the date of enactment of this Act, the Secretary shall submit a report to Congress that contains—

(A) the recommendations developed under paragraph (1);

(B) an estimate of the cost of maintaining the database described in paragraph (1); and

(C) a reasonable timetable with a deadline by which a national database on mortgage defaults and foreclosures shall be established by the Secretary.

(d) PROVISION OF DATA.—

(1) DATA REPORT REQUIRED.—Not later than 12 months after the date of enactment of this Act, the Secretary, in consultation with the heads of appropriate agencies, shall issue final rules that require each mortgagee or servicer that originates or services not fewer than 100 loans in the prior calendar year (or any other person that the Secretary determines can effectively provide the data described in paragraph (2)) to submit a report to the Secretary not less frequently than once each quarter that contains data the Secretary determines are necessary to carry out this section.

(2) CONTENTS OF REPORT.—Each report submitted under paragraph (1) shall contain data that—

(A) for each loan, use the identification requirements that are established under the Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.) for data reporting, including—

(i) the date of origination;

(ii) the agency code of the originator;

(iii) the respondent identification number of the originator; and

(iv) the identifying number for the loan;

(B) describe the characteristics of each home loan originated in the preceding 12 months by the mortgagee or servicer (or, in the case of the first report required to be submitted under this subsection, all active loans originated by the mortgagee or servicer), including—

(i) the loan-to-value ratio at the time of origination for each mortgage on the property; and

(ii) the type of mortgage, such as a fixed-rate or adjustable-rate mortgage; and

(C) include the performance outcome of each home loan originated in the preceding 12 months by the mortgagee or servicer (or, in the case of the first report required to be submitted under this subsection, all active loans originated by the mortgagee or servicer), including—

(i) whether such home loan was in delinquency at any point in such 12-month period; and

(ii) whether any judicial or non-judicial foreclosure was initiated on such home loan during such 12-month period;

(D) are sufficient to establish for each home loan that at any point during the preceding 12 months had become 60 or more days delinquent with respect to a payment on any amount due under the home loan, or for which a judicial or non-judicial foreclosure was initiated, the interest rate on such home loan at the time of such delinquency or foreclosure;

(E) include information relating to foreclosures, including—

(i) the date of all foreclosures initiated by the mortgagee or servicer; and

(ii) the combined loan-to-value ratio of all mortgages on a home at the time foreclosure was initiated;

(F) for a home loan that is in foreclosure, include information on all actions, including loan modifications, taken to mitigate or resolve the problem that led to the initiation of foreclosure and all actions undertaken prior to initiation of a foreclosure to resolve a delinquency or default;

(G) identify each home loan for which foreclosure was completed in the preceding 12 months, including—

(i) foreclosures initiated in such 12-month period; and

(ii) the date of the foreclosure completion; and

(H) include any other information that the Secretary determines is necessary to carry out this section.

(3) COMPLIANCE PLAN AND REPORT.—The Secretary, in consultation with the heads of appropriate agencies, shall—

(A) develop a plan to monitor the compliance with the requirements established in this subsection; and

(B) submit to Congress a report on such plan.

(4) ESTABLISHMENT OF NATIONAL DATABASE.—The Secretary shall establish a national database on mortgage defaults and foreclosures by the deadline established in the report to Congress required by subsection (c)(3) and shall provide public access to such database or portions thereof, subject to the Secretary making reasonable efforts to ensure that such public disclosure adequately addresses privacy, confidentiality, or legal rights under Federal or State law that may reasonably be raised.

(e) CONSOLIDATED DATABASE.—Not later than 6 months after the establishment of the national database described in subsection

(d)(4), the Federal Financial Institutions Examination Council, or any successor thereto, shall create a consolidated database that establishes a connection between the data provided under the Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.) and the data provided under this section.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2010 through 2014.

SA 4077. Mr. REED (for himself, Mr. GRASSLEY, Mr. JOHNSON, Mr. BROWN of Ohio, and Mr. LEVIN) 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 384, strike line 1 and all that follows through page 387, line 3 and insert the following:

SEC. 407. FAMILY OFFICES.

(a) IN GENERAL.—Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)) is amended by striking ''or (G)'' and inserting the following: ''; (G) any family office, as defined by rule, regulation, or order of the Commission, in accordance with the purposes of this title; or (H)''.

(b) RULEMAKING.—The rules, regulations, or orders issued by the Commission pursuant to section 202(a)(11)(G) of the Investment Advisers Act of 1940, as added by this section, regarding the definition of the term ''family office'' shall provide for an exemption that—

(1) is consistent with the previous exemptive policy of the Commission, as reflected in exemptive orders for family offices in effect on the date of enactment of this Act; and

(2) recognizes the range of organizational, management, and employment structures and arrangements employed by family offices.

SEC. 408. STATE AND FEDERAL RESPONSIBILITIES; ASSET THRESHOLD FOR FEDERAL REGISTRATION OF INVESTMENT ADVISERS.

Section 203A(a) of the of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3a(a)) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following:

''(2) TREATMENT OF MID-SIZED INVESTMENT ADVISERS.—

''(A) IN GENERAL.—No investment adviser described in subparagraph (B) shall register under section 203, unless the investment adviser is an adviser to an investment company registered under the Investment Company Act of 1940, or a company which has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940, and has not withdrawn the election, except that, if by effect of this paragraph an investment adviser would be required to register with 15 or more States, then the adviser may register under section 203.

''(B) COVERED PERSONS.—An investment adviser described in this subparagraph is an investment adviser that—

''(i) is required to be registered as an investment adviser with the securities commissioner (or any agency or office performing like functions) of the State in which it maintains its principal office and place of business and, if registered, would be subject to examination as an investment adviser by any such commissioner, agency, or office; and

''(ii) has assets under management between—

''(I) the amount specified under subparagraph (A) of paragraph (1), as such amount may have been adjusted by the Commission pursuant to that subparagraph; and

''(II) $100,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this title.''.

SEC. 409. CUSTODY OF CLIENT ASSETS.

SA 4078. Mr. REED (for himself, Mr. GRASSLEY, Mr. JOHNSON, Mr. BROWN of Ohio, and Mr. LEVIN) 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 384, strike line 1 and all that follows through page 385, line 15.

On page 385, line 16, strike ''**409**'' and insert ''**407**''.

On page 386, strike line 10 and all that follows through page 387, line 2 and insert the following:

SEC. 408. STATE AND FEDERAL RESPONSIBILITIES; ASSET THRESHOLD FOR FEDERAL REGISTRATION OF INVESTMENT ADVISERS.

Section 203A(a) of the of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3a(a)) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following:

''(2) TREATMENT OF MID-SIZED INVESTMENT ADVISERS.—

''(A) IN GENERAL.—No investment adviser described in subparagraph (B) shall register under section 203, unless the investment adviser is an adviser to an investment company registered under the Investment Company Act of 1940, or a company which has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940, and has not withdrawn the election, except that, if by effect of this paragraph an investment adviser would be required to register with 15 or more States, then the adviser may register under section 203.

''(B) COVERED PERSONS.—An investment adviser described in this subparagraph is an investment adviser that—

''(i) is required to be registered as an investment adviser with the securities commissioner (or any agency or office performing like functions) of the State in which it maintains its principal office and place of business and, if registered, would be subject to examination as an investment adviser by any such commissioner, agency, or office; and

''(ii) has assets under management between—

''(I) the amount specified under subparagraph (A) of paragraph (1), as such amount may have been adjusted by the Commission pursuant to that subparagraph; and

''(II) $100,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this title.''.

On page 387, line 3, strike ''**411**'' and insert ''**409**''

On page 387, line 13, strike ''**412**'' and insert ''**410**''.

On page 388, line 4, strike ''**413**'' and insert ''**411**''.

On page 388, line 16, strike ''**414**'' and insert ''**412**''.

On page 389, line 3, strike ''**415**'' and insert ''**413**''.

On page 390, line 1, strike ''**416**'' and insert ''**414**''.

SA 4079. Mr. REED 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 71, strike lines 15 through 23 and insert the following:

(1) IN GENERAL.—

(A) AUTHORITY.—To assist the Office in assessing financial stability or otherwise carrying out the functions described in this subtitle, the Director may require, by subpoena, the production of the data requested under subsection (a)(1) and section 154(b)(1), upon a written finding by the Director that—

(i) such data is required to carry out the functions described under this subtitle;

(ii) attempts to obtain such data without the use of a subpoena have been unsuccessful; and

(iii) the Office has coordinated with such agency, as required under section 154(b)(1)(B)(ii).

(B) CONSIDERATIONS.—The Director shall take into consideration the burden imposed by the request of the Director under subparagraph (A).

SA 4080. Mr. ENSIGN 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 1089, strike line 6 and all that follows through **"SEC. 973."**

SA 4081. Mr. HATCH 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 1235, line 10, before the semicolon insert ''and shall certify that the costs of the rule will not be borne by the consumer''.

SA 4082. Mr. DODD 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 1242, between lines 14 and 15, insert the following:

(7) CONSUMER PRIVACY.—

(A) IN GENERAL.—The Bureau may not have access to, or obtain copies of, any personally identifiable financial information relating to a consumer contained in the financial records of any covered person from a disclosure of such information by the covered person to the Bureau, except—

(i) if the financial records are reasonably described in a request by the Bureau and the consumer provides written permission for the disclosure of such information by the covered person to the Bureau; or

(ii) as may be specifically permitted or required under other provisions of law, and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.).

(B) TREATMENT OF COVERED PERSON.—With respect to the application of any provision of the Right to Financial Privacy Act of 1978 to a disclosure by a covered person subject to this subsection, the covered person shall be treated as if it were a ''financial institution'', as that term is defined in section 1101 of that Act (12 U.S.C. 3401).

SA 4083. 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 by or on behalf 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 10 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 4084. Mr. REED 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 502, strike lines 4 through 14.

On page 502, between lines 15 and 16, insert the following:

(a) JOINT RULEMAKING.—

(1) DEFINITION OF TERMS.—

(A) IN GENERAL.—Notwithstanding any other provision of this title, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall engage in joint rulemaking to jointly adopt a rule or rules further defining the terms ''swap'', ''security-based swap'', ''swap dealer'', ''security-based swap dealer'', ''major swap participant'', ''major security-based swap participant'', and ''eligible contract participant'' and such other rules regarding such definitions as the Commodity Futures Trading Commission and the Securities and Exchange Commission determine are necessary and appropriate, in the public interest, and for the protection of investors.

(B) PREVENTION OF EVASIONS.—The Commodity Futures Trading Commission and the Securities and Exchange Commission may jointly prescribe rules defining the term ''swap'' or ''security-based swap'' to include transactions that have been structured to evade this title.

(2) TRADE REPOSITORY RECORD KEEPING.—Notwithstanding any other provision of this title, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall engage in joint rulemaking to jointly adopt a rule or rules governing the books and records that are required to be kept and maintained regarding security-based swap agreements by persons that are registered as swap data repositories under the Commodity Exchange Act, including uniform rules that specify the data elements that shall be collected and maintained by each repository.

(3) CAPITAL AND MARGIN.—

(A) Notwithstanding any other provision of this title, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall engage in joint rulemaking to jointly adopt a rule or rules imposing capital and margin requirements under the respective provisions of the Commodity Exchange Act and the Securities Exchange Act of 1934 for swap dealers, security-based swap dealers, major swap participants, and major security-based swap participants for which there is not a prudential regulator.

(B) Notwithstanding any other provision of this title, prudential regulators, the Commodity Futures Trading Commission, and the Securities and Exchange Commission shall engage in joint rulemaking to jointly adopt a rule or rules imposing capital and margin requirements under the respective provisions of the Commodity Exchange Act and the Securities Exchange Act of 1934 for swap dealers, security-based swap dealers, major swap participants, and major security-based swap participants for which there is a prudential regulator.

(4) BOOKS AND RECORDS.—Notwithstanding any other provision of this title, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall engage in joint rulemaking to jointly adopt a rule or rules governing books and records regarding security-based swap agreements, including daily trading records, for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants.

(5) JOINT RULEMAKING UNDER THIS TITLE.—

(A) COMPARABLE RULES.—Rules and regulations prescribed jointly under this title by the Commodity Futures Trading Commission and the Securities and Exchange Commission shall be comparable to the maximum extent possible, taking into consideration differences in instruments and in the applicable statutory requirements.

(B) CONSULTATION WITH THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.—Prior to prescribing jointly any rules and regulations under this title, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall consult with the Board of Governors of the Federal Reserve System.

(6) FINANCIAL STABILITY OVERSIGHT COUNCIL.—In the event that the Commodity Futures Trading Commission and the Securities and Exchange Commission fail to jointly prescribe rules pursuant to paragraphs (1), (2), (3), or (4) of subsection (a) in a timely manner, at the request of either Commission, the Financial Stability Oversight Council shall resolve the dispute—

(A) within a reasonable time after receiving the request;

(B) after consideration of relevant information provided by each Commission; and

(C) by agreeing with one of the Commissions regarding the entirety of the matter or by determining a compromise position.

(7) TREATMENT OF SIMILAR PRODUCTS.—In adopting joint rules and regulations under this title, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall treat functionally or economically similar products similarly.

(8) TREATMENT OF DISSIMILAR PRODUCTS.—Nothing in this title shall be construed to require the Commodity Futures Trading Commission and the Securities and Exchange Commission to adopt joint rules that treat functionally or economically different products identically.

(9) JOINT INTERPRETATION.—Any Commission interpretation of, or guidance regarding, a provision of this title, shall be effective only if issued jointly by the Commodity Futures Trading Commission and the Securities and Exchange Commission if this title requires the Commodity Futures Trading Commission and the Securities and Exchange Commission to issue joint regulations to implement the provision.

On page 502, line 15, strike ''**REVIEW OF**'' before ''**REGULATORY AUTHORITY**''.

On page 502, line 16, strike ''(a)'' and insert ''(b)''.

On page 502, line 17, insert ''subsection (a) and'' after ''provided in''.

On page 505, line 7, strike ''(b)'' and insert ''(c)''.

On page 506, strike line 23 and all that follows through ''any other'' on page 507, line 2, and insert the following:

(3) PROHIBITION ON CERTAIN FUTURES ASSOCIATIONS.—Notwithstanding any other

On page 507, strike line 14 and all that follows through page 508, line 2.

On page 508, line 3, strike ''(c)'' and insert ''(d)''.

On page 508, line 8, strike ''(a)'' and insert ''(b)''.

On page 508, line 9, strike ''(b)'' and insert ''(c)''.

On page 509, line 24, strike ''(a)(4) or (b)'' and insert ''(b)(4) or (c)''.

On page 510, line 8, strike ''(d)'' and insert ''(e)''.

On page 510, line 9, strike ''(b) and (c)'' and insert ''(c) and (d)''.

On page 511, line 3, strike ''(e)'' and insert ''(f)''.

On page 511, lines 3 and 4, strike ''(b) and (c)'' and insert ''(c) and (d)''.

On page 511, line 4, insert '' and including subsection (a)'' before '', the Commodity''.

On page 511, line 11, strike ''(f)'' and insert ''(g)''.

On page 511, strike line 20 and all that follows through page 512, line 2.

On page 524, line 6, insert ''issued pursuant to subsection (a)(3)(A)'' after ''other Commission''.

On page 524, lines 11 through 12, strike '', including an order or orders issued under subsection (a)(3)(A),''.

On page 528, lines 11 and 12, strike '', security futures product,''.

On page 528, strike lines 13 through 15.

On page 528, line 16, strike ''(iii)'' and insert ''(ii)''.

On page 528, line 16, strike ''(iv)'' and insert ''(iii)''.

On page 528, strike line 20 and all that follows through ''Act.'' on page 529, line 2.

On page 529, line 19, strike '', security futures product,''.

On page 529, strike lines 20 through 22.

On page 529, line 23, strike ''(III)'' and insert ''(II)''.

On page 530, line 1, strike ''(IV)'' and insert ''(III)''.

On page 530, strike line 5 and all that follows through ''Act.'' on line 13.

On page 530, lines 20 and 21, strike '', security futures product,''.

On page 530, strike line 22 and all that follows through page 531, line 3.

On page 531, line 5, strike ''(iv)'' and insert ''(ii)''.

On page 531, line 5, strike ''(IV) (as so redesignated)'' and insert ''(III)''.

On page 531, line 8, strike ''a semicolon'' and insert the following: ''the following: '; or' ''.

On page 531, line 11, strike ''; or'' and insert a period.

On page 531, strike line 12 and all that follows through ''Act.'' on line 15.

On page 548, lines 9 and 10, strike '', leverage contract authorized under section 19,'' and insert ''or''.

On page 548, line 11, insert ''traded on or subject to the rules of a board of trade designated as a contract market under section 5 or 5f'' after ''product''.

On page 551, strike line 24 and all that follows through page 552, line 14.

On page 552, line 15, strike ''(E)'' and insert ''(D)''.

On page 554, line 14, strike ''(F)'' and insert ''(E)''.

On page 557, line 20, strike ''define—'' and all that follows through ''the term'' on line 21, and insert ''define the term''.

On page 557, line 21, strike ''; and'' and insert a period.

On page 557, strike lines 22 through 24.

On page 563, line 25, after the first period, insert the following:

''(i) REGULATION OF SWAPS AS SECURITIES UNDER FEDERAL AND STATE LAW.—Nothing in this section or this Act shall limit the jurisdiction conferred on the Securities and Exchange Commission by the Wall Street Transparency and Accountability Act of 2010 with regard to security-based swap agreements, as such agreements are defined in section 3(a)(79) of the Securities Exchange Act of 1934, and security-based swaps.''.

On page 565, line 17, strike ''and (g)'' and insert ''(g), (j), and (k)''.

On page 565, line 22, strike ''and (f)'' and insert ''(f), and (i)''.

On page 566, line 1, insert ''by their terms'' before ''to registered''.

On page 566, line 7, after the first period insert the following:

''(f) EXCLUSION FOR SECURITIES.—Notwithstanding any other provision of law, the Wall Street Transparency and Accountability Act of 2010 shall not apply to, and the Commodity Futures Trading Commission shall have no jurisdiction under such Act (or any amendments to the Commodity Exchange Act made by such Act) with respect to any security other than a security-based swap.''.

On page 567, line 8, strike ''5(b)'' and insert ''5b''.

On page 616, line 15, strike ''books and records'' and insert ''information (including information on a real-time basis)''.

On page 616, line 18, delete ''8'' and insert ''24 of the Securities Exchange Act of 1934''.

On page 617, between lines 15 and 16, insert the following:

''(ii) foreign financial regulatory authorities;''.

On page 617, line 16, strike ''(ii)'' and insert ''(iii)''.

On page 617, line 17, strike ''(iii)'' and insert ''(iv)''.

On page 629, line 15, delete ''8'' and insert ''24 of the Securities Exchange Act of 1934''.

On page 631, between lines 10 and 11, insert the following:

''(ii) foreign financial regulatory authorities, as defined in section 3(a)(52) of the Securities Exchange Act of 1934;''.

On page 631, line 11, strike ''(ii)'' and insert ''(iii)''.

On page 631, line 12, strike ''(iii)'' and insert ''(iv)''.

On page 642, line 3, delete ''8'' and insert ''24 of the Securities Exchange Act of 1934''.

On page 646, lines 16 and 17, strike ''appropriate Federal banking agency'' and insert ''prudential regulators''.

On page 647, lines 12 and 13, strike ''appropriate Federal banking agencies'' and insert ''prudential regulators''.

On page 647, line 23, insert '', in consultation with the prudential regulators,'' after ''Commission''.

On page 650, lines 24 and 25, strike ''appropriate Federal banking agency'' and insert ''prudential regulators''.

On page 651, lines 24 and 25, strike ''appropriate Federal banking agency'' and insert ''prudential regulators''.

On page 652, lines 24 and 25, strike ''appropriate Federal banking agencies'' and insert ''prudential regulators''.

On page 676, line 7, before the period insert ''taking into consideration the impact of public disclosure on market liquidity''.

On page 676, line 20, strike ''and''.

On page 677, line 2, strike the period and insert ''; and''.

On page 677, between lines 2 and 3, insert the following:

''(iii) make available to the Securities and Exchange Commission, upon request, all information, including a complete audit trail, relating to transactions in security-based swap agreements (as such term is defined in section 3(a)(79) of the Securities Exchange Act of 1934).''.

On page 714, line 10, strike ''amended—'' and all that follows through ''by striking'' on line 11, and insert ''amended by striking''.

On page 714, line 12, strike the semicolon and insert a period.

On page 714, strike lines 13 through 23.

On page 714, line 25, strike ''amended—'' and all that follows through ''by striking'' on page 716, line 1, and insert ''amended by striking''.

On page 715, line 2, strike the semicolon and insert a period.

On page 715, strike lines 3 through 23.

On page 717, line 9, insert ''or any agreement, contract, or transaction in one or more securities'' after ''security''.

On page 751, between lines 11 and 12, insert the following:

''(II) the Securities and Exchange Commission;''.

On page 751, line 12, strike ''(II)'' and insert ''(III)''.

On page 751, line 16, strike ''(III)'' and insert ''(IV)''.

On page 751, line 21, strike ''(IV)'' and insert ''(V)''.

On page 752, line 1, strike ''(V)'' and insert ''(VI)''.

On page 752, line 3, strike ''and'' after ''jurisdiction;''.

On page 752, line 4, strike ''(VI)'' and insert ''(VII)''.

On page 752, line 4, strike the period and insert ''; and''.

On page 752, between lines 4 and 5, insert the following:

''(VIII) a foreign financial regulatory authority.''.

On page 752, line 7, strike ''described in clause (i)'' and insert ''described in subclauses (I) through (VI) of clause (i)''.

On page 752, line 11, after the period insert the following: ''Each of the entities described in subclauses (VII) and (VIII) of clause (i) shall maintain such information in accordance with such assurances of confidentiality as the Commission determines appropriate.''

On page 761, line 24, strike ''standards'' and insert ''principles''.

On page 767, line 18, insert ''(without regard to paragraph (47)(B)(x) of such section)'' after ''Exchange Act''.

On page 768, line 4, insert ''or single obligor on a loan'' after ''a security''.

On page 768, line 4, insert ''or obligors on loans'' after ''securities''.

On page 768, line 9, insert ''or obligor'' after ''issuer''.

On page 769, line 5, strike ''references,'' and insert ''reference or''.

On page 769, beginning line 6, strike '', or settles through the transfer'' and all that follows through ''other option'' on line 16 and insert ''a government security''.

On page 769, line 17, strike ''(D) MIXED SWAP.—The term'' and insert the following:

''(D) MIXED SWAP.—

''(i) IN GENERAL.—The term''.

On page 770, between lines 6 and 7, insert the following:

''(ii) RULE OF CONSTRUCTION.—A security-based swap shall not constitute, nor be construed to constitute, a mixed swap solely because the obligations or rights of 1 party to the swap agreement are defined by reference to 1 or more interest rates or currencies.

''(E) RULE OF CONSTRUCTION REGARDING USE OF THE TERM INDEX.—The term 'index' means an index or group of securities, including any interest therein or based on the value thereof.''.

On page 775, strike lines 7 through 19.

On page 776, after line 25, insert the following:

(c) CONFORMING AMENDMENTS TO GRAMM-LEACH-BLILEY.—Section 206A(a) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) is amended in the material preceding paragraph (1), by striking ''Except as'' and all that follows through ''that—''and inserting the following: ''Except as provided in subsection (b), as used in this section, the term 'swap agreement' means any agreement, contract, or transaction that—''.

On page 776, line 1, strike ''(b)'' and insert ''(c)''

On page 777, line 1, strike ''(c)'' and insert ''(d)''.

On page 780, line 3, insert '', in each place that such terms appear'' before the semicolon.

On page 783, lines 5 through 6, strike '', subject to the requirements of section 5(b)''.

On page 783, line 8, insert ''registered'' before ''clearing agency''.

On page 786, line 14, strike ''accepted'' and insert ''approved''.

On page 789, line 22, strike ''listed'' and insert ''accepted''.

On page 790, line 15, strike ''authorize'' and insert ''authorizes''.

On page 790, line 16, strike ''list'' and insert ''accept''.

On page 794, line 9, strike ''from'' and insert ''for''.

On page 809, strike line 14 through 16, and insert the following:

''(k) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a clearing''.

On page 810, strike lines 3 through 18.

On page 832, line 5, strike ''as described in paragraph (68) of section 3(a)''.

On page 833 lines 18 and 19, strike ''or narrow-based security narrow-based security index''.

On page 834, line 1, strike ''narrow-based security''.

On page 834, line 3, strike ''and''.

On page 834, between lines 3 and 4, insert the following:

''(ii) any security or group or index of securities the price, yield, value or volatility of which, or of which any interest therein, is the basis for a material term of such security-based swap; and''.

On page 834, line 4, strike ''(ii)'' and insert ''(iii)''.

On page 834, line 4, strike ''security-based swap and any''.

On page 834, line 6, strike ''narrow-based security''.

On page 834, line 7, insert ''described under subparagraph (B)(ii)'' after ''securities''.

On page 834, line 13, strike ''or narrow-based security index''.

On page 834, lines 18 and 19, strike ''or narrow-based security index''.

On page 834, lines 20 and 21, strike ''or narrow-based security index''.

On page 843, between lines 8 and 9, insert the following:

''(II) foreign financial regulatory authorities;''.

On page 843, line 9, strike ''(II)'' and insert ''(III)''.

On page 843, line 9, strike ''(III)'' and insert ''(IV)''.

On page 843, lines 11 and 12, strike ''AND IDEMNIFICATION AGREEMENT''.

On page 843, line 15, strike ''(G)—'' and all that follows through ''the security-based'' on line 16, and insert the following: ''(G), the security-based''.

On page 843, line 22, strike ''; and'' and insert a period.

On page 843, strike line 23 and all that follows through page 844, line 2.

On page 853, lines 6 and 7, strike ''appropriate Federal banking agency'' and insert ''prudential regulators''.

On page 854, lines 5 and 6, strike ''appropriate Federal banking agencies'' and insert ''prudential regulators''.

On page 854, line 18, insert '', in consultation with the prudential regulators,'' after ''Commission''.

On page 857, lines 17 and 18, strike ''appropriate Federal banking agency'' and insert ''prudential regulators''.

On page 858, lines 15 and 16, strike ''appropriate Federal banking agency'' and insert ''prudential regulators''.

On page 859, lines 5 and 6, strike ''appropriate Federal banking agencies'' and insert ''prudential regulators''.

On page 859, line 7, strike ''Securities and Exchange'' and insert ''Commodity Futures Trading''.

On page 886, line 4, insert ''or other derivative instrument'' after ''security-based swap''.

On page 886, lines 4 through 5, insert ''or has defined,'' after ''Commission may define,''.

On page 886, line 10, insert ''as the Commission may designate or has designated by rule'' after ''section (d)(1)''.

On page 886, line 14, strike ''(1)'' after ''13(f)''.

On page 886, line 15, strike ''(1)'' and all that follows through ''section (d)(1) of this section'' on line 20 and insert the following:

(1) in paragraph (1)—

(A) by inserting ''(A)'' after ''accounts holding''; and

(B) by inserting ''or (B) security-based swaps or other derivative securities that the Commission may determine or has determined by rule, having such values as the Commission, by rule, may determine'' after ''less than $10,000,000) as the Commission, by rule, may determine.''; and

(2) in paragraph (3), by striking ''section 13(d)(1) of this title'' and inserting ''subsection (d)(1) of this section and of security-based swaps or other derivative instruments that the Commission may determine by rule.''.

On page 892, line 23, strike ''the Commission'' and insert ''Unless the Commission is expressly authorized, the Commission''.

On page 892, line 24, insert ''any provision described in this subsection with respect to subtitle B'' after ''from''.

On page 892, line 24, strike ''the security-based swap provisions''.

On page 893, lines 1 and 2, strike ''except as expressly authorized under the provisions of that Act'' and insert ''with respect to paragraphs 65, 66, 68, 69, 70, 71, 72, 73, 74, 75, 76, and 79 of section 3(a), and sections 10B(a), 10B(b), 10B(c), 13A, 15F, 17A(g), 17A(h), 17A(i), 17A(j), 17A(k), 17A(l); provided that the Commission also shall have exemptive authority under that Act with respect to security-based swaps as to the same matters that the Commodity Futures Trading Commission has under that Act with respect to swaps, including under section 4(c) of the Commodity Exchange Act''.

On page 893, line 2, after the first period insert the following:

''(d) EXPRESS AUTHORITY.—The Commission is expressly authorized to use any authority granted to the Commission under subsection (a) to exempt any person, security, or transaction, or any class or classes of persons, securities or transactions from any provision or provisions of this title, or of any rule or regulation thereunder, that applies to such person, security, or transaction solely because a 'security-based swap' is a 'security' under section 3(a).''.

On page 548, line 11, insert ''traded on or subject to the rules of a board of trade designated as a contract market under section 5 or 5f, leverage contract authorized under section 19,'' after ''product''.

On page 551, line 5, strike ''subparagraph (D)'' and insert ''other than a security-based swap as described in section 3(a)(68)(D) of the Securities Exchange Act of 1934''.

On page 616, line 2, insert ''**AND SECURITY-BASED SWAPS**'' after ''**AGREEMENTS**''.

On page 616, line 13, insert ''or security-based swaps (as defined in section 3(a)(68) of the Securities Exchange Act of 1934)'' after ''Act)''.

On page 616, line 16, insert ''or security-based swaps'' after ''agreements''.

On page 616, line 18, delete ''8'' and insert ''24 of the Securities Exchange Act of 1934''.

On page 835, strike line 3 and all that follows through page 839, line 12.

On page 887, strike lines 8–25.

SA 4085. Mr. HARKIN (for himself, Mr. SANDERS, Mr. WHITEHOUSE, Mr. UDALL of New Mexico, and Mr. SCHUMER) submitted an amendment intended to be proposed by him 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:

At the end of subtitle G of title X, add the following:

SEC. 1077. FAIR ATM FEES.

(a) AMENDMENT TO THE ELECTRONIC FUND TRANSFER ACT.—Section 904(d)(3) of the Electronic Fund Transfer Act (15 U.S.C. 1693b(d)(3)) is amended—

(1) in subparagraph (A), by striking the subparagraph heading and inserting the following:

''(A) FEE DISCLOSURE.—'' ;

(2) by redesignating subparagraph (D) as subparagraph (E); and

(3) by inserting after subparagraph (C) the following:

''(D) REGULATION OF FEES.—The regulations prescribed under paragraph (1) shall require any fee charged by an automated teller machine operator for a transaction conducted at that automated teller machine to bear a reasonable relation to the cost of processing the transaction.

(b) EFFECTIVE DATE.—The amendments made by this section shall become effective not later than 6 months after the date of enactment of this Act.

(c) RULEMAKING.—The Bureau shall issue such rules as may be necessary to carry out this section, not later than 6 months after the date of enactment of this Act.

SA 4086. Ms. CANTWELL (for herself and Mrs. LINCOLN) 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 570, line 21, insert before ''In adopting'' the following: ''Except as provided in paragraphs (3) and (10), any swap that is required to be cleared is unlawful unless the swap is cleared.''.

On page 705, line 19, insert before the period the following: ''unless there is a knowing failure by a party to comply with, or reckless disregard for, the terms and conditions of section 2(f) or regulations of the Commission''.

On page 705, line 20, strike ''No agreement'' and insert the following: ''Unless there is a knowing failure by a party to comply with, or a reckless disregard for, the definition of the term 'swap' under section 1(a) or the requirements of section 2(h)(1), no agreement''.

On page 708, line 17, strike ''and other prudential requirements of this Act,''.

SA 4087. Mr. PRYOR 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 20, line 1, strike ''substantially'' and insert ''predominantly''.

On page 20, beginning on line 2, strike ''activities'' and all that follows through line 5, and insert ''financial activities, as defined in paragraph (6).''.

On page 20, line 17, strike ''substantially'' and all that follows through the end of line 20, and insert ''predominantly engaged in financial activities as defined in paragraph (6).''.

On page 21, line 11, strike ''(6)'' and insert the following:

(6) PREDOMINANTLY ENGAGED.—A company is ''predominantly engaged in financial activities'' if—

(A) the annual gross revenues derived by the company and all of its subsidiaries from activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) or are incidental to a financial activity, and, if applicable, from the ownership or control of one or more insured depository institutions, represents 85 percent or more of the consolidated annual gross revenues of the company; or

(B) the consolidated assets of the company and all of its subsidiaries related to activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) or are incidental to a financial activity, and, if applicable, related to the ownership or control of one or more insured depository institutions, represents 85 percent or more of the consolidated assets of the company.

(7)

On page 21, line 16, strike ''criteria'' and all the follows through line 22, and insert ''requirements for determining if a company is predominantly engaged in financial activities, as defined in paragraph (6).''.

On page 37, line 3, strike ''(c)'' and insert the following:

(c) ANTI-EVASION.—

(1) DETERMINATIONS.—In order to avoid evasion of this Act, the Council, on its own initiative or at the request of the Board of Governors, may determine, on a nondelegable basis and by a vote of not fewer than ⅔ of the members then serving, including an affirmative vote by the Chairperson, that—

(A) material financial distress related to financial activities conducted directly or indirectly by a company incorporated or organized under the laws of the United States or any State or the financial activities in the United States of a company incorporated or

organized in a country other than the United States would pose a threat to the financial stability of the United States based on consideration of the factors in subsection (b)(2);

(B) the company is organized or operates in a manner that evades the application of this Act; and

(C) such financial activities of the company shall be supervised by the Board of Governors and subject to prudential standards in accordance with this title.

(2) NOTICE AND OPPORTUNITY FOR HEARING AND FINAL DETERMINATION; JUDICIAL REVIEW.—Subsections (d), (f), and (g) shall apply to determinations made by the Council pursuant to paragraph (1) in the same manner as such subsections apply to nonbank financial companies.

(3) COVERED FINANCIAL ACTIVITIES.—For purposes of this subsection, the term ''financial activities'' means activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) and related to the ownership or control of one or more insured depository institutions and shall not include internal financial activities conducted for the company or any affiliates thereof including internal treasury, investment, and employee benefit functions.

(4) TREATMENT AS A NONBANK FINANCIAL COMPANY.—

(A) ONLY FINANCIAL ACTIVITIES SUBJECT TO PRUDENTIAL SUPERVISION.—Nonfinancial activities of the company shall not be subject to supervision by the Board of Governors and prudential standards of the Board. For purposes of this Act, the financial activities that are the subject of the determination in paragraph (1) shall be subject to the same requirements as a nonbank financial company. Nothing in this paragraph shall prohibit or limit the authority of the Board of Governors to apply prudential standards under this title to the financial activities that are subject to the determination in paragraph (1).

(B) CONSOLIDATED SUPERVISION OF ONLY FINANCIAL ACTIVITIES.—To facilitate the supervision of the financial activities subject to the determination in paragraph (1), the Board of Governors may require a company to establish an intermediate holding company, as provided for in section 167, which would be subject to the supervision of the Board of Governors and to prudential standards under this title.

(d)

On page 37, line 15, strike ''(d)'' and insert ''(e)''.

On page 39, line 3, strike ''(e)'' and insert ''(f)''.

On page 40, line 13, strike ''(f)'' and insert ''(g)''.

On page 40, line 21, strike ''(g)'' and insert ''(h)''.

SA 4088. Mr. BAYH 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 486, strike lines 1 through 12 and insert the following:

(3) the term ''sponsoring''—

(A) when used with respect to a hedge fund or private equity fund, means—

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

(ii) 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

(iii) sharing with the fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name; and

(B) does not include an activity of a banking entity with respect to a hedge fund or private equity fund, if—

(i) the banking entity provides bona fide trust, fiduciary or investment advisory services;

(ii) the fund is sponsored and offered only in connection with the provision of bona fide trust, fiduciary, or investment advisory services and only to persons that are customers of such services of the banking entity;

(iii) the banking entity does not acquire or retain an equity interest, economic partnership interest, or ownership interest in the fund, other than a partnership or ownership interest acquired or retained solely in connection with the provision of bona fide trust, fiduciary, or investment advisory services;

(iv) the banking entity 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);

(v) the obligations of the fund are not guaranteed, directly or indirectly, by the banking entity or any subsidiary or affiliate of the banking entity; and

(vi) the banking entity does not share with the fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

SA 4089. 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:

On page 567, line 8, strike ''5(b)'' and insert ''5b''.

SA 4090. Mr. CORNYN submitted an amendment intended to be proposed by him 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:

At the appropriate place, insert the following:

SEC. ___. STUDY AND REPORT ON A FEDERAL CHARTER FOR NONBANK FINANCIAL SERVICES BUSINESSES.

(a) STUDY REQUIRED.—The research unit established by the Director under section 1013 shall conduct a study on the feasibility of establishing a Federal charter for nonbank financial services businesses that offer credit products and other financial services and products to consumers and small businesses that are unbanked, underbanked, or have low credit scores, low credit ratings, or below average credit histories (in this section, referred to as ''underserved borrowers''), including an analysis of—

(1) common credit products and other financial services and products available to underserved borrowers and the true availability and costs of such products and services to all underserved borrowers;

(2) the true costs and expenses (including loan losses) of creditors in providing credit products and other financial services and products to underserved borrowers;

(3) the merits, both positive and negative, of establishing a Federal charter to enable nonbank financial services businesses to provide reasonable and fair credit products and other financial products and services to underserved borrowers in a manner that is economically viable to nonbank financial services businesses; and

(4) the potential statutory and regulatory framework for establishing a Federal charter for nonbank financial services businesses that could reduce the costs for such businesses to offer and deliver such products and services to underserved borrowers and provide underserved borrowers throughout the Nation with a reasonable and fair opportunity to access credit and other financial services and products, and in turn build their credit scores and histories.

(b) REPORT TO THE BUREAU.—Not later than 1 year after the date of enactment of this Act, the research unit established under section 1013 shall—

(1) provide to the Bureau a report on the results of the study conducted under subsection (a), together with—

(A) a recommendation as to whether or not it would be in the best interests of all underserved borrowers to establish a Federal charter for nonbank financial services businesses to provide credit products and other financial products and services to underserved borrowers; and

(B) a recommendation for the statutory and regulatory framework for such a charter; and

(2) make such report available to the public.

SA 4091. Mr. JOHNSON (for himself, Ms. LANDRIEU, Mr. BURRIS, Mr. BROWNBACK, Ms. MURKOWSKI, Mr. CRAPO, Mr. ROBERTS, Mr. COBURN, Mr. TESTER, Mr. BROWN of Ohio, Mr. NELSON of Nebraska, Mr. CARDIN, and Mr. BENNETT) 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 99, line 14, strike ''risks.'' and insert the following: ''risks, except that the Board of Governors may not prescribe standards under this title that limit fully secured extensions of credit by a Federal Home Loan Bank to any member or former member of the Federal Home Loan Bank made in compliance with the regulations of the Federal Housing Finance Agency.''

SA 4092. Mr. CHAMBLISS (for Mrs. LINCOLN) submitted an amendment intended to be proposed by Mr. CHAMBLISS 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:

Strike title VIII and insert the following:

TITLE VIII—PAYMENT, CLEARING, AND SETTLEMENT SUPERVISION

SEC. 801. SHORT TITLE.

This title may be cited as the ''Payment, Clearing, and Settlement Supervision Act of 2010''.

SEC. 802. FINDINGS.

Congress finds the following:

(1) The proper functioning of the financial markets is dependent upon safe and efficient arrangements for the clearing and settlement of payment, securities, and other financial transactions.

(2) Financial market utilities that conduct or support multilateral payment, clearing, or settlement activities may reduce risks for their participants and the broader financial system, but such utilities may also concentrate and create new risks and thus must be well designed and operated in a safe and sound manner.

(3) Payment, clearing, and settlement activities conducted by financial institutions also present important risks to the participating financial institutions and to the financial system.

(4) Enhancements to the regulation and supervision of systemically important financial market utilities and the conduct of systemically important payment, clearing, and settlement activities by financial institutions are necessary—

(A) to provide consistency;

(B) to promote robust risk management and safety and soundness;

(C) to reduce systemic risks; and

(D) to support the stability of the broader financial system.

SEC. 803. DEFINITIONS.

In this title, the following definitions shall apply:

(1) DESIGNATED ACTIVITY.—The term ''designated activity'' means a payment, clearing, or settlement activity (other than a payment, clearing, or settlement activity that is regulated by the Commodity Futures Trading Commission or the Securities and Exchange Commission) that the Council has designated as systemically important under section 804.

(2) DESIGNATED FINANCIAL MARKET UTILITY.—The term ''designated financial market utility'' means a financial market utility that the Council has designated as systemically important under section 804.

(3) FINANCIAL INSTITUTION.—The term ''financial institution'' means—

(A) a depository institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(B) a branch or agency of a foreign bank, as defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101);

(C) an organization operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601–604a and 611 through 631);

(D) a credit union, as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752);

(E) a broker or dealer, as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(F) an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3);

(G) an insurance company, as defined in section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a–2);

(H) an investment adviser, as defined in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2);

(I) a futures commission merchant, commodity trading advisor, or commodity pool operator, as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a); and

(J) any company engaged in activities that are financial in nature or incidental to a financial activity, as described in section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(4) FINANCIAL MARKET UTILITY.—The term ''financial market utility'' means any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person.

(5) PAYMENT, CLEARING, OR SETTLEMENT ACTIVITY.—

(A) IN GENERAL.—The term ''payment, clearing, or settlement activity'' means an activity carried out by 1 or more financial institutions to facilitate the completion of financial transactions.

(B) FINANCIAL TRANSACTION.—For the purposes of subparagraph (A), the term ''financial transaction'' includes—

(i) funds transfers;

(ii) securities contracts;

(iii) contracts of sale of a commodity for future delivery;

(iv) forward contracts;

(v) repurchase agreements;

(vi) swaps;

(vii) security-based swaps;

(viii) foreign exchange swaps and forwards; and

(ix) any similar transaction that the Council determines to be a financial transaction for purposes of this title.

(C) INCLUDED ACTIVITIES.—When conducted with respect to a financial transaction, payment, clearing, and settlement activities may include—

(i) the calculation and communication of unsettled financial transactions between counterparties;

(ii) the netting of transactions;

(iii) provision and maintenance of trade, contract, or instrument information;

(iv) the management of risks and activities associated with continuing financial transactions;

(v) transmittal and storage of payment instructions;

(vi) the movement of funds;

(vii) the final settlement of financial transactions; and

(viii) other similar functions that the Council may determine.

(6) SUPERVISORY AGENCY.—

(A) IN GENERAL.—The term ''Supervisory Agency'' means the Federal agency that has primary jurisdiction over a designated financial market utility under Federal banking, securities, or commodity futures laws, including—

(i) the Securities and Exchange Commission, with respect to a designated financial market utility that is registered with the Securities and Exchange Commission;

(ii) the Commodity Futures Trading Commission, with respect to a designated financial market utility that is registered with the Commodity Futures Trading Commission;

(iii) the appropriate Federal banking agency, with respect to a designated financial market utility that is an institution described in section 3(q) of the Federal Deposit Insurance Act; and

(iv) the Board of Governors, with respect to a designated financial market utility that is otherwise not subject to the jurisdiction of any agency listed in clauses (i), (ii), and (iii).

(B) MULTIPLE AGENCY JURISDICTION.—

(i) If a designated financial market utility is subject to the primary jurisdictional supervision of more than 1 agency listed in clauses (iii) or (iv) of subparagraph (A), then such agencies should agree on 1 agency to act as the Supervisory Agency, and if such agencies cannot agree on which agency has primary jurisdiction, the Council shall decide which agency is the Supervisory Agency for purposes of this title.

(ii) If a designated financial market utility is subject to the primary jurisdictional supervision of more than 1 agency listed in clauses (i) through (iv) of subparagraph (A), and such designated financial market utility is registered with either the Commodity Futures Trading Commission or the Securities and Exchange Commission, the Commodity Futures Trading Commission or the Securities and Exchange Commission, as applicable, shall be the Supervisory Agency for purposes of this title. If the designated financial market utility is registered with both the Commodity Futures Trading Commission and the Securities and Exchange Commission, then the agency which oversees the predominance of the payment, clearing, and settlement activities conducted by the designated financial market utility shall be the Supervisory Agency for purposes of this title.

(7) SYSTEMICALLY IMPORTANT AND SYSTEMIC IMPORTANCE.—The terms ''systemically important'' and ''systemic importance'' mean a situation where the failure of or a disruption to the functioning of a financial market utility or the conduct of a payment, clearing, or settlement activity could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the financial system.

SEC. 804. DESIGNATION OF SYSTEMIC IMPORTANCE.

(a) DESIGNATION.—

(1) FINANCIAL STABILITY OVERSIGHT COUNCIL.—The Council, on a nondelegable basis and by a vote of not fewer than ⅔ of members then serving, including an affirmative vote by the Chairperson, shall designate those financial market utilities or payment, clearing, or settlement activities that the Council determines are, or are likely to become, systemically important.

(2) CONSIDERATIONS.—In determining whether a financial market utility or payment, clearing, or settlement activity is, or is likely to become, systemically important, the Council shall take into consideration the following:

(A) The aggregate monetary value of transactions processed by the financial market utility or carried out through the payment, clearing, or settlement activity.

(B) The aggregate exposure of the financial market utility or a financial institution engaged in payment, clearing, or settlement activities to its counterparties.

(C) The relationship, interdependencies, or other interactions of the financial market utility or payment, clearing, or settlement activity with other financial market utilities or payment, clearing, or settlement activities.

(D) The effect that the failure of or a disruption to the financial market utility or payment, clearing, or settlement activity

would have on critical markets, financial institutions, or the broader financial system.

(E) Any other factors that the Council deems appropriate.

(b) RESCISSION OF DESIGNATION.—

(1) IN GENERAL.—The Council, on a nondelegable basis and by a vote of not fewer than ⅔ of members then serving, including an affirmative vote by the Chairperson, shall rescind a designation of systemic importance for a designated financial market utility or designated activity if the Council determines that the utility or activity no longer meets the standards for systemic importance.

(2) EFFECT OF RESCISSION.—Upon rescission, the financial market utility or financial institutions conducting the activity will no longer be subject to the provisions of this title or any rules or orders prescribed by the Council under this title.

(c) CONSULTATION AND NOTICE AND OPPORTUNITY FOR HEARING.—

(1) CONSULTATION.—Before making any determination under subsection (a) or (b), the Council shall consult with the relevant Supervisory Agency.

(2) ADVANCE NOTICE AND OPPORTUNITY FOR HEARING.—

(A) IN GENERAL.—Before making any determination under subsection (a) or (b), the Council shall provide the financial market utility or, in the case of a payment, clearing, or settlement activity, financial institutions with advance notice of the proposed determination of the Council.

(B) NOTICE IN FEDERAL REGISTER.—The Council shall provide such advance notice to financial institutions by publishing a notice in the Federal Register.

(C) REQUESTS FOR HEARING.—Within 30 days from the date of any notice of the proposed determination of the Council, the financial market utility or, in the case of a payment, clearing, or settlement activity, a financial institution engaged in the designated activity may request, in writing, an opportunity for a written or oral hearing before the Council to demonstrate that the proposed designation or rescission of designation is not supported by substantial evidence.

(D) WRITTEN SUBMISSIONS.—Upon receipt of a timely request, the Council shall fix a time, not more than 30 days after receipt of the request, unless extended at the request of the financial market utility or financial institution, and place at which the financial market utility or financial institution may appear, personally or through counsel, to submit written materials, or, at the sole discretion of the Council, oral testimony or oral argument.

(3) EMERGENCY EXCEPTION.—

(A) WAIVER OR MODIFICATION BY VOTE OF THE COUNCIL.—The Council may waive or modify the requirements of paragraph (2) if the Council determines, by an affirmative vote of not less than ⅔ of all members then serving, including an affirmative vote by the Chairperson, that the waiver or modification is necessary to prevent or mitigate an immediate threat to the financial system posed by the financial market utility or the payment, clearing, or settlement activity.

(B) NOTICE OF WAIVER OR MODIFICATION.—The Council shall provide notice of the waiver or modification to the financial market utility concerned or, in the case of a payment, clearing, or settlement activity, to financial institutions, as soon as practicable, which shall be no later than 24 hours after the waiver or modification in the case of a financial market utility and 3 business days in the case of financial institutions. The Council shall provide the notice to financial institutions by posting a notice on the website of the Council and by publishing a notice in the Federal Register.

(d) NOTIFICATION OF FINAL DETERMINATION.—

(1) AFTER HEARING.—Within 60 days of any hearing under subsection (c)(2), the Council shall notify the financial market utility or financial institutions of the final determination of the Council in writing, which shall include findings of fact upon which the determination of the Council is based.

(2) WHEN NO HEARING REQUESTED.—If the Council does not receive a timely request for a hearing under subsection (c)(2), the Council shall notify the financial market utility or financial institutions of the final determination of the Council in writing not later than 30 days after the expiration of the date by which a financial market utility or a financial institution could have requested a hearing. All notices to financial institutions under this subsection shall be published in the Federal Register.

(e) EXTENSION OF TIME PERIODS.—The Council may extend the time periods established in subsections (c) and (d) as the Council determines to be necessary or appropriate.

SEC. 805. STANDARDS FOR SYSTEMICALLY IMPORTANT DESIGNATED FINANCIAL MARKET UTILITIES AND PAYMENT, CLEARING, OR SETTLEMENT ACTIVITIES.

(a) AUTHORITY TO PRESCRIBE STANDARDS.—The Board of Governors, by rule or order, and in consultation with the Council and the Supervisory Agencies, shall prescribe risk management standards, taking into consideration relevant international standards and existing prudential requirements, governing—

(1) the operations related to the payment, clearing, and settlement activities of designated financial market utilities other than designated financial market utilities for which the Supervisory Agency is either the Commodity Futures Trading Commission or the Securities and Exchange Commission; and

(2) the conduct of designated activities by financial institutions.

(b) RECOMMENDED STANDARDS.—

(1) IN GENERAL.—The Council may recommend risk management standards regarding the operations of payment, clearing, and settlement activities of designated financial market utilities for which the Commodity Futures Trading Commission or the Securities and Exchange Commission is the Supervisory Agency, taking into consideration relevant international standards and existing prudential requirements.

(2) PROCEDURE FOR RECOMMENDATION.—The Council shall consult with the Commodity Futures Trading Commission or the Securities and Exchange Commission, as applicable, and shall provide notice to the public and opportunity for comment for any proposed recommendation under paragraph (1).

(3) CONSIDERATION AND IMPLEMENTATION.—The Commodity Futures Trading Commission or the Securities and Exchange Commission, as applicable, may impose the standards recommended by the Council under paragraph (1), or shall explain in writing to the Council, not later than 90 days after the date on which it receives the Council's recommendation, why the agency has determined not to follow the recommendation of the Council.

(c) OBJECTIVES AND PRINCIPLES.—The objectives and principles for the risk management standards prescribed under subsection (a) or recommended under subsection (b) shall be to—

(1) promote robust risk management;

(2) promote safety and soundness;

(3) reduce systemic risks; and

(4) support the stability of the broader financial system.

(d) SCOPE.—The standards prescribed under subsection (a) or recommended under subsection (b) may address areas such as—

(1) risk management policies and procedures;

(2) margin and collateral requirements;

(3) participant or counterparty default policies and procedures;

(4) the ability to complete timely clearing and settlement of financial transactions;

(5) capital and financial resource requirements for designated financial market utilities; and

(6) other areas that the Board of Governors determines are necessary to achieve the objectives and principles in subsection (c).

(e) THRESHOLD LEVEL.—The standards prescribed under subsection (a) governing the conduct of designated activities by financial institutions shall, where appropriate, establish a threshold as to the level or significance of engagement in the activity at which a financial institution will become subject to the standards with respect to that activity.

(f) COMPLIANCE REQUIRED.—Designated financial market utilities and financial institutions subject to the standards prescribed by the Board of Governors under subsection (a) for a designated activity shall conduct their operations in compliance with the applicable risk management standards prescribed by the Board of Governors.

SEC. 806. OPERATIONS OF DESIGNATED FINANCIAL MARKET UTILITIES.

(a) FEDERAL RESERVE ACCOUNT AND SERVICES.—The Board of Governors may authorize a Federal Reserve Bank to establish and maintain an account for a designated financial market utility and provide services to the designated financial market utility that the Federal Reserve Bank is authorized under the Federal Reserve Act to provide to a depository institution, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board of Governors.

(b) ADVANCES.—The Board of Governors may authorize a Federal Reserve Bank to provide to a designated financial market utility the same discount and borrowing privileges as the Federal Reserve Bank may provide to a depository institution under the Federal Reserve Act, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board of Governors.

(c) EARNINGS ON FEDERAL RESERVE BALANCES.—A Federal Reserve Bank may pay earnings on balances maintained by or on behalf of a designated financial market utility in the same manner and to the same extent as the Federal Reserve Bank may pay earnings to a depository institution under the Federal Reserve Act, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board of Governors.

(d) RESERVE REQUIREMENTS.—The Board of Governors may exempt a designated financial market utility from, or modify any, reserve requirements under section 19 of the Federal Reserve Act (12 U.S.C. 461) applicable to a designated financial market utility.

(e) CHANGES TO RULES, PROCEDURES, OR OPERATIONS.—

(1) ADVANCE NOTICE.—

(A) ADVANCE NOTICE OF PROPOSED CHANGES REQUIRED.—A designated financial market utility shall provide 60-days' advance notice to its Supervisory Agency and the Board of Governors of any proposed change to its rules, procedures, or operations that could, as defined in rules of the Board of Governors, materially affect, the nature or level of risks presented by the designated financial market utility.

(B) TERMS AND STANDARDS PRESCRIBED BY THE BOARD OF GOVERNORS.—The Board of Governors shall prescribe regulations that define and describe the standards for determining when notice is required to be provided under subparagraph (A).

(C) CONTENTS OF NOTICE.—The notice of a proposed change shall describe—

(i) the nature of the change and expected effects on risks to the designated financial market utility, its participants, or the market; and

(ii) how the designated financial market utility plans to manage any identified risks.

(D) ADDITIONAL INFORMATION.—The Supervisory Agency or the Board of Governors may require a designated financial market utility to provide any information necessary to assess the effect the proposed change would have on the nature or level of risks associated with the designated financial market utility's payment, clearing, or settlement activities and the sufficiency of any proposed risk management techniques.

(E) NOTICE OF OBJECTION.—The Supervisory Agency or the Board of Governors shall notify the designated financial market utility of any objection regarding the proposed change within 60 days from the later of—

(i) the date that the notice of the proposed change is received; or

(ii) the date any further information requested for consideration of the notice is received.

(F) CHANGE NOT ALLOWED IF OBJECTION.—A designated financial market utility shall not implement a change to which the Board of Governors or the Supervisory Agency has an objection.

(G) CHANGE ALLOWED IF NO OBJECTION WITHIN 60 DAYS.—A designated financial market utility may implement a change if it has not received an objection to the proposed change within 60 days of the later of—

(i) the date that the Supervisory Agency or the Board of Governors receives the notice of proposed change; or

(ii) the date the Supervisory Agency or the Board of Governors receives any further information it requests for consideration of the notice.

(H) REVIEW EXTENSION FOR NOVEL OR COMPLEX ISSUES.—The Supervisory Agency or the Board of Governors may, during the 60-day review period, extend the review period for an additional 60 days for proposed changes that raise novel or complex issues, subject to the Supervisory Agency or the Board of Governors providing the designated financial market utility with prompt written notice of the extension. Any extension under this subparagraph will extend the time periods under subparagraphs (E) and (G).

(I) CHANGE ALLOWED EARLIER IF NOTIFIED OF NO OBJECTION.—A designated financial market utility may implement a change in less than 60 days from the date of receipt of the notice of proposed change by the Supervisory Agency or the Board of Governors, or the date the Supervisory Agency or the Board of Governors receives any further information it requested, if the Supervisory Agency or the Board of Governors notifies the designated financial market utility in writing that it does not object to the proposed change and authorizes the designated financial market utility to implement the change on an earlier date, subject to any conditions imposed by the Supervisory Agency or the Board of Governors.

(2) EMERGENCY CHANGES.—

(A) IN GENERAL.—A designated financial market utility may implement a change that would otherwise require advance notice under this subsection if it determines that—

(i) an emergency exists; and

(ii) immediate implementation of the change is necessary for the designated financial market utility to continue to provide its services in a safe and sound manner.

(B) NOTICE REQUIRED WITHIN 24 HOURS.—The designated financial market utility shall provide notice of any such emergency change to its Supervisory Agency and the Board of Governors, as soon as practicable, which shall be no later than 24 hours after implementation of the change.

(C) CONTENTS OF EMERGENCY NOTICE.—In addition to the information required for changes requiring advance notice, the notice of an emergency change shall describe—

(i) the nature of the emergency; and

(ii) the reason the change was necessary for the designated financial market utility to continue to provide its services in a safe and sound manner.

(D) MODIFICATION OR RESCISSION OF CHANGE MAY BE REQUIRED.—The Supervisory Agency or the Board of Governors may require modification or rescission of the change if it finds that the change is not consistent with the purposes of this Act or any rules, orders, or standards prescribed by the Board of Governors hereunder.

(3) COPYING THE BOARD OF GOVERNORS.—The Supervisory Agency shall provide the Board of Governors concurrently with a complete copy of any notice, request, or other information it issues, submits, or receives under this subsection.

(4) CONSULTATION WITH BOARD OF GOVERNORS.—Before taking any action on, or completing its review of, a change proposed by a designated financial market utility, the Supervisory Agency shall consult with the Board of Governors.

(f) APPLICABILITY.—Nothing in this section shall be applicable to any designated financial market utility for which the Supervisory Agency is the Commodity Futures Trading Commission or the Securities and Exchange Commission. Notwithstanding the previous sentence, nothing in this subsection shall limit or be construed to limit the authority of the Board under section 13(3) of the Federal Reserve Act (12 U.S.C. 343).

SEC. 807. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST DESIGNATED FINANCIAL MARKET UTILITIES.

(a) EXAMINATION.—Notwithstanding any other provision of law and subject to subsection (d), the Supervisory Agency shall conduct examinations of a designated financial market utility at least once annually in order to determine the following:

(1) The nature of the operations of, and the risks borne by, the designated financial market utility.

(2) The financial and operational risks presented by the designated financial market utility to financial institutions, critical markets, or the broader financial system.

(3) The resources and capabilities of the designated financial market utility to monitor and control such risks.

(4) The safety and soundness of the designated financial market utility.

(5) For a designated financial market utility for which the Supervisory Agency is not the Commodity Futures Trading Commission or the Securities and Exchange Commission, the designated financial market utility's compliance with—

(A) this title; and

(B) the rules and orders prescribed by the Board of Governors under this title.

(b) SERVICE PROVIDERS.—Whenever a service integral to the operation of a designated financial market utility is performed for the designated financial market utility by another entity, whether an affiliate or non-affiliate and whether on or off the premises of the designated financial market utility, the Supervisory Agency may examine whether the provision of that service is in compliance with applicable law, rules, orders, and standards to the same extent as if the designated financial market utility were performing the service on its own premises.

(c) ENFORCEMENT.—For purposes of enforcing the provisions of this section, a designated financial market utility shall be subject to, and the appropriate Supervisory Agency shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the designated financial market utility was an insured depository institution and the Supervisory Agency was the appropriate Federal banking agency for such insured depository institution.

(d) BOARD OF GOVERNORS INVOLVEMENT IN EXAMINATIONS.—

(1) BOARD OF GOVERNORS CONSULTATION ON EXAMINATION PLANNING.—The Supervisory Agency shall consult with the Board of Governors regarding the scope and methodology of any examination conducted under subsections (a) and (b).

(2) BOARD OF GOVERNORS PARTICIPATION IN EXAMINATION.—The Board of Governors may, in its discretion, participate in any examination led by a Supervisory Agency and conducted under subsections (a) and (b).

(e) BOARD OF GOVERNORS ENFORCEMENT RECOMMENDATIONS.—

(1) RECOMMENDATION.—The Board of Governors may at any time recommend to the Supervisory Agency that such agency take enforcement action against a designated financial market utility. Any such recommendation for enforcement action shall provide a detailed analysis supporting the recommendation of the Board of Governors.

(2) CONSIDERATION.—The Supervisory Agency shall consider the recommendation of the Board of Governors and submit a response to the Board of Governors within 60 days.

(3) MEDIATION.—If the Supervisory Agency rejects, in whole or in part, the recommendation of the Board of Governors, the Board of Governors may dispute the matter by referring the recommendation to the Council, which shall attempt to resolve the dispute.

(4) ENFORCEMENT ACTION.—If the Council is unable to resolve the dispute under paragraph (3) within 30 days from the date of referral, the Board of Governors may, upon a vote of its members—

(A) exercise the enforcement authority referenced in subsection (c) as if it were the Supervisory Agency; and

(B) take enforcement action against the designated financial market utility.

(f) EMERGENCY ENFORCEMENT ACTIONS BY THE BOARD OF GOVERNORS.—

(1) IMMINENT RISK OF SUBSTANTIAL HARM.—The Board of Governors may, after consulting with the Council and the Supervisory Agency, take enforcement action against a designated financial market utility if the Board of Governors has reasonable cause to believe that—

(A) either—

(i) an action engaged in, or contemplated by, a designated financial market utility (including any change proposed by the designated financial market utility to its rules, procedures, or operations that would otherwise be subject to section 806(e)) poses an imminent risk of substantial harm to financial institutions, critical markets, or the broader financial system; or

(ii) the condition of a designated financial market utility, poses an imminent risk of substantial harm to financial institutions, critical markets, or the broader financial system; and

(B) the imminent risk of substantial harm precludes the Board of Governors' use of the procedures in subsection (e).

(2) ENFORCEMENT AUTHORITY.—For purposes of taking enforcement action under paragraph (1), a designated financial market utility shall be subject to, and the Board of Governors shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the

same extent as if the designated financial market utility was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution.

(3) PROMPT NOTICE TO SUPERVISORY AGENCY OF ENFORCEMENT ACTION.—Within 24 hours of taking an enforcement action under this subsection, the Board of Governors shall provide written notice to the designated financial market utility's Supervisory Agency containing a detailed analysis of the action of the Board of Governors, with supporting documentation included.

(g) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to make the provisions of subsections (c), (d), (e), or (f) applicable with respect to any designated financial market utility for which the Supervisory Agency is the Commodity Futures Trading Commission or the Securities and Exchange Commission.

SEC. 808. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST FINANCIAL INSTITUTIONS SUBJECT TO STANDARDS FOR DESIGNATED ACTIVITIES.

(a) EXAMINATION.—The primary financial regulatory agency is authorized to examine a financial institution subject to the standards prescribed by the Board of Governors for a designated activity in order to determine the following:

(1) The nature and scope of the designated activities engaged in by the financial institution.

(2) The financial and operational risks the designated activities engaged in by the financial institution may pose to the safety and soundness of the financial institution.

(3) The financial and operational risks the designated activities engaged in by the financial institution may pose to other financial institutions, critical markets, or the broader financial system.

(4) The resources available to and the capabilities of the financial institution to monitor and control the risks described in paragraphs (2) and (3).

(5) The financial institution's compliance with this title and the rules and orders prescribed by the Board of Governors under this title.

(b) ENFORCEMENT.—For purposes of enforcing the provisions of this section, and the rules and orders prescribed by the Board of Governors under this section, a financial institution subject to the standards prescribed by the Board of Governors for a designated activity shall be subject to, and the primary financial regulatory agency shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the financial institution was an insured depository institution and the primary financial regulatory agency was the appropriate Federal banking agency for such insured depository institution.

(c) TECHNICAL ASSISTANCE.—The Board of Governors shall consult with and provide such technical assistance as may be required by the primary financial regulatory agencies to ensure that the rules and orders prescribed by the Board of Governors with respect to a designated activity under this title are interpreted and applied in as consistent and uniform a manner as practicable.

(d) DELEGATION.—

(1) EXAMINATION.—

(A) REQUEST TO BOARD OF GOVERNORS.—The primary financial regulatory agency may request the Board of Governors to conduct or participate in an examination of a financial institution subject to the standards prescribed by the Board of Governors for a designated activity in order to assess the compliance of such financial institution with—

(i) this title; or

(ii) the rules or orders prescribed by the Board of Governors under this title.

(B) EXAMINATION BY BOARD OF GOVERNORS.—Upon receipt of an appropriate written request, the Board of Governors will conduct the examination under such terms and conditions to which the Board of Governors and the primary financial regulatory agency mutually agree.

(2) ENFORCEMENT.—

(A) REQUEST TO BOARD OF GOVERNORS.—The primary financial regulatory agency may request the Board of Governors to enforce this title or the rules or orders prescribed by the Board of Governors under this title against a financial institution that is subject to the standards prescribed by the Board of Governors for a designated activity.

(B) ENFORCEMENT BY BOARD OF GOVERNORS.—Upon receipt of an appropriate written request, the Board of Governors shall determine whether an enforcement action is warranted, and, if so, it shall enforce compliance with this title or the rules or orders prescribed by the Board of Governors with respect to a designated activity under this title and, if so, the financial institution shall be subject to, and the Board of Governors shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the financial institution was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution

(e) BACK-UP AUTHORITY OF THE BOARD OF GOVERNORS.—

(1) EXAMINATION AND ENFORCEMENT.—Notwithstanding any other provision of law, the Board of Governors may—

(A) conduct an examination of the type described in subsection (a) of any financial institution that is subject to the standards prescribed by the Board of Governors for a designated activity; and

(B) enforce the provisions of this title or any rules or orders prescribed by the Board of Governors under this title against any financial institution that is subject to the standards prescribed by the Board of Governors for a designated activity.

(2) LIMITATIONS.—

(A) EXAMINATION.—The Board of Governors may exercise the authority described in paragraph (1)(A) only if the Board of Governors has—

(i) reasonable cause to believe that a financial institution is not in compliance with this title or the rules or orders prescribed by the Board of Governors under this title with respect to a designated activity;

(ii) notified, in writing, the primary financial regulatory agency and the Council of its belief under clause (i) with supporting documentation included;

(iii) requested the primary financial regulatory agency to conduct a prompt examination of the financial institution; and

(iv) either—

(I) not been afforded a reasonable opportunity to participate in an examination of the financial institution by the primary financial regulatory agency within 30 days after the date of the Board's notification under clause (ii); or

(II) reasonable cause to believe that the financial institution's noncompliance with this title or the rules or orders prescribed by the Board of Governors with respect to a designated activity under this title poses a substantial risk to other financial institutions, critical markets, or the broader financial system, subject to the Board of Governors affording the primary financial regulatory agency a reasonable opportunity to participate in the examination.

(B) ENFORCEMENT.—The Board of Governors may exercise the authority described in paragraph (1)(B) only if the Board of Governors has—

(i) reasonable cause to believe that a financial institution is not in compliance with this title or the rules or orders prescribed by the Board of Governors under this title with respect to a designated activity;

(ii) notified, in writing, the primary financial regulatory agency and the Council of its belief under clause (i) with supporting documentation included and with a recommendation that the primary financial regulatory agency take 1 or more specific enforcement actions against the financial institution; and

(iii) either—

(I) not been notified, in writing, by the primary financial regulatory agency of the commencement of an enforcement action recommended by the Board of Governors against the financial institution within 60 days from the date of the notification under clause (ii); or

(II) reasonable cause to believe that the financial institution's noncompliance with this title or the rules or orders prescribed by the Board of Governors with respect to a designated activity under this title poses a substantial risk to other financial institutions, critical markets, or the broader financial system, subject to the Board of Governors notifying the primary financial regulatory agency of the Board's enforcement action.

(3) ENFORCEMENT PROVISIONS.—For purposes of taking enforcement action under paragraph (1), the financial institution shall be subject to, and the Board of Governors shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the financial institution was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution.

SEC. 809. REQUESTS FOR INFORMATION, REPORTS, OR RECORDS.

(a) INFORMATION TO ASSESS SYSTEMIC IMPORTANCE.—

(1) FINANCIAL MARKET UTILITIES.—The Council is authorized to require any financial market utility to submit such information as the Council may require for the sole purpose of assessing whether that financial market utility is systemically important, but only if the Council has reasonable cause to believe that the financial market utility meets the standards for systemic importance set forth in section 804.

(2) FINANCIAL INSTITUTIONS ENGAGED IN PAYMENT, CLEARING, OR SETTLEMENT ACTIVITIES.—The Council is authorized to require any financial institution to submit such information as the Council may require for the sole purpose of assessing whether any payment, clearing, or settlement activity engaged in or supported by a financial institution is systemically important, but only if the Council has reasonable cause to believe that the activity meets the standards for systemic importance set forth in section 804.

(b) REPORTING AFTER DESIGNATION.—

(1) DESIGNATED FINANCIAL MARKET UTILITIES.—The Board of Governors and the Council may require a designated financial market utility to submit reports or data to the Board of Governors and the Council in such frequency and form as deemed necessary by the Board of Governors and the Council in order to assess the safety and soundness of the utility and the systemic risk that the utility's operations pose to the financial system.

(2) FINANCIAL INSTITUTIONS SUBJECT TO STANDARDS DESIGNATED ACTIVITIES.—The Board of Governors and the Council may require 1 or more financial institutions subject to the standards prescribed by the Board of Governors for a designated activity to submit, in such frequency and form as deemed necessary by the Board of Governors and the Council, reports and data to the Board of Governors and the Council solely with respect to the conduct of the designated activity and solely to assess whether—

(A) the rules, orders, or standards prescribed by the Board of Governors with respect to the designated activity appropriately address the risks to the financial system presented by such activity; and

(B) the financial institutions are in compliance with this title and the rules and orders prescribed by the Board of Governors under this title with respect to the designated activity.

(c) COORDINATION WITH APPROPRIATE FEDERAL SUPERVISORY AGENCY.—

(1) ADVANCE COORDINATION.—Before directly requesting any material information from, or imposing reporting or recordkeeping requirements on, any financial market utility or any financial institution engaged in a payment, clearing, or settlement activity as provided in subsections (a) and (b), the Board of Governors and the Council shall coordinate with the Supervisory Agency for a financial market utility or the primary financial regulatory agency for a financial institution to determine if the information is available from or may be obtained by the agency in the form, format, or detail required by the Board of Governors and the Council.

(2) SUPERVISORY REPORTS.—For purposes of the coordination required by paragraph (1), and notwithstanding any other provision of law, the Supervisory Agency, the primary financial regulatory agency, and the Board of Governors are authorized to disclose to each other and the Council copies of its examination reports or similar reports regarding any financial market utility or any financial institution engaged in payment, clearing, or settlement activities.

(d) TIMING OF RESPONSE FROM APPROPRIATE FEDERAL SUPERVISORY AGENCY.—

(1) IN GENERAL.—If the information, report, records, or data requested by the Board of Governors or the Council under subsection (c)(1) are not provided in full by the Supervisory Agency or the primary financial regulatory agency in less than 15 days after the date on which the material is requested, the Board of Governors or the Council may request the information or impose recordkeeping or reporting requirements directly on such persons as provided in subsections (a) and (b) with notice to the agency.

(2) RULE OF CONSTRUCTION.—Nothing in this section authorizes or shall be construed to authorize the Board of Governors or the Council to prescribe any recordkeeping or reporting requirements on designated financial market utilities for which the Supervisory Agency is the Commodity Futures Trading Commission or the Securities and Exchange Commission.

(e) SHARING OF INFORMATION.—

(1) MATERIAL CONCERNS.—Notwithstanding any other provision of law, the Board of Governors, the Council, the primary financial regulatory agency, and any Supervisory Agency are authorized to—

(A) promptly notify each other of material concerns about a designated financial market utility or any financial institution engaged in designated activities; and

(B) share appropriate reports, information or data relating to such concerns.

(2) OTHER INFORMATION.—Notwithstanding any other provision of law, the Board of Governors, the Council, the primary financial regulatory agency, or any Supervisory Agency may, under such terms and conditions as it deems appropriate, provide confidential supervisory information and other information obtained under this title to other persons it deems appropriate, including the Secretary, State financial institution supervisory agencies, foreign financial supervisors, foreign central banks, and foreign finance ministries, subject to reasonable assurances of confidentiality.

(f) PRIVILEGE MAINTAINED.—The Board of Governors, the Council, the primary financial regulatory agency, and any Supervisory Agency providing reports or data under this section shall not be deemed to have waived any privilege applicable to those reports or data, or any portion thereof, by providing the reports or data under this section or by permitting the reports or data, or any copies thereof, to be used pursuant to this section.

(g) DISCLOSURE EXEMPTION.—Information obtained by the Board of Governors or the Council under this section and any materials prepared by the Board of Governors or the Council regarding its assessment of the systemic importance of financial market utilities or any payment, clearing, or settlement activities engaged in by financial institutions, and in connection with its supervision of designated financial market utilities and designated activities, shall be confidential supervisory information exempt from disclosure under section 552 of title 5, United States Code. For purposes of such section 552, this subsection shall be considered a statute described in subsection (b)(3) of such section 552.

SEC. 810. RULEMAKING.

The Board of Governors and the Council are authorized to prescribe such rules and issue such orders as may be necessary to administer and carry out the authorities and duties granted to the Board of Governors or the Council, respectively, under this title and prevent evasions thereof.

SEC. 811. OTHER AUTHORITY.

Unless otherwise provided by its terms, this title does not divest any primary financial regulatory agency, any Supervisory Agency, or any other Federal or State agency, of any authority derived from any other applicable law, except that any standards prescribed by the Board of Governors under section 805 shall supersede any less stringent requirements established under other authority to the extent of any conflict.

SEC. 812. EFFECTIVE DATE.

This title is effective as of the date of enactment of this Act.

SA 4093. Mr. NELSON of Florida 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 296, between lines 15 and 16, insert the following:

(d) REPEAL OF SAFE HARBOR TREATMENT IN THE BANKRUPTCY CODE.—Title 11, United States Code, is amended—

(1) in section 103(a), by striking ''chapter'' and all that follows through ''apply'' and inserting ''chapter, sections 307, 362(n), 557, and 562 apply'':

(2) in section 362—

(A) in subsection (b)—

(i) by striking paragraphs (6), (7), (17), and (27);

(ii) by redesignating paragraphs (8) through (16) as paragraphs (5) through (13), respectively;

(iii) by redesignating paragraphs (18) through (26) as paragraphs (14) through (22), respectively;

(iv) by redesignating paragraph (28) as paragraph (23); and

(v) in the undesignated matter at the end, by striking ''(12) and (13)'' and inserting ''(9) and (10)''; and

(B) by striking subsection (o);

(3) in section 546—

(A) in subsection (e)—

(i) by striking ''101 or'';

(ii) by striking ''101, 741,'' and inserting ''741''; and

(iii) by inserting ''and except in a case under chapter 11 or 15,'' before ''the trustee'';

(B) in subsection (f), by inserting ''and except in a case under chapter 11 or chapter 15,'' before ''the trustee'';

(C) by striking subsections (g) and (j); and

(D) by redesignating subsections (h) and (i) as subsections (g) and (h), respectively;

(4) in section 548(d)(2)—

(A) by striking subparagraphs (C) through (E);

(B) in subparagraph (A), by adding ''and'' at the end; and

(C) in subparagraph (B), by striking the semicolon at the end and inserting a period;

(5) in section 553—

(A) in subsection (a), by striking ''(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561)'' each place that term appears; and

(B) in subsection (b), by striking ''Except with respect to a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561, if a'' and inserting ''If a'';

(6) by striking sections 555, 556, 559, 560, and 561 and inserting ''[Repealed].'';

(7) in the table of sections for subchapter III of chapter 5, by striking the items relating to sections 555, 556, 559, 560, and 561;

(8) in section 901—

(A) by striking ''555, 556,''; and

(B) by striking ''559, 560, 561,'';

(9) in section 1519, by striking subsection (f); and

(10) in section 1521, by striking subsection (f).

At the end of title II, add the following:

SEC. ___. BANKRUPTCY CODE AMENDMENTS.

(a) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (43) the following:

''(43A) The term 'qualified financial contract' means any securities contract, commodity contract, forward contract, repurchase agreement, or swap agreement, that is cleared by or subject to the rules of a clearing organization (as defined in section 201(c)(9)(D) of the Restoring American Financial Stability Act of 2010.''.

(b) LIMITATION ON STAY OF EXERCISE OF CERTAIN CONTRACTUAL RIGHTS.—Section 541 of title 11, United States Code, is amended by adding at the end the following:

''(g) Notwithstanding any other provision of this title, if the trustee does not assume or reject a qualified financial contract of the debtor within 3 days after the order for relief, the exercise of any contractual right of any counterparty to such qualified financial contract to cause the liquidation, termination, or acceleration of one or more qualified financial contracts because of a condition of the kind specified in section 365(e)(1), or to offset or net out any termination values or payment amounts arising under or in

connection with the termination, liquidation, or acceleration of one or more qualified financial contracts shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by order of a court or administrative agency in any proceeding under this title. During such 3-day period the trustee shall make a good faith effort to meet all margin, collateral, and settlement obligations of the debtor that arise under qualified financial contracts, other than any such obligation that is not enforceable against the trustee.''.

(c) LIMITATION ON AVOIDANCE OF TRANSFER.—Section 546(j) of title 11, United States Code, is amended to read as follows:

''(j) Notwithstanding any Federal or State law relating to the avoidance of preferential or fraudulent transfers, the trustee may not avoid any transfer of money or other property in connection with any qualified financial contract of the debtor, unless the transferee had actual intent to hinder, delay, or defraud the debtor, the creditors of the debtor, or the trustee.''.

SA 4094. Mr. NELSON of Florida 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 209, line 9, insert before the period the following: '', that is cleared by or subject to the rules of a clearing organization (as defined in paragraph (9)(D))''.

SA 4095. Mr. NELSON of Florida 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 209, line 9, insert before the period the following: '', that is cleared by or subject to the rules of a clearing organization (as defined in paragraph (9)(D))''.

On page 296, between lines 15 and 16, insert the following:

(d) REPEAL OF SAFE HARBOR TREATMENT IN THE BANKRUPTCY CODE.—Title 11, United States Code, is amended—

(1) in section 103(a), by striking ''chapter'' and all that follows through ''apply'' and inserting ''chapter, sections 307, 362(n), 557, and 562 apply'':

(2) in section 362—

(A) in subsection (b)—

(i) by striking paragraphs (6), (7), (17), and (27);

(ii) by redesignating paragraphs (8) through (16) as paragraphs (5) through (13), respectively;

(iii) by redesignating paragraphs (18) through (26) as paragraphs (14) through (22), respectively;

(iv) by redesignating paragraph (28) as paragraph (23); and

(v) in the undesignated matter at the end, by striking ''(12) and (13)'' and inserting ''(9) and (10)''; and

(B) by striking subsection (o);

(3) in section 546—

(A) in subsection (e)—

(i) by striking ''101 or'';

(ii) by striking ''101, 741,'' and inserting ''741''; and

(iii) by inserting ''and except in a case under chapter 11 or 15,'' before ''the trustee'';

(B) in subsection (f), by inserting ''and except in a case under chapter 11 or chapter 15,'' before ''the trustee'';

(C) by striking subsections (g) and (j); and

(D) by redesignating subsections (h) and (i) as subsections (g) and (h), respectively;

(4) in section 548(d)(2)—

(A) by striking subparagraphs (C) through (E);

(B) in subparagraph (A), by adding ''and'' at the end; and

(C) in subparagraph (B), by striking the semicolon at the end and inserting a period;

(5) in section 553—

(A) in subsection (a), by striking ''(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561)'' each place that term appears; and

(B) in subsection (b), by striking ''Except with respect to a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561, if a'' and inserting ''If a'';

(6) by striking sections 555, 556, 559, 560, and 561 and inserting ''[Repealed].'';

(7) in the table of sections for subchapter III of chapter 5, by striking the items relating to sections 555, 556, 559, 560, and 561;

(8) in section 901—

(A) by striking ''555, 556,''; and

(B) by striking ''559, 560, 561,'';

(9) in section 1519, by striking subsection (f); and

(10) in section 1521, by striking subsection (f).

At the end of title II, add the following:

SEC. ____. BANKRUPTCY CODE AMENDMENTS.

(a) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (43) the following:

''(43A) The term 'qualified financial contract' means any securities contract, commodity contract, forward contract, repurchase agreement, or swap agreement, that is cleared by or subject to the rules of a clearing organization (as defined in section 201(c)(9)(D) of the Restoring American Financial Stability Act of 2010.''.

(b) LIMITATION ON STAY OF EXERCISE OF CERTAIN CONTRACTUAL RIGHTS.—Section 541 of title 11, United States Code, is amended by adding at the end the following:

''(g) Notwithstanding any other provision of this title, if the trustee does not assume or reject a qualified financial contract of the debtor within 3 days after the order for relief, the exercise of any contractual right of any counterparty to such qualified financial contract to cause the liquidation, termination, or acceleration of one or more qualified financial contracts because of a condition of the kind specified in section 365(e)(1), or to offset or net out any termination values or payment amounts arising under or in connection with the termination, liquidation, or acceleration of one or more qualified financial contracts shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by order of a court or administrative agency in any proceeding under this title. During such 3-day period the trustee shall make a good faith effort to meet all margin, collateral, and settlement obligations of the debtor that arise under qualified financial contracts, other than any such obligation that is not enforceable against the trustee.''.

(c) LIMITATION ON AVOIDANCE OF TRANSFER.—Section 546(j) of title 11, United States Code, is amended to read as follows:

''(j) Notwithstanding any Federal or State law relating to the avoidance of preferential or fraudulent transfers, the trustee may not avoid any transfer of money or other property in connection with any qualified financial contract of the debtor, unless the transferee had actual intent to hinder, delay, or defraud the debtor, the creditors of the debtor, or the trustee.''.

SA 4096. Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. REED) 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 370, between lines 13 and 14, insert the following:

SEC. 333. FDIC EXAMINATION AUTHORITY.

(a) EXAMINATION AUTHORITY FOR INSURANCE AND ORDERLY LIQUIDATION PURPOSES.—Section 10(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1820(b)(3)) is amended by striking ''whenever the Board'' and all that follows through the period at the end and inserting the following: ''or depository institution holding company whenever the Chairperson or the Board of Directors determines that a special examination of any such depository institution or depository institution holding company is necessary to determine the condition of such depository institution or depository institution holding company for insurance purposes or for purposes of title II of the Restoring American Financial Stability Act of 2010.''.

(b) ENFORCEMENT AUTHORITY.—Section 8(t) of the Federal Deposit Insurance Act (12 U.S.C. 1818(t)) is amended—

(1) in paragraph (1)—

(A) by striking ''based on an examination of an insured depository institution'' and inserting ''based on an examination of an insured depository institution or depository institution holding company''; and

(B) by striking ''with respect to any insured depository institution or'' and inserting ''with respect to any insured depository institution, depository institution holding company, or'';

(2) in paragraph (2)—

(A) by striking ''Board of Directors determines, upon a vote of its members,'' and inserting ''Board of Directors, upon a vote of its members, or the Chairperson determines'';

(B) in subparagraph (B), by striking ''or'' at the end;

(C) in subparagraph (C), by striking the period at the end and inserting ''; or''; and

(D) by adding at the end the following:

''(D) the conduct or threatened conduct (including any acts or omissions) of the depository institution holding company poses a risk to the Deposit Insurance Fund or of the exercise of authority under title II of the Restoring American Financial Stability Act of 2010, or may prejudice the interests of the depositors of an affiliated institution.'';

(3) in paragraph (3)(A), by striking ''upon a vote of the Board of Directors'' and inserting ''upon a determination by the Chairperson or upon a vote of the Board of Directors'';

(4) in paragraph (4)(A)—

(A) by striking ''any insured depository institution'' and inserting ''any insured depository institution, depository institution holding company,''; and

(B) by striking ''the institution'' and inserting ''the institution, holding company,'';

(5) in paragraph (4)(B), by striking ''the institution'' each place that term appears and inserting ''the institution, holding company,''; and

(6) in paragraph (5)(A), by striking ''an insured depository institution'' and inserting ''an insured depository institution, depository institution holding company,''.

(c) BACK-UP EXAMINATION AUTHORITY FOR ORDERLY LIQUIDATION PURPOSES.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following:

''SEC. 51. BACK-UP EXAMINATION AUTHORITY FOR ORDERLY LIQUIDATION PURPOSES.

''The Corporation may conduct a special examination of a nonbank financial company supervised by the Board of Governors of the Federal Reserve System under section 113 of the Restoring American Financial Stability Act of 2010, if the Chairperson or the Board of Directors determines an examination is necessary to determine the condition of the company for purposes of title II of that Act.''.

(d) ACCESS TO INFORMATION FOR INSURANCE AND ORDERLY LIQUIDATION PURPOSES.—The Federal Deposit Insurance Act is amended by adding at the end the following:

''SEC. 52. ACCESS TO INFORMATION FOR INSURANCE AND ORDERLY LIQUIDATION PURPOSES.

''(a) ACCESS TO INFORMATION.—The Corporation may, if the Corporation determines that such action is necessary to carry out its responsibilities relating to deposit insurance or orderly liquidation—

''(1) obtain information from an insured depository institution, depository institution holding company, or nonbank financial company supervised by the Board of Governors of the Federal Reserve System under section 113 of the Restoring American Financial Stability Act of 2010;

''(2) obtain information from the appropriate Federal banking agency, or any regulator of a nonbank financial company supervised by the Board of Governors of the Federal Reserve System under section 113 of the Restoring American Financial Stability Act of 2010, including examination reports; and

''(3) participate in any examination, visitation, or risk-scoping activity of an insured depository institution, depository institution holding company, or nonbank financial company supervised by the Board of Governors of the Federal Reserve System under section 113 of the Restoring American Financial Stability Act of 2010.

''(b) ENFORCEMENT.—The Corporation shall have the authority to take any enforcement action under section 8 against any institution or company described in paragraph (1) of subsection (a) that fails to provide any information requested under that paragraph.

''(c) USE OF AVAILABLE INFORMATION.—The Corporation shall use, in lieu of a request for information under subsection (a), information provided to another Federal or State regulatory agency, publicly available information, or externally audited financial statements to the extent that the Corporation determines such information is adequate to the needs of the Corporation.''.

SA 4097. Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. FRANKEN) 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 1006, strike line 17 and all that follows through page 1007, line 2, and insert the following:

(A) by striking paragraph (2) and inserting the following:

''(2) STANDARDS AND OVERSIGHT.—The Commission shall set standards and exercise oversight of the procedures and methodologies, including qualitative and quantitative data and models, used by nationally recognized statistical rating organizations, to ensure that the credit ratings issued by the nationally recognized statistical rating organizations have a reasonable foundation.''; and

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SA 4098. Mr. LEVIN (for himself, Mr. KAUFMAN, Mr. REED, and Mrs. MCCASKILL) 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. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 15G, as added by this Act, the following new section:

''SEC. 15H. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.

''(a) DEFINITION.—For purposes of this section, the term 'synthetic asset-backed security' means an asset-backed security with respect to which, by design, the self-liquidating financial assets referenced in the synthetic securitization do not provide any direct payment or cash flow to the holder of the security.

''(b) RESTRICTION.—No issuer, underwriter, placement agent, sponsor, or initial purchaser may offer, sell, or transfer a synthetic asset-backed security that has no substantial or material economic purpose apart from speculation on a possible future gain or loss associated with the value or condition of the referenced assets. The Commission may determine whether a synthetic asset-backed security meets the requirements of this section. A determination by the Commission under the preceding sentence is not subject to judicial review.''.

SA 4099. Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. FRANKEN) 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 1028 between lines 4 and 5 insert the following:

''(E) NO RELIANCE ON INADEQUATE REPORT.—A nationally recognized statistical rating organization may not rely on a third-party due diligence report if the nationally recognized statistical rating organization has reason to believe that the report is inadequate.

SA 4100. Mr. DODD 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 584, line 7, after the first period insert the following:

''(k) CLEARING REQUIREMENTS FOR CREDIT DEFAULT SWAPS.—Subject to the exemption requirements of paragraphs (9) and (10) of subsection (h), all credit default swaps that are swaps shall be cleared pursuant to the requirements of subsection (h)(1).

''(l) BAN ON RISKY UNDISCLOSED NAKED CREDIT DEFAULT SWAPS.—

''(1) PROHIBITION.—

''(A) IN GENERAL.—It shall be unlawful for a protection buyer to enter into a credit default swap that establishes a short position in a reference entity's credit instrument unless the protection buyer can demonstrate to the Commission, in such manner and in such form as may be prescribed jointly by the Commission and the Securities and Exchange Commission, that the protection buyer—

''(i) is undertaking such action to establish a legitimate short position in credit default swaps; or

''(ii) is regulated by the Commission as a swap dealer in credit default swaps, and is acting as a market-maker or is otherwise engaged in a financial transaction on behalf of a customer.

''(B) LEGITIMATE SHORT POSITION IN CREDIT DEFAULT SWAPS.—A protection buyer's short position in credit default swaps shall be considered a legitimate short position in credit default swaps if—

''(i) the value of the protection buyer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the protection buyer's position in credit default swaps; and

''(ii) the reference entity or entities for the protection buyer's credit default swaps in clause (i), whether in a single-name, or a narrow-based index or a non-narrow-based index credit default swap, is the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the protection buyer owns.

''(C) DETERMINATION OF THE COMMISSION.—

''(i) IN GENERAL.—The Commission and the Securities and Exchange Commission shall

jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, defining the term 'valid credit instrument'.

''(ii) CONSIDERATIONS AND REQUIREMENTS.—In defining the term 'valid credit instrument', the Commission and the Securities and Exchange Commission shall consider which group, category, type, or class of credit instruments can be effectively hedged using credit default swaps.

''(iii) RULE OF CONSTRUCTION.—For purposes of this subsection, any instrument with an equity risk exposure or equity-like features shall not be considered by the Commission and the Securities and Exchange Commission to be a valid credit instrument.

''(D) REPORTING.—Each protection buyer shall report all of its legitimate short positions in credit default swaps, as well as any other credit default swap positions and the valid credit instruments that it owns to the Commission, in such manner, in such frequency, and in such form as the Commission may prescribe.

''(E) HOLDING OF SHORT POSITIONS IN CREDIT DEFAULT SWAPS BY SWAP DEALERS.—Any swap dealer in credit default swaps seeking to establish, possess, or otherwise obtain a short position as the protection buyer of any credit default swap for more than 60 consecutive calendar days or for more than two-thirds of the days in any calendar quarter, shall demonstrate to the Commission, in such manner and in such form as shall be prescribed jointly by the Commission and the Securities and Exchange Commission, that—

''(i) the value of the swap dealer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the swap dealer's position in credit default swaps; and

''(ii) the reference entity or entities for the swap dealer's credit default swaps in clause (i), whether in a single-name, or a narrow-based index or a non-narrow-based index credit default swap, are the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the swap dealer owns.

''(F) PROHIBITION ON EVASIONS AND STRUCTURING OF TRANSACTIONS.—No person, including any protection buyer, protection seller, or counterparty, may take any action in connection with a credit default swap to structure such swap for the purpose and with the intent of evading the provisions of this subsection.

''(G) AUTHORITY OF THE COMMISSION.—The Commission, in consultation with the Securities and Exchange Commission, may, in the public interest, for the protection of investors, for the protection of market participants, and the maintenance of fair and orderly markets, prohibit any other action, practice, or conduct in connection with or related to the direct or indirect purchase or sale credit default swaps that are swaps.

''(2) DEFINITIONS.—

''(A) IN GENERAL.—In this subsection, the following definitions shall apply:

''(i) CREDIT DEFAULT SWAP.—The term 'credit default swap'—

''(I) means a swap or security-based swap whose payout is determined by the occurrence of a credit event with respect to a single referenced credit instrument or reference entity or multiple referenced credit instruments or reference entities; and

''(II) is not a security issued by a corporation, State, municipality, or sovereign entity.

''(ii) CREDIT EVENT.—The term 'credit event' includes a default, restructuring, insolvency, bankruptcy, credit downgrade, and a violation of a debt covenant.

''(iii) PROTECTION BUYER.—The term 'protection buyer' means a person that enters into a credit default swap to obtain a payoff from a third party (commonly referred to as the 'protection seller') upon the occurrence of one or more credit events.

''(iv) REFERENCE ENTITY.—The term 'reference entity' means any borrower, such as a corporation, State, municipality, sovereign entity, or special purpose entity, which has issued a debt obligation or obtained a loan that is referenced by a credit default swap.

''(B) FURTHER DEFINITION OF TERMS.—The Commission and the Securities and Exchange Commission shall jointly establish and adopt rules, regulations, or order, in accordance with the public interest, further defining the terms 'credit default swap', 'credit event', 'protection buyer', and 'reference entity'.

''(3) EFFECTIVE DATE.—This subsection shall take effect 2 years following the date on which the Wall Street Transparency and Accountability Act of 2010 becomes effective, except that the Commission and the Securities and Exchange Commission may require disclosure and reporting of positions and holdings as set forth in this subsection at such earlier date as they may jointly determine.

''(m) PUBLIC REPORTING OF CREDIT DEFAULT SWAPS.—

''(1) IN GENERAL.—Notwithstanding paragraphs (8), (9), and (10) of subsection (h), the Commission and the Securities and Exchange Commission shall jointly adopt rules requiring public reporting by counterparties of all net notional amount of credit default swaps purchased or sold referencing a specific reference entity in an amount greater than 1 percent of the outstanding debt of that reference entity.

''(2) RULEMAKING.—The Commission and the Securities and Exchange Commission may adopt rules setting the public reporting requirement threshold of subparagraph (A) in an amount less than 1 percent and may set a lower reporting requirement threshold for credit default swaps purchased or sold on governmental entities. In adopting rules implementing this requirement, the Commission and the Securities and Exchange Commission shall require counterparties to report both hedged and unhedged positions. The Commission and the Securities and Exchange Commission shall prescribe rules to specify the form, manner, and timing of such reports.

''(3) FURTHER DEFINITION OF TERMS.—For purposes of this subsection, the Commission and the Securities and Exchange Commission shall jointly establish and adopt rules, regulation, or orders in accordance with the public interest, defining the terms 'credit default swap', 'reference entity', 'outstanding debt', 'net notional amount of credit default swaps', and 'governmental entities'.''.

On page 808, line 8, after the first period, insert the following:

''(e) CLEARING REQUIREMENTS FOR CREDIT DEFAULT SWAPS.—Subject to the exemption requirements of paragraphs (9) and (10) of subsection (a), all credit default swaps that are security-based swaps shall be cleared pursuant to the requirements of subsection (a)(1).

''SEC. 3C–1. BAN ON RISKY UNDISCLOSED NAKED CREDIT DEFAULT SWAPS.

''(a) PROHIBITION.—

''(1) IN GENERAL.—It shall be unlawful for a protection buyer to enter into a credit default swap that establishes a short position in a reference entity's credit instrument unless the protection buyer can demonstrate to the Commission, in such manner and in such form as may be prescribed jointly by the Commission and the Commodity Futures Trading Commission, that the protection buyer—

''(A) is undertaking such action to establish a legitimate short position in credit default swaps; or

''(B) is regulated by the Commission as a security-based swap dealer in credit default swaps, and is acting as a market-maker or is otherwise engaged in a financial transaction on behalf of a customer.

''(2) LEGITIMATE SHORT POSITION IN CREDIT DEFAULT SWAPS.—A protection buyer's short position in credit default swaps shall be considered a legitimate short position in credit default swaps if—

''(A) the value of the protection buyer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the protection buyer's position in credit default swaps; and

''(B) the reference entity or entities for the protection buyer's credit default swaps in subparagraph (A), whether in a single-name, or a narrow-based index or a non-narrow-based index credit default swap, is the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the protection buyer owns.

''(3) DETERMINATION OF THE COMMISSION.—

''(A) IN GENERAL.—The Commission and the Commodity Futures Trading Commission shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, defining the term 'valid credit instrument'.

''(B) CONSIDERATIONS AND REQUIREMENTS.—In defining the term 'valid credit instrument', the Commission and the Commodity Futures Trading Commission shall consider which group, category, type, or class of credit instruments can be effectively hedged using credit default swaps.

''(C) RULE OF CONSTRUCTION.—For purposes of this section, any instrument with an equity risk exposure or equity-like features shall not be considered by the Commission and the Commodity Futures Trading Commission to be a valid credit instrument.

''(4) REPORTING.—Each protection buyer shall report all of its legitimate short positions in credit default swaps, as well as any other credit default swap positions and the valid credit instruments that it owns to the Commission, in such manner, in such frequency, and in such form as the Commission may prescribe.

''(5) HOLDING OF SHORT POSITIONS IN CREDIT DEFAULT SWAPS BY SECURITY-BASED SWAP DEALERS.—Any security-based swap dealer in credit default swaps seeking to establish, possess, or otherwise obtain a short position as the protection buyer of any credit default swap for more than 60 consecutive calendar days or for more than two-thirds of the days in any calendar quarter, shall demonstrate to the Commission, in such manner and in such form as shall be prescribed jointly by the Commission and the Commodity Futures Trading Commission, that—

''(A) the value of the security-based swap dealer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the security-based swap dealer's position in credit default swaps; and

''(B) the reference entity or entities for the security-based swap dealer's credit default swaps in subparagraph (A), whether in a single-name, or a narrow-based index or a non-narrow-based index credit default swap, are the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the security-based swap dealer owns.

''(6) PROHIBITION ON EVASIONS AND STRUCTURING OF TRANSACTIONS.—No person, including any protection buyer, protection seller, or counterparty, may take any action in connection with a credit default swap to structure such swap for the purpose and with

the intent of evading the provisions of this section.

''(7) AUTHORITY OF THE COMMISSION.—The Commission, in consultation with the Commodity Futures Trading Commission, may, in the public interest, for the protection of investors, for the protection of market participants, and the maintenance of fair and orderly markets, prohibit any other action, practice, or conduct in connection with or related to the direct or indirect purchase or sale credit default swaps that are security-based swaps.

''(b) DEFINITIONS.—

''(1) IN GENERAL.—In this section, the following definitions shall apply:

''(A) CREDIT DEFAULT SWAP.—The term 'credit default swap'—

''(i) means a swap or security-based swap whose payout is determined by the occurrence of a credit event with respect to a single referenced credit instrument or reference entity or multiple referenced credit instruments or reference entities; and

''(ii) is not a security issued by a corporation, State, municipality, or sovereign entity.

''(B) CREDIT EVENT.—The term 'credit event' includes a default, restructuring, insolvency, bankruptcy, credit downgrade, and a violation of a debt covenant.

''(C) PROTECTION BUYER.—The term 'protection buyer' means a person that enters into a credit default swap to obtain a payoff from a third party (commonly referred to as the 'protection seller') upon the occurrence of one or more credit events.

''(D) REFERENCE ENTITY.—The term 'reference entity' means any borrower, such as a corporation, State, municipality, sovereign entity, or special purpose entity, which has issued a debt obligation or obtained a loan that is referenced by a credit default swap.

''(2) FURTHER DEFINITION OF TERMS.—The Commission and the Commodity Futures Trading Commission shall jointly establish and adopt rules, regulations, or order, in accordance with the public interest, further defining the terms 'credit default swap', 'credit event', 'protection buyer', and 'reference entity'.

''(c) EFFECTIVE DATE.—This section shall take effect 2 years following the date on which the Wall Street Transparency and Accountability Act of 2010 becomes effective, except that the Commission and the Commodity Futures Trading Commission may require disclosure and reporting of positions and holdings as set forth in this section at such earlier date as they may jointly determine.

''SEC. 3C–2. PUBLIC REPORTING OF CREDIT DEFAULT SWAPS.

''(a) IN GENERAL.—Notwithstanding paragraphs (8), (9), and (10) of section 3C(a), the Commission and the Commodity Futures Trading Commission shall jointly adopt rules requiring public reporting by counterparties of all net notional amount of credit default swaps purchased or sold referencing a specific reference entity in an amount greater than 1 percent of the outstanding debt of that reference entity.

''(b) RULEMAKING.—The Commission and the Commodity Futures Trading Commission may adopt rules setting the public reporting requirement threshold of subsection (a) in an amount less than 1 percent and may set a lower reporting requirement threshold for credit default swaps purchased or sold on governmental entities. In adopting rules implementing this requirement, the Commission and the Commodity Futures Trading Commission shall require counterparties to report both hedged and unhedged positions. The Commission and the Commodity Futures Trading Commission shall prescribe rules to specify the form, manner, and timing of such reports.

''(c) FURTHER DEFINITION OF TERMS.—For purposes of this section, the Commission and the Commodity Futures Trading Commission shall jointly establish and adopt rules, regulation, or orders in accordance with the public interest, defining the terms 'credit default swap', 'reference entity', 'outstanding debt', 'net notional amount of credit default swaps', and 'governmental entities'.''.

On page 893, after line 25, insert the following:

SEC. 774. COUNCIL STUDY AND ACTION REGARDING CERTAIN PROHIBITIONS.

(a) IN GENERAL.—

(1) IN GENERAL.—The Financial Stability Oversight Council shall conduct a study of issues involving the purchase and sale of credit default swaps and naked credit default swaps.

(2) RULE OF CONSTRUCTION.—For purposes of this section, a naked credit default swap is a credit default swap entered into by a person that does not own the valid debt instrument or valid debt instruments referenced in the credit default swap or own a valid debt instrument or valid debt instruments of the issuer or borrower, or issuers or borrowers, referenced in the credit default swap, or a similar risk exposure.

(b) MATTERS TO BE ADDRESSED.—The study required under subsection (a) shall address—

(1) the impact of trading of credit default swaps on debt issuers, credit availability, financial markets, and the overall economy of the United States;

(2) the potential uses of naked credit default swaps;

(3) the potential systemic impact of short positions in naked credit default swaps;

(4) existing authority of regulators to address risks to market participants and systemic risk of credit default swaps and naked credit default swaps; and

(5) such other relevant matters as the Council deems necessary or appropriate to address.

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, if the Financial Stability Oversight Council agrees by an affirmative vote of the majority of its members then serving to the conclusions and findings of the study required under subsection (a), and to any recommendations for legislative action the Council deems necessary and appropriate based on such conclusions and findings, the Council shall submit such report, together with such recommendations, to Congress.

(d) ACTION BY CHAIRPERSON OF THE COUNCIL.—Following receipt of the report required by subsection (c), and notwithstanding section 2(l) of the Commodity Exchange Act, section 5A of the Securities Act of 1933, and section 3C–1 of the Securities Exchange Act of 1934, the Chairperson of the Council may make a written determination suspending, in whole or in part, the prohibitions of section 2(l) of the Commodity Exchange Act, section 5A of the Securities Act of 1933, and section 3C–1 of the Securities Exchange Act of 1934.

(e) FINDING BY CHAIRPERSON OF THE COUNCIL.—Based upon the conclusions and findings of the study required under subsection (a), the Chairperson of the Council may make a written determination as provided in subsection (d) only upon a finding that the prohibitions in section 2(l) of the Commodity Exchange Act, section 5A of the Securities Act of 1933, and section 3C–1 of the Securities Exchange Act of 1934 would have a material adverse effect on the financial markets and economy of the United States.

(f) CONGRESSIONAL NOTICE; EFFECTIVENESS.—The Chairperson of the Council shall submit any written determination made pursuant to subsection (d) to the Committees on Banking, Housing, and Urban Affairs and the Committee on Agriculture, Nutrition, and Forestry of the United States Senate and the Committees on Financial Services and Agriculture of the United States House of Representatives. Any such written determination by the Chairperson of the Council shall not be effective until such determination has been submitted to the appropriate committees of Congress.

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

SEC. 946. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.

The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 5 the following:

''SEC. 5A. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.

''(a) DEFINITION.—For purposes of this section, the term 'synthetic asset-backed security' means an asset-backed security, as defined in section 3(a)(77) of the Securities Exchange Act of 1934, with respect to which, by design, the self-liquidating financial assets referenced in the synthetic securitization do not provide any direct payment or cash flow to the holders of the security.

''(b) RESTRICTION.—

''(1) IN GENERAL.—No issuer, underwriter, placement agent, sponsor, or initial purchaser may offer, sell, or transfer a synthetic asset-backed security that has no purpose apart from speculation on a possible future gain or loss associated with the value or condition of the referenced assets. The Commission may determine, by rule or otherwise, whether a security is included within the description set forth in the preceding sentence. Any such determination by the Commission, other than by rule, is not subject to judicial review.

''(2) RULEMAKING.—Not later than 270 days after the date of enactment of this section, the Commission shall issue rules carry out this section and to prevent evasions thereof.

''(c) EFFECTIVE DATE.—This section shall take effect 2 years following the date on which the Wall Street Transparency and Accountability Act of 2010 becomes effective, except that the Commission may require any disclosure or reporting of information or data pursuant this section at such earlier date as the Commission may determine.''.

SA 4101. Mr. MERKLEY (for himself and Mr. LEVIN) 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 484, strike line 16 and all that follows through page 497, line 8, and insert the following:

SEC. 619. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.

The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by adding at the end the following:

''SEC. 13. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.

''(a) IN GENERAL.—

''(1) PROHIBITION.—Unless otherwise provided in this section, a banking entity shall not—

''(A) engage in proprietary trading; or

''(B) acquire or retain any equity, partnership, or other ownership interest in or sponsor a hedge fund or a private equity fund.

''(2) NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD.—Any nonbank financial company supervised by the Board that engages in proprietary trading or takes or retains any equity, partnership, or other ownership interest in or sponsors a hedge fund or a private equity fund shall be subject by the Board to additional capital requirements for and additional quantitative limits with regards to such proprietary trading and taking or retaining any equity, partnership, or other ownership interest in or sponsorship of a hedge fund or a private equity fund, except that permitted activities as described in subsection (d) shall be subject to additional capital and additional quantitative limits as prescribed pursuant to subsection (d)(3).

''(b) STUDY AND RULEMAKING.—

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

''(A) promote and enhance the safety and soundness of banking entities;

''(B) protect taxpayers and enhance financial stability by minimizing the risk that insured depository institutions and the affiliates of insured depository institutions will engage in unsafe and unsound activities;

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

''(D) reduce conflicts of interest between the self-interest of banking entities and nonbank financial companies supervised by the Board, and the interests of the customers of such entities and companies;

''(E) limit activities that have caused undue risk or loss in banking entities and nonbank financial companies supervised by the Board, or that might reasonably be expected to create undue risk or loss in such banking entities and nonbank financial companies supervised by the Board;

''(F) appropriately accommodate the business of insurance within an insurance company subject to regulation in accordance with the relevant insurance company investment laws while protecting the safety and soundness of any banking entity with which such insurance company is affiliated, and of the United States financial system; and

''(G) appropriately time the divestiture of illiquid assets that are affected by the implementation of the prohibitions under subsection (a).

''(2) RULEMAKING.—

''(A) IN GENERAL.—Not later than 9 months after the completion of the study under paragraph (1), the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, (unless otherwise provided in this section) shall consider the findings of the study under paragraph (1) and adopt rules to carry out this section, as provided in subparagraph (B).

''(B) COORDINATED RULEMAKING.—

''(i) REGULATORY AUTHORITY.—The regulations issued under this paragraph and subsections (d) and (e) shall be issued by—

''(I) the appropriate Federal banking agencies, jointly, with respect to insured depository institutions;

''(II) the Board, with respect to any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, any subsidiary of such a company (other than a subsidiary described in subparagraph (A) or (C)), and any nonbank financial company supervised by the Board;

''(III) the Commodity Futures Trading Commission, with respect to any entity for which the Commodity Futures Trading Commission is the primary financial regulatory agency, as defined in section 2 of the Restoring American Financial Stability Act of 2010; and

''(IV) the Securities and Exchange Commission, with respect to any entity for which the Securities and Exchange Commission is the primary financial regulatory agency, as defined in section 2 of the Restoring American Financial Stability Act of 2010.

''(ii) COORDINATION, CONSISTENCY, AND COMPARABILITY.—In developing and issuing regulations pursuant to this section, the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall consult and coordinate with each other, as appropriate, for the purposes of assuring, to the extent possible, that such regulations are comparable and provide for consistent application and implementation of the applicable provisions of this section to avoid providing advantages or imposing disadvantages to the companies affected by this subsection and to protect the safety and soundness of banking entities and nonbank financial companies supervised by the Board.

''(iii) COUNCIL ROLE.—The Chairperson of the Council shall be responsible for coordination of the regulations issued under this section.

''(c) EFFECTIVE DATE.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), this section shall take effect on the earlier of—

''(A) 12 months after the issuance of final rules under subsection (b); or

''(B) 2 years after the date of enactment of this section.

''(2) TRANSITION PERIOD FOR DIVESTITURE OF HEDGE FUNDS OR PRIVATE EQUITY FUNDS BY BANKING ENTITIES.—

''(A) NO NEW INVESTMENTS.—

''(i) NO NEW FUNDS.—On and after the date of enactment of this section, a banking entity may not sponsor or invest in a hedge fund or private equity fund that the banking entity did not sponsor or in which the banking entity was not invested on May 1, 2010.

''(ii) NO ADDITIONAL CAPITAL OR ASSETS.—On and after the date of enactment of this section, a banking entity may not sell, transfer, loan, or otherwise provide any additional capital or assets to a hedge fund or private equity fund sponsored by the banking entity or in which the banking entity invests, except to the extent necessary to fulfill a contractual obligation that was in effect on May 1, 2010.

''(B) REDUCTION OF EXISTING INVESTMENTS.—Except as provided in paragraph (3), on and after the date that is 2 years after the effective date of this section, the aggregate amount of equity, partnership, or other ownership interests in all hedge funds and private equity funds held by a banking entity shall not exceed 2 percent of the Tier I capital of the banking entity.

''(C) TOTAL DIVESTITURE.—On and after the date that is 5 years after the effective date of this section, no banking entity may engage in any activity prohibited under subsection (a)(1)(B), except as provided in paragraph (3).

''(3) TRANSITION PERIOD FOR ILLIQUID FUNDS.—

''(A) DEFINITION.—In this paragraph, the term 'illiquid fund' means a hedge fund or private equity fund that, as of May 1, 2010, was principally invested in or is invested in illiquid assets, and committed to principally invest in illiquid assets, such as portfolio companies, real estate investments, and venture capital investments, and that maintains the investment strategy of the fund that was in place as of May 1, 2010, regarding principally investing in illiquid assets. In issuing rules under this subparagraph, the Board shall take into consideration the terms of investment for the hedge fund or private equity fund, including contractual obligations, the ability of the fund to divest of assets held by the fund, and any other factors that the Board determines are appropriate.

''(B) TRANSITION.—

''(i) IN GENERAL.—During the 4-year period beginning on the date of enactment of this section, a banking entity may only take an equity, partnership, or ownership interest in, or otherwise provide additional capital to, an illiquid fund to the extent necessary to fulfill a contractual obligation of the banking entity to the illiquid fund that was in effect on May 1, 2010.

''(ii) LIMITATIONS.—A banking entity may not exercise an option to renew, or otherwise extend the duration of, any contractual obligation described in clause (i) and shall exercise any contractual option permitting the banking entity to exit the illiquid fund if and when such option becomes available. A banking entity may elect not to exercise an option described in the preceding sentence, to the extent that the maintenance of an investment would be permitted under paragraph (2).

''(iii) EXTENSION.—

''(I) APPROVAL REQUIRED.—If a contractual obligation of a banking entity described in clause (i) extends beyond the 4-year period beginning on the date of enactment of this section, the banking entity may not continue to make the investment required under the contractual obligation without the prior written approval of the Board. In determining whether to grant an extension under this clause, the Board shall evaluate whether the proposed investment meets the requirements of this subparagraph.

''(II) TIME LIMIT ON APPROVAL.—The Board may approve an investment described in subclause (I) for a period of not longer than 2 years for each extension.

''(III) LIMIT ON NUMBER OF APPROVALS.—The Board may not approve an investment described in subclause (I) more than 3 times.

''(iv) DIVESTITURE REQUIRED.—Except as otherwise permitted under subsection (d), no banking entity may engage in any activity prohibited under subsection (a)(1)(B) after the earlier of —

''(I) the date on which the contractual obligation to invest in the illiquid fund terminates; and

''(II) the date on which the approval by the Board under clause (iii) expires.

''(4) ADDITIONAL CAPITAL.—Notwithstanding paragraph (2) or (3), on and after the effective date under paragraph (1), the Board may impose additional capital requirements, and any other restrictions, as the Board determines appropriate, on any equity, partnership, or ownership interest in or sponsorship of a hedge fund or private equity fund by a banking entity or nonbank financial company supervised by the Board, including on a case-by-case basis, as the Board determines appropriate.

''(5) RULEMAKING.—Not later than 6 months after the date of enactment of this section, the Board shall issues rules to implement paragraphs (2), (3), and (4).

''(d) PERMITTED ACTIVITIES.—

''(1) IN GENERAL.—Notwithstanding the restrictions in subsection (a), to the extent permitted by any other provision of Federal or State law, and subject to the limitations under paragraph (2) and any restrictions or limitations that the appropriate Federal

banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, may determine, the following activities (in this section referred to as 'permitted activities') are permitted:

''(A) The purchase, sale, acquisition, or disposition of obligations of the United States or any agency thereof; obligations, participations, or other instruments of or issued by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation, or a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), and obligations of any State or of any political subdivision thereof.

''(B) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) in connection with underwriting, market-making, or in facilitation of customer relationships, to the extent that any such activities permitted by this subparagraph are designed to not exceed the reasonably expected near term demands of clients, customers, or counterparties.

''(C) Risk-mitigating hedging activities designed to reduce the specific risks to a banking entity or nonbank financial company supervised by the Board.

''(D) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) on behalf of customers.

''(E) Investments in one or more small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 662), or investments designed primarily to promote the public welfare, as provided in paragraph (11) of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24).

''(F) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) by a regulated insurance company directly engaged in the business of insurance for the general account of the company and by any affiliate of such regulated insurance company, provided that such activities by any affiliate are solely for the general account of the regulated insurance company, if—

''(i) the purchase, sale, acquisition, or disposition is conducted 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 appropriate Federal banking agencies, after consultation with the Financial Stability Oversight 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 particular law, regulation, or written guidance described in clause (i) is insufficient to protect the safety and soundness of the banking entity or nonbank financial company supervised by the Board, or of the financial stability of the United States.

''(G) Organizing and offering a private equity or hedge fund, including serving as a general partner, managing member, or trustee of the fund and 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, including any necessary expenses for the foregoing, only if—

''(i) the banking entity provides bona fide trust, fiduciary, or investment advisory services;

''(ii) the fund is organized and offered only in connection with the provision of bona fide trust, fiduciary, or investment advisory services and only to persons that are customers of such services of the banking entity;

''(iii) the banking entity does not acquire or retain an equity interest, partnership interest, or other ownership interest in the funds;

''(iv) the banking entity does not enter into or otherwise engage in any transaction with the hedge fund or private equity fund that is a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c);

''(v) the obligations or performance of the hedge fund or private equity fund are not guaranteed, assumed, or otherwise covered, directly or indirectly, by the banking entity or any subsidiary or affiliate of the banking entity;

''(vi) the banking entity does not share with the hedge fund or private equity fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name;

''(vii) no director or employee of the banking entity takes or retains an equity interest, partnership interest, or other ownership interest in, except for any director or employee of the banking entity who is directly engaged in providing investment advisory or other services to the hedge fund or private equity fund; and

''(viii) the banking entity complies with any rules of the appropriate Federal banking agencies, the Securities and Exchange Commission, or the Commodity Futures Trading Commission designed to ensure that losses in such hedge fund or private equity fund are borne solely by investors in the fund and not by the banking entity.

''(H) Proprietary trading conducted by a company pursuant to paragraph (9) or (13) of section 4(c), provided that the trading occurs solely outside of the United States and that the banking entity or nonbank financial company supervised by the Board is not directly or indirectly controlled by a United States person.

''(I) The acquisition or retention of any equity, partnership, or other ownership interest in, or the sponsorship of, a hedge fund or a private equity fund by a banking entity or nonbank financial company supervised by the Board pursuant to paragraph (9) or (13) of section 4(c) solely outside of the United States, provided that no ownership interest in such hedge fund or private equity fund is offered for sale or sold to a resident of the United States and that the banking entity or nonbank financial company supervised by the Board is not directly or indirectly controlled by a company that is organized in the United States.

''(J) Such other activity as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission determine through regulation, as provided in subsection (b)(2)(B), would promote and protect the safety and soundness of the banking entity or nonbank financial company supervised by the Board and the financial stability of the United States.

''(2) LIMITATION ON PERMITTED ACTIVITIES.—

''(A) IN GENERAL.—No transaction, class of transactions, or activity may be deemed a permitted activity under paragraph (1) if it—

''(i) would involve or result in a material conflict of interest (as such term shall be defined jointly by rule) between the banking entity or the nonbank financial company supervised by the Board and its clients, customers, or counterparties;

''(ii) would result, directly or indirectly, in an unsafe and unsound exposure by the banking entity or nonbank financial company supervised by the Board to high-risk assets or high-risk trading strategies (as such terms shall be defined jointly by rule);

''(iii) would pose a threat to the safety and soundness of such banking entity or nonbank financial company supervised by the Board; or

''(iv) would pose a threat to the financial stability of the United States.

''(B) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations to implement subparagraph (A), as part of the regulations issued under subsection (b)(2).

''(3) CAPITAL AND QUANTITATIVE LIMITATIONS.—The Board shall adopt rules, as provided under subsection (b)(2), imposing additional capital requirements and quantitative limitations regarding the activities permitted under this section if the Board determines that additional capital and quantitative limitations are appropriate to protect the safety and soundness of the banking entities and nonbank financial companies supervised by the Board engaged in such activities.

''(e) ANTI-EVASION.—

''(1) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations as part of the rulemaking provided for in subsection (b)(2) regarding internal controls and recordkeeping in order to insure compliance with this section.

''(2) TERMINATION OF ACTIVITIES OR INVESTMENT.—Notwithstanding any other provision of law, whenever an appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, has reasonable cause to believe that a banking entity or nonbank financial company supervised by the Board under the respective agency's jurisdiction has made an investment or engaged in an activity in a manner that functions as an evasion of the requirements of this section (including through an abuse of any permitted activity) or otherwise violates the restrictions under this section, the appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, shall order, after due notice and opportunity for hearing, the banking entity or nonbank financial company supervised by the Board to terminate the activity and, as relevant, dispose of the investment. Nothing in this subparagraph shall be construed to limit the inherent authority of any Federal agency or State regulatory authority to further restrict any investments or activities under otherwise applicable provisions of law.

''(f) LIMITATIONS ON RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

''(1) IN GENERAL.—No banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund may enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c) with the hedge fund or private equity fund.

''(2) TREATMENT AS MEMBER BANK.—A banking entity that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund shall be subject to section 23B of the Federal Reserve Act (12 U.S.C. 371c–1), as if such person were a member bank and such hedge fund or private equity fund were an affiliate thereof.

''(3) COVERED TRANSACTIONS WITH UNAFFILIATED HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—No banking entity may enter into a covered transaction, as defined in section

23A of the Federal Reserve Act (12 U.S.C. 371c), with any hedge fund or private equity fund organized and offered by the banking entity or with any hedge fund or private equity fund in which such hedge fund or private equity fund has taken any equity, partnership, or other ownership interest.

''(g) RULES OF CONSTRUCTION.—

''(1) LIMITATION ON CONTRARY AUTHORITY.—Any prohibitions or restrictions under this section shall apply even though such activities may be authorized for a banking entity or a nonbank financial company supervised by the Board under any other provision of law.

''(2) SALE OR SECURITIZATION OF LOANS.—Nothing in this section shall be construed to limit or restrict the ability of a banking entity or nonbank financial company supervised by the Board to sell or securitize loans in a manner otherwise permitted by law.

''(3) AUTHORITY OF FEDERAL AGENCIES AND STATE REGULATORY AUTHORITIES.—Nothing in this section shall be construed to limit the inherent authority of any Federal agency or State regulatory authority under otherwise applicable provisions of law.

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

''(1) BANKING ENTITY.—The term 'banking entity' means any insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, and any affiliate or subsidiary of any such entity. For purposes of this paragraph, the term 'insured depository institution' does not include an institution that functions solely in a trust or fiduciary capacity, if—

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

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

''(C) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

''(D) such institution does not—

''(i) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11(a) of the Federal Reserve Act (12 U.S.C. 248a); or

''(ii) exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act (12 U.S.C. 461(b)(7)).

''(2) HEDGE FUND; PRIVATE EQUITY FUND.—The terms 'hedge fund' and 'private equity fund' mean a company or other entity that is exempt from registration as an investment company pursuant to section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(1) or 80a–3(c)(7)), or such similar funds as jointly determined appropriate by the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission.

''(3) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD.—The term 'nonbank financial company supervised by the Board' means a nonbank financial company supervised by the Board of Governors, as defined in section 102 of the Financial Stability Act of 2010.

''(4) PROPRIETARY TRADING.—The term 'proprietary trading' means engaging as a principal for its own trading account in any transaction to purchase or sell, or otherwise acquire or dispose of, any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may jointly, by rule, determine.

''(5) SPONSOR.—The term to 'sponsor' a fund means—

''(A) to serve as a general partner, managing member, or trustee of a fund;

''(B) in any manner to select or to control (or to have employees, officers, or directors, or agents who constitute) a majority of the directors, trustees, or management of a fund; or

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

''(6) TRADING ACCOUNT.—The term 'trading account' means any account used for acquiring or taking positions in the securities and instruments described in paragraph (4) principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements), and any such other accounts as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may jointly, by rule, determine.''.

SEC. 619A. STUDY OF BANK ACTIVITIES.

(a) STUDY.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Federal banking agencies shall jointly review and prepare a report on activities that a banking entity may engage in under Federal and State law including activities authorized by statute and by order, interpretation and guidance.

(2) CONTENT.—In carrying out the study under paragraph (1), the Federal banking agencies shall review and consider—

(A) the type of activities or investment;

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

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

(b) REPORT AND RECOMMENDATIONS TO THE COUNCIL AND TO CONGRESS.—The appropriate Federal banking agencies shall submit to the Council, the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate the study conducted pursuant to subsection (a) no later than 2 months after its completion. In addition to the information described in subsection (a), the report shall include recommendations regarding—

(1) whether each activity or investment has or could have a negative effect on the safety and soundness of the banking entity or the United States financial system;

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

(3) additional restrictions as may be necessary to address risks to safety and soundness arising from the activities or types of investments described in subsection (a).

SEC. 619B. CONFLICTS OF INTEREST.

The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

''SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS.

''(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include a synthetic asset-backed security), shall not, during such period as the asset-backed security is outstanding or such lesser period as the Commission determines is appropriate, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

''(b) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules for the purpose of implementing subsection (a) including any appropriate disclosures or other measures.

''(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship. This subsection shall not otherwise limit the application of section 15G of the Securities Exchange Act of 1934.''.

SA 4102. Mr. MERKLEY 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 496, line 2, and insert the following:

(2) 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, except that the Federal banking agencies may, for the purposes of this subparagraph, exclude from the definition of the term ''insured depository institution'' an institution that functions principally in a trust or fiduciary capacity; and

(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, otherwise in connection with or in facilitation of customer relationships, including risk-mitigating hedging activities related to such a purchase, sale, acquisition, or disposal, or in the conduct of regulated insurance investments;

(3) 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 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, the Federal Home Loan Mortgage Corporation, or other similar Government-sponsored enterprises, 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 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.

(d) INVESTMENTS IN SMALL BUSINESS INVESTMENT COMPANIES AND INVESTMENTS DESIGNED TO PROMOTE THE PUBLIC WELFARE.—

(1) IN GENERAL.—A prohibition imposed by the appropriate Federal banking agencies under subsection (c) shall not apply with respect an investment otherwise authorized under Federal law that is—

(A) an investment in a small business investment company, as that term is defined in section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662); or

(B) designed primarily to promote the public welfare, as provided in the 11th paragraph of section 5136 of the Revised Statutes (12 U.S.C. 24).

(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1) may be construed to grant any authority to any person that is not otherwise provided in Federal law.

(e) LIMITATIONS ON RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

(1) COVERED TRANSACTIONS.—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 that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund may not enter into a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c) with such hedge fund or private equity fund.

(2) AFFILIATION.—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 that serves, directly or indirectly, as the investment manager or investment adviser to a hedge fund or private equity fund shall be subject to section 23B of the Federal Reserve Act (12 U.S.C. 371c–1) as if such institution, company, or subsidiary were a member bank and such hedge fund or private equity fund were an affiliate.

(f) CAPITAL AND QUANTITATIVE LIMITATIONS FOR CERTAIN NONBANK FINANCIAL COMPANIES.—

(1) IN GENERAL.—Except as provided in paragraph (2), and subject to the recommendations of the Council under subsection (g), the Board of Governors shall adopt rules imposing additional capital requirements and specifying additional quantitative limits for nonbank financial companies supervised by the Board of Governors under section 113 that engage in proprietary trading or sponsoring and investing in hedge funds and private equity funds.

(2) EXCEPTIONS.—The rules under this subsection shall not apply with respect to the trading of an investment that is otherwise authorized by Federal law—

(A) in 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;

(B) in obligations, participations, or other instruments of, or issued by, the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or other similar Government-sponsored enterprises, including obligations fully guaranteed as to principal and interest by such entities;

(C) in obligations of any State or any political subdivision of a State;

(D) in a small business investment company, as that term is defined in section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662); or

(E) that is designed primarily to promote the public welfare, as provided in the 11th paragraph of section 5136 of the Revised Statutes (12 U.S.C. 24).

(g) COUNCIL STUDY AND RULEMAKING.—

(1) STUDY AND RECOMMENDATIONS.—Not later than 6 months after the date of enactment of this Act, the Council—

(A) shall complete a study of the definitions under subsection (a) and the other provisions under subsections (b) through (f), to assess the manner in which to implement this section so as to—

(i) promote and enhance the safety and soundness of depository institutions and the affiliates of depository institutions;

(ii) protect taxpayers and enhance financial stability by minimizing the risk that depository institutions and the affiliates of depository institutions will engage in unsafe and unsound activities;

(iii) limit the inappropriate transfer of Federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the Federal Government to unregulated entities;

(iv) reduce inappropriate conflicts of interest between the self-interest of depository institutions, affiliates of depository institutions, and financial companies supervised by the Board, and the interests of the customers of such institutions and companies;

(v) not raise the cost of credit or other financial services, reduce the availability of credit or other financial services, or impose other costs on households and businesses in the United States;

(vi) limit activities that have caused undue risk or loss in depository institutions, affiliates of depository institutions, and financial companies supervised by the Board of Governors, or that might reasonably be expected to create undue risk or loss in such institutions, affiliates, and companies; and

(vii) appropriately accommodates the business of insurance within an insurance company subject to regulation in accordance with State insurance company investment laws;

(B) shall make recommendations regarding the definitions under subsection (a) and the implementation of other provisions under subsections (b) through (f).

(2) RULEMAKING.—Not earlier than the date of completion of the study required under paragraph (1), and not later than 9 months after the date of completion of such study—

(A) the appropriate Federal banking agencies shall—

(i) jointly issue final regulations implementing subsections (b) through (e); and

(ii) evaluate and consider any recommendations made by the Council pursuant to paragraph (1)(B); and

(B) the Board of Governors shall—

(i) issue final regulations implementing subsection (f); and

(ii) evaluate and consider any recommendations made by the Council pursuant to paragraph (1)(B).

SA 4103. Mr. BURRIS 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 1023, strike lines 12 through 18 and insert the following:

''(ii) the main assumptions and principles used in constructing procedures and methodologies, including—

''(I) qualitative methodologies and quantitative inputs;

''(II) assumptions about the correlation of defaults across obligors used in rating structured products; and

''(III) the 5 assumptions made in the ratings process that, without accounting for any other factor, would have the greatest impact on a rating if such assumptions were proven false or inaccurate, together with an analysis, using concrete examples, of how each of the 5 assumptions impacts the credit rating;

SA 4104. Mr. MENENDEZ (for himself, Mr. BAYH, and Mr. SCHUMER) 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 615, line 18, strike ''all'' and all that follows through line 21, and insert the following: ''or to the registered swap data repositories, as the Commission may by rule prescribe, all information that is determined by the Commission to be necessary for each to perform their respective responsibilities under this Act''.

On page 623, line 12, strike ''In this paragraph'' and insert ''Subject to subparagraph (E), in this paragraph''.

On page 624, line 18, strike ''With'' and all that follows through ''subsection (h),'' on line 22, and insert the following: ''The registered swap data repositories and''.

On page 625, strike line 2, and insert the following: ''swap trading volumes and positions for both cleared and uncleared trades.''.

On page 625, line 3, strike ''With respect'' and insert ''Subject to subparagraph (E), with respect''.

On page 625, line 6, strike ''(10)'' and insert ''(9)''.

On page 630, line 14, insert ''for both cleared and uncleared trades'' after ''swap data''.

On page 637, strike line 17 and all that follows through page 638, line 12.

On page 810, line 22, after the first period, insert the following:

''(m) DUTY OF CLEARING AGENCY.—Each clearing agency that clears security-based swaps shall provide to the Commission or to the registered security-based swap data repositories, as the Commission may by rule prescribe, all information that is determined by the Commission to be necessary for each to perform their respective responsibilities under this Act.

On page 835, line 7, strike ''In this paragraph'' and insert ''Subject to subparagraph (E), in this paragraph''.

On page 836, line 14, strike ''With'' and all that follows through ''section 3C(a),'' on line 18, and insert the following: ''The registered security-based swap data repositories and''.

On page 836, strike lines 23 and 24, and insert the following: ''security-based swap trading volumes and positions for both cleared and uncleared trades.''.

On page 837, lines 3 and 4, strike ''but are subject to the requirements of section 3C(a)(8)'' and insert ''pursuant to section 3C(a)(9)''.

On page 842, line 9, before the semicolon insert ''for both cleared and uncleared trades, including compliance and frequency of end user clearing exemption claims by individual and affiliated entities''.

On page 883, strike line 7 and all that follows through page 884, line 9.

SA 4105. Mr. DURBIN 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 621, after line 23, insert the following:

(h) LINKING OF REGULATED CLEARING FACILITIES.—Section 5b(f)(1) of the Commodity Exchange Act (7 U.S.C. 7a-1) is amended to read as follows:

''(1) IN GENERAL.—The Commission shall facilitate the linking or coordination of derivatives clearing organizations registered under this chapter with other regulated clearance facilities for the coordinated settlement of cleared transactions. In order to minimize systemic risk, under no circumstances shall a derivatives clearing organization be compelled to accept the counterparty credit risk of another clearing organization.''.

SA 4106. Mr. MERKLEY submitted an amendment intended to be proposed by him 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:

At the end of title X, insert the following:

SEC. 1111. COMPLIANCE WITH OTHER RULES.

Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting before section 130 the following:

''SEC. 129B. COMPLIANCE WITH CONSUMER FINANCIAL PROTECTION LAWS.

''A creditor or other person shall comply with all rules promulgated pursuant to sections 1031 through 1033 of the Consumer Financial Protection Act of 2010 applicable to that person in connection with consumer credit.''.

SEC. 1112. CONSUMER LEASING ACT OF 1976.

Section 183 of the Consumer Leasing Act of 1976 (15 U.S.C. 1667b) is amended—

(1) by striking the section heading and inserting the following:

''SEC. 183. LESSEE LIABILITY AND LESSOR COMPLIANCE.''; and

(2) by adding at the end the following:

''(d) COMPLIANCE WITH CONSUMER FINANCIAL PROTECTION LAWS.—A lessor shall comply with all rules promulgated pursuant to sections 1031 through 1033 of the Consumer Financial Protection Act of 2010 applicable to the lessor in connection with consumer leases.''.

SEC. 1113. ELECTRONIC FUND TRANSFER ACT.

The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended by adding at the end the following:

''SEC. 922. COMPLIANCE WITH CONSUMER FINANCIAL PROTECTION LAWS.

''A person shall comply with all rules promulgated pursuant to sections 1031 through 1033 of the Consumer Financial Protection Act of 2010 applicable to that person in connection with electronic fund transfers.''.

SEC. 1114. FAIR CREDIT REPORTING ACT.

The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended by inserting after section 615 the following:

''SEC. 615A. COMPLIANCE WITH CONSUMER FINANCIAL PROTECTION LAWS.

''A person shall comply with all rules promulgated pursuant to sections 1031 through 1033 of the Consumer Financial Protection Act of 2010 applicable to that person in connection with consumer reports.''.

SEC. 1115. FAIR DEBT COLLECTION PRACTICES ACT.

The Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.) is amended by inserting after section 812 the following:

''SEC. 812A. COMPLIANCE WITH CONSUMER FINANCIAL PROTECTION LAWS.

''A person shall comply with all rules promulgated pursuant to sections 1031 through 1033 of the Consumer Financial Protection Act of 2010 applicable to that person in connection with the collection of debt.''.

SEC. 1116. REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974.

(a) COMPLIANCE WITH CONSUMER FINANCIAL PROTECTION LAWS.—The Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et. seq) is amended by inserting after section 12 the following:

''SEC. 13. COMPLIANCE WITH CONSUMER FINANCIAL PROTECTION LAWS.

''A person shall comply with all rules promulgated pursuant to sections 1031 through 1033 of the Consumer Financial Protection Act of 2010 applicable to that person in connection with settlement services or the servicing of federally related mortgage loans.''.

(b) JURISDICTION.—Notwithstanding section 1096(8) of this Act, section 16 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2614) is amended to read as follows:

''SEC. 16. COMPLIANCE WITH CONSUMER FINANCIAL PROTECTION LAWS; JURISDICTION; LIMITATIONS.

''Any action pursuant to the provisions of section 6, 8, 9, or 13 may be brought in the United States district court or in any other court of competent jurisdiction, for the district in which the property involved is located, or where the violation is alleged to have occurred, within 3 years in the case of a violation of section 6 and 1 year in the case of a violation of section 8, 9, or 13 from the date of the occurrence of the violation, except that actions brought by the Bureau, the Secretary, the Attorney General of any State, or the insurance commissioner of any State may be brought within 3 years from the date of the occurrence of the violation.''.

SEC. 1117. HOMEOWNERS PROTECTION ACT OF 1998.

The Homeowners Protection Act of 1998 (12 U.S.C. 4901 et. seq) is amended by inserting after section 7 (12 U.S.C. 4906) the following:

''SEC. 7A. COMPLIANCE WITH CONSUMER FINANCIAL PROTECTION LAWS.

''A servicer, mortgagee, or mortgage insurer shall comply with all rules promulgated pursuant to sections 1031 through 1033 of the Consumer Financial Protection Act of 2010 applicable to that person in connection with private mortgage insurance.''.

SEC. 1118. TRUTH IN SAVINGS ACT.

Section 269 of the Truth in Savings Act (12 U.S.C. 4308) is amended by adding at the end the following:

''(c) COMPLIANCE WITH CONSUMER FINANCIAL PROTECTION LAWS.—Any regulation promulgated pursuant to sections 1031 through 1033 of the Consumer Financial Protection Act of 2010 regarding disclosures, payment of interest, or periodic statements in connection with accounts within the scope this Act shall be considered a regulation pursuant to this Act.''.

SA 4107. Mr. WARNER submitted an amendment intended to be proposed by him 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:

Sec. 154(1)(A) is amended by inserting on page 69, line 4 after the word 'maintain' the following new language, 'within a single electronic database,'.

Sec. 154(b)(1) is amended by striking on page 70 line 3, subparagraph '(C)' and adding the following new subparagraph—

'(C) ADMINISTRATION AND USE OF DATA.—The database described in subparagraph (A) shall—

(i) use accurate data structures and taxonomies to allow for easy cross-referencing, compiling, and reporting of numerous data elements;

(ii) provide for filtering of data content to allow users to screen for events most relevant to identifying waste, fraud, and abuse, such as management changes and material corporate events;

(iii) provide geospatial analysis capabilities; and

(iv) provide for the daily collection of any data necessary to implement this subsection.

'(D) DATA STANDARD.—The Office shall adopt and require a single data standard for the submission of data to the Office by member agencies. The Office shall update the standard as necessary to address changes in technology over time. The standard shall—

(i) be common across all member agencies, to the maximum extent practicable;

(ii) be a widely accepted, non-proprietary, searchable, computer-readable format for business and financial data;

(iii) be consistent with and implement United States generally accepted accounting principles or Federal financial accounting standards (as appropriate), industry best practices, and Federal regulatory requirements; and

(iv) improve the transparency, consistency, and usability of business and financial information.

'(E) TRANSITION AND IMPLEMENTATION.—

(i) TRANSITION.—Not later than 60 days after date of enactment of this subsection, the Office, or the Secretary if a Director has not been confirmed, shall issue a request for proposal for the establishment of the database described in subparagraph (A) and award contract service as required by this subsection.

(ii) IMPLEMENTATION OF DATABASE.—The Office, or the Secretary, if a Director has not been confirmed, shall make operational the database described in subparagraph (A) not later than 180 days after the issuance of request for proposal under clause (i) of this subparagraph.'

(iii) FUTURE MODIFICATIONS.—Modifications to the database following its becoming operational shall be determined by the Office.

Sec. 154(b)(2) is amended by inserting on page 70, line 20 the following subparagraph and reletter accordingly—

(B) The Data Center shall make the database described in subparagraph (1)(A) of this section available to the Comptroller General of the United States and to the Special Inspector General and the Congressional Oversight Panel established under sections 121 and 125 of the Emergency Economic Stabilization Act respectively.'

SA 4108. Mr. WARNER submitted an amendment intended to be proposed by him 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:

Sec. 154(b)(1) is amended by striking on page 70 line 3, subparagraph '(C)' and adding the following new subparagraph—

'(C) DATA STANDARD.—The Office shall adopt and require a single data standard for submission of data to the Office by member agencies. The Office shall update the standard as necessary to address changes in technology over time. The standard shall—

(i) be common across all member agencies, to the maximum extent practicable;

(ii) be widely accepted, non-proprietary, searchable, computer-readable format for business and financial data;

(iii) be consistent with and implement United States generally accepted accounting principles or Federal financial accounting standards (as appropriate), industry best practices, and Federal regulatory requirements; and

(iv) improve the transparency, consistency, and usability of business and financial information.

SA 4109. Mr. DORGAN 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 893, after line 25, insert the following:

SEC. 774. CLEARING OF CREDIT DEFAULT SWAPS.

(a) CLEARING OF CREDIT DEFAULT SWAPS UNDER THE COMMODITY EXCHANGE ACT.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2), as amended by this title, is amended by adding at the end the following:

''(k) CLEARING OF CREDIT DEFAULT SWAPS.—

''(1) SUBMISSION.—It shall be unlawful for any party to enter into a credit default swap unless that person shall submit such credit default swap for clearing to a derivatives clearing organization that is registered under this Act or a derivatives clearing organization that is exempt from registration under section 5b(i) of this Act.

''(2) PROHIBITION.—Notwithstanding any other provisions in this section or of this Act, if no derivatives clearing organization will accept a credit default swap for clearing, it shall be unlawful for any party to enter into the credit default swap.

''(3) LIMITATION ON SHORT POSITIONS.—

''(A) IN GENERAL.—It shall be unlawful for a protection buyer to enter into a credit default swap which establishes a short position in a reference entity's credit instrument unless the protection buyer can demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that the protection buyer—

''(i) is undertaking such action to establish a legitimate short position in credit default swaps; or

''(ii) is regulated by the Commission as a swap dealer in credit default swaps, and is acting as a market-maker or is otherwise engaged in a financial transaction on behalf of a customer.

''(B) LEGITIMATE SHORT POSITION IN CREDIT DEFAULT SWAPS.—A protection buyer's short position in credit default swaps shall be considered a legitimate short position in credit default swaps if—

''(i) the value of the protection buyer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the protection buyer's credit default swaps; and

''(ii) the reference entity or entities for the protection buyer's credit default swaps in clause (i), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the protection buyer owns.

''(C) DETERMINATION OF THE COMMISSION.—

''(i) IN GENERAL.—The Commission and the Securities and Exchange Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, defining the term 'valid credit instrument'.

''(ii) CONSIDERATIONS AND REQUIREMENTS.—In defining the term 'valid credit instrument', the Commission and the Securities and Exchange Commission shall consider which group, category, type, or class of credit instruments can be effectively hedged using credit default swaps.

''(iii) RULE OF CONSTRUCTION.—For purposes of this paragraph, any instrument with an equity risk exposure or equity-like features shall not be considered by the Commission to be a valid credit instrument.

''(D) REPORTING.—Each protection buyer shall report all of its legitimate short positions in credit default swaps, as well as any other credit default swap positions and the valid credit instruments that it owns to the Commission, in such manner, in such frequency, and in such form as may be prescribed by the Commission.

''(E) HOLDING OF SHORT POSITIONS IN CREDIT DEFAULT SWAPS BY SWAP DEALERS.—Any swap dealer in credit default swaps seeking to establish, possess, or otherwise obtain a short position as the protection buyer of any credit default swap for more than 60 consecutive calendar days or for more than two-thirds of the days in any calendar quarter, shall demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that—

''(i) the value of the swap dealer's holdings in valid credit instruments is equal to or

greater than the absolute notional value of the swap dealer's position in credit default swaps; and

''(ii) the reference entity or entities for the swap dealer's credit default swaps in clause (i), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the swap dealer owns.

''(F) PROHIBITION ON EVASIONS AND STRUCTURING OF TRANSACTIONS.—No person, including any protection buyer, protection seller, or counterparty, may take any action in connection with a credit default swap to structure such swap for the purpose and with the intent of evading the provisions of this subsection.

''(G) AUTHORITY OF THE COMMISSION.—The Commission, in consultation with the Securities and Exchange Commission, may, in the public interest, for the protection of investors, for the protection of market participants, and the maintenance of fair and orderly markets, prohibit any other action, practice, or conduct in connection with or related to the direct or indirect purchase or sale of credit default swaps.

''(4) DETERMINATION OF THE COUNCIL; PHASE IN.—

''(A) EFFECTIVE DATE.—Subject to subparagraph (B), this subsection shall take effect on the earlier of—

''(i) the effective date established under section 753 of the Wall Street Transparency and Accountability Act of 2010; or

''(ii) the date on which the Chairperson of the Financial Stability Oversight Council makes a determination that the prohibitions and limitations established under this subsection would not cause undue market disruptions.

''(B) DETERMINATION OF MARKET DISRUPTION.—Not later than the effective date established under section 753 of the Wall Street Transparency and Accountability Act of 2010, if the Chairperson of the Financial Stability Oversight Council determines that a phase in of the prohibitions and limitations established under this subsection is necessary to avoid undue market disruptions, then the Chairperson shall recommend, and the Commission shall adopt, a phase in period for such prohibitions and limitations. Any phase in period described under this subparagraph shall not exceed 18 months.

''(5) DEFINITIONS.—

''(A) IN GENERAL.—In this subsection, the following definitions shall apply:

''(i) CREDIT DEFAULT SWAP.—The term 'credit default swap'—

''(I) means a swap or security-based swap whose payout is determined by the occurrence of a credit event with respect to a single referenced credit instrument or reference entity or multiple referenced credit instruments or reference entities; and

''(II) is not a debt security registered with the Securities and Exchange Commission and issued by a corporation, State, municipality, or sovereign entity.

''(ii) CREDIT EVENT.—The term 'credit event' includes a default, restructuring, insolvency, bankruptcy, credit downgrade, and a violation of a debt covenant.

''(iii) PROTECTION BUYER.—The term 'protection buyer' means a person that enters into a credit default swap to obtain a payoff from a third party (commonly referred to as the 'protection seller') upon the occurrence of one or more credit events.

''(iv) REFERENCE ENTITY.—The term 'reference entity' means any borrower, such as a corporation, State, municipality, sovereign entity, or special purpose entity, which has issued a public debt obligation or obtained a loan that is referenced by a credit default swap.

''(B) FURTHER DEFINITION OF TERMS.—The Commission and the Securities and Exchange Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, further defining the terms 'credit default swap', 'credit event', 'protection buyer', and 'reference entity'.''.

(b) CLEARING OF CREDIT DEFAULT SWAPS UNDER SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 3C, as added by this title, the following:

''SEC. 3C-1. CLEARING OF CREDIT DEFAULT SWAPS.

''(a) SUBMISSION.—It shall be unlawful for any party to enter into a credit default swap unless that person shall submit such credit default swap for clearing to a clearing agency that is registered under section 17A of this Act.

''(b) PROHIBITION.—Notwithstanding any other provisions in this section or of this Act, if no clearing agency will accept a credit default swap for clearing, it shall be unlawful for any party to enter into the credit default swap.

''(c) LIMITATION ON SHORT POSITIONS.—

''(1) IN GENERAL.—It shall be unlawful for a protection buyer to enter into a credit default swap which establishes a short position in a reference entity's credit unless the protection buyer can demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that the protection buyer—

''(A) is undertaking such action to establish a legitimate short position in credit default swaps; or

''(B) is regulated by the Commission as a security-based swap dealer in credit default swaps, and is acting as a market-maker or otherwise for the purpose of serving clients.

''(2) LEGITIMATE SHORT POSITION IN CREDIT DEFAULT SWAPS.—A protection buyer's short position in credit default swaps shall be considered a legitimate short position in credit default swaps if —

''(A) the value of the protection buyer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the protection buyer's credit default swaps; and

''(B) the reference entity or entities for the protection buyer's credit default swaps in subparagraph (A), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the protection buyer owns.

''(3) DETERMINATION OF THE COMMISSION.—

''(A) IN GENERAL.—The Commission and the Commodity Futures Trading Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, defining the term 'valid credit instrument'.

''(B) CONSIDERATIONS AND REQUIREMENTS.—In defining the term 'valid credit instrument', the Commission and the Commodity Futures Trading Commission shall consider which group, category, type, or class of credit instruments can be effectively hedged using credit default swaps.

''(C) RULE OF CONSTRUCTION.—For purposes of this subsection, any instrument with an equity risk exposure or equity-like features shall not be considered by the Commission to be a valid credit instrument.

''(4) REPORTING.—Each protection buyer shall report all of its legitimate short positions in credit default swaps, as well as any other credit default swap positions and the valid credit instruments that it owns to the Commission, in such manner, in such frequency, and in such form as may be prescribed by the Commission.

''(5) HOLDINGS OF SHORT POSITIONS IN CREDIT DEFAULT SWAPS BY SECURITY-BASED SWAP DEALERS.—Any security-based swap dealer in credit default swaps seeking to establish, possess, or otherwise obtain a short position as the protection buyer of any credit default swap for more than 60 consecutive calendar days or for more than two-thirds of the days in any calendar quarter, shall demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that—

''(A) the value of the security-based swap dealer's long holdings in valid credit instruments is equal to or greater than the absolute notional value of the security-based swap dealer's position in credit default swaps; and

''(B) the reference entity or entities for the security-based swap dealer's credit default swaps in subparagraph (A), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the security-based swaps dealer owns.

''(6) PROHIBITION ON EVASIONS AND STRUCTURING OF TRANSACTIONS.—No person, including any protection buyer, protection seller, or counterparty, may take any action in connection with a credit default swap to structure such swap for the purpose and with the intent of evading the provisions of this section.

''(7) AUTHORITY OF THE COMMISSION.—The Commission, in consultation with the Commodity Futures Trading Commission, may, in the public interest, for the protection of investors, for the protection of market participants, and the maintenance of fair and orderly markets, prohibit any other action, practice, or conduct in connection with or related to the direct or indirect purchase or sale of credit default swaps.

''(d) DETERMINATION OF THE COUNCIL; PHASE IN.—

''(1) EFFECTIVE DATE.—Subject to paragraph (2), this section shall take effect on the earlier of—

''(A) the effective date established under section 773 of the Wall Street Transparency and Accountability Act of 2010; or

''(B) the date on which the Chairperson of the Financial Stability Oversight Council makes a determination that the prohibitions and limitations established under this subsection would not cause undue market disruptions.

''(2) DETERMINATION OF MARKET DISRUPTION.—Not later than the effective date established under section 773 of the Wall Street Transparency and Accountability Act of 2010, if the Chairperson of the Financial Stability Oversight Council determines that a phase in of the prohibitions and limitations established under this section is necessary to avoid undue market disruptions, then the Chairperson shall recommend, and the Commission shall adopt, a phase in period for such prohibitions and limitations. Any phase in period described under this paragraph shall not exceed 18 months.

''(e) DEFINITIONS.—

''(1) IN GENERAL.—In this section, the following definitions shall apply:

''(A) CREDIT DEFAULT SWAP.—The term 'credit default swap'—

''(i) means a swap or security-based swap whose payout is determined by the occurrence of a credit event with respect to a single referenced credit instrument or reference entity or multiple referenced credit instruments or reference entities; and

''(ii) is not a debt security registered with the Commission and issued by a corporation, State, municipality, or sovereign entity.

''(B) CREDIT EVENT.—The term 'credit event' includes a default, restructuring, insolvency, bankruptcy, credit downgrade, and a violation of a debt covenant.

''(C) PROTECTION BUYER.—The term 'protection buyer' means a person that enters into a credit default swap to obtain a payoff from a third party (commonly referred to as the 'protection seller') upon the occurrence of one or more credit events.

''(D) REFERENCE ENTITY.—The term 'reference entity' means any borrower, such as a corporation, State, municipality, sovereign entity, or special purpose entity, which has issued a public debt obligation or obtained a loan that is referenced by a credit default swap.

''(2) FURTHER DEFINITION OF TERMS.—The Commission and the Commodity Futures Trading Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, further defining the terms 'credit default swap', 'credit event', 'protection buyer', and 'reference entity'.''.

SEC. 775. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.

The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 5 the following:

''SEC. 5A. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.

''(a) DEFINITION.—For purposes of this section, the term 'synthetic asset-backed security' means an asset-backed security, as defined in section 3(a)(77) of the Securities Exchange Act of 1934, with respect to which, by design, the self-liquidating financial assets referenced in the synthetic securitization do not provide any direct payment or cash flow to the holders of the security.

''(b) RESTRICTION.—

''(1) IN GENERAL.—No issuer, underwriter, placement agent, sponsor, or initial purchaser may offer, sell, or transfer a synthetic asset-backed security that has no purpose apart from speculation on a possible future gain or loss associated with the value or condition of the referenced assets. The Commission may determine, by rule or otherwise, whether a security is included within the description set forth in the preceding sentence. Any such determination by the Commission, other than by rule, is not subject to judicial review.

''(2) RULEMAKING.—Not later than 270 days after the date of enactment of this section, the Commission shall issue rules carry out this section and to prevent evasions thereof.''.

SA 4110. Mr. DODD 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 515, between lines 11 and 12, insert the following:

(c) PROHIBITION ON PROPRIETARY TRADING.—No insured depository institution, or 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 depository institution or company may purchase or sell, or otherwise acquire or dispose of derivatives, including swaps, security-based swaps, mixed swaps, and security-based swap agreements except in accordance with section 619 of the Restoring American Financial Stability Act of 2010.

(d) STUDY AND REPORT.—

(1) STUDY.—The Financial Stability Oversight Council shall conduct a study of the impact of the prohibitions of this section on the swaps and security-based swaps markets, including the effect of such prohibitions on central clearing and exchange trading of standardized swaps.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, if the Financial Stability Oversight Council agrees by an affirmative vote of the majority of its members then serving to the conclusions and findings of the study required under paragraph (1), and to any recommendations for legislative action the Council deems necessary and appropriate based on such conclusions and findings, the Council shall make such report, together with such recommendations, available to the public.

(e) DETERMINATION AND FINDING.—

(1) DETERMINATION.—Following issuance of the report required under subsection (d) and based upon consideration of the findings and conclusions of the study mandated by such subsection, the Chairperson of the Financial Stability Oversight Council may make a written determination suspending, in whole or in part, the prohibitions of subsection (a) upon the consideration of the recommendations of such report and a finding that the prohibitions in subsection (a) would have a material adverse effect on the financial markets and economy of the United States.

(2) CONGRESSIONAL NOTICE; EFFECTIVENESS.—The Chairperson of the Financial Stability Oversight Council shall submit any written determination under this subsection, together with the report required under subsection (d), and any recommendations for legislative actions, to the Committee on Banking, Housing, and Urban Affairs and the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Financial Services and the Committee on Agriculture of the House of Representatives. Any such written determination by the Chairperson of the Financial Stability Oversight Council shall not be effective until such determination has been submitted to the appropriate committees of Congress described in the prior sentence.

(f) PRUDENTIAL MATTERS.—If the prohibition established under subsection (a) is suspended, in whole or in part, pursuant to subsection (e), the swaps entity shall conduct its swap, security-based swap, or other activities in compliance with such minimum standards as shall be prescribed in regulations issued by the prudential regulator of such swaps entity as appropriate and which are reasonably calculated to permit the swaps entity to conduct its swap, security-based swap, or other activities in a safe and sound manner and consistent with protecting taxpayers and the financial system of the United States.

(g) RULES.—In prescribing regulations described in subsection (f), the prudential regulator for a swaps entity shall consider the following factors:

(1) The expertise and managerial strength of the swaps entity, including systems for effective oversight of the swaps entity.

(2) The financial strength of the swaps entity.

(3) Systems for identifying, measuring, and controlling risks arising from the swaps entity's operations and activities.

(4) Systems for identifying, measuring, and controlling the swaps entity's participation in existing markets.

(5) Systems for controlling the swaps entity's participation or entry into in new markets and products.

(h) EFFECTIVE DATE.—Subject to subsection (e), the prohibition established under subsection (a) shall take effect 2 years after the date on which the Wall Street Transparency and Accountability Act of 2010 becomes effective.

SA 4111. Ms. STABENOW 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 707, line 19, strike the first period and insert the following:

''(6) RULES, REGULATIONS, AND ORDERS.—Notwithstanding any other provision of law, including any authority granted pursuant to this title or title VII of the Restoring American Financial Stability Act of 2010, the Commission, the Securities and Exchange Commission, or the appropriate Federal banking agencies shall not issue any rule, regulation, or order that would void, terminate, or require the renegotiation, modification, or amendment of any contract or transaction (including any related credit support arrangement) entered into before the date of enactment of the Wall Street Transparency and Accountability Act of 2010.

SA 4112. Mr. MERKLEY (for himself and Mr. LEVIN) 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 1054, between lines 10 and 11, insert the following:

(c) CONFLICTS OF INTEREST.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 27A the following:

''SEC. 27B. CONFLICTS OF INTEREST RELATING TO CERTAIN SECURITIZATIONS.

''(a) IN GENERAL.—An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. 78c), which for the purposes of this section shall include a synthetic asset-backed security), shall not, during such period as the asset-backed security is outstanding or such lesser period as the Commission determines is appropriate, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

''(b) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules for the purpose of implementing subsection (a) including any appropriate disclosures or other measures. The disclosure by a person of a material conflict of interest with respect to a transaction prohibited under subsection (a) may not be construed to permit any person to engage in the transaction.

''(c) EXCEPTION.—The prohibitions of subsection (a) shall not apply to risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship. This subsection shall not otherwise limit the application of section 15G of the Securities Exchange Act of 1934.''.

SA 4113. Mrs. FEINSTEIN 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 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. In adopting such rules and regulations, the commission shall consider: (i) whether any such foreign board of trade is subject to comparable, comprehensive supervision and regulation by the appropriate governmental authorities in the foreign board of trade's home country; and (ii) any previous commission findings that the foreign board of trade is subject to comparable comprehensive supervision and regulation by the appropriate government authorities in the foreign board of trade's home country.

''(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 4114. Mr. DORGAN proposed an amendment to amendment SA 4072 submitted by Mr. GRASSLEY (for himself and Mrs. MCCASKILL) to the 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:

At the appropriate place, insert the following:

SEC. CLEARING OF CREDIT DEFAULT SWAPS.

(a) CLEARING OF CREDIT DEFAULT SWAPS UNDER THE COMMODITY EXCHANGE ACT.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2), as amended by this title, is amended by adding at the end the following:

''(k) CLEARING OF CREDIT DEFAULT SWAPS.—

''(1) SUBMISSION.—It shall be unlawful for any party to enter into a credit default swap unless that person shall submit such credit default swap for clearing to a derivatives clearing organization that is registered under this Act or a derivatives clearing organization that is exempt from registration under section 5b(i) of this Act.

''(2) PROHIBITION.—Notwithstanding any other provisions in this section or of this Act, if no derivatives clearing organization will accept a credit default swap for clearing, it shall be unlawful for any party to enter into the credit default swap.

''(3) LIMITATION ON SHORT POSITIONS.—

''(A) IN GENERAL.—It shall be unlawful for a protection buyer to enter into a credit default swap which establishes a short position in a reference entity's credit instrument unless the protection buyer can demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that the protection buyer—

''(i) is undertaking such action to establish a legitimate short position in credit default swaps; or

''(ii) is regulated by the Commission as a swap dealer in credit default swaps, and is acting as a market-maker or is otherwise engaged in a financial transaction on behalf of a customer.

''(B) LEGITIMATE SHORT POSITION IN CREDIT DEFAULT SWAPS.—A protection buyer's short position in credit default swaps shall be considered a legitimate short position in credit default swaps if—

''(i) the value of the protection buyer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the protection buyer's credit default swaps; and

''(ii) the reference entity or entities for the protection buyer's credit default swaps in clause (i), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the protection buyer owns.

''(C) DETERMINATION OF THE COMMISSION.—

''(i) IN GENERAL.—The Commission and the Securities and Exchange Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, defining the term 'valid credit instrument'.

''(ii) CONSIDERATIONS AND REQUIREMENTS.—In defining the term 'valid credit instrument', the Commission and the Securities and Exchange Commission shall consider which group, category, type, or class of credit instruments can be effectively hedged using credit default swaps.

''(iii) RULE OF CONSTRUCTION.—For purposes of this paragraph, any instrument with an equity risk exposure or equity-like features shall not be considered by the Commission to be a valid credit instrument.

''(D) REPORTING.—Each protection buyer shall report all of its legitimate short positions in credit default swaps, as well as any other credit default swap positions and the valid credit instruments that it owns to the Commission, in such manner, in such frequency, and in such form as may be prescribed by the Commission.

''(E) HOLDING OF SHORT POSITIONS IN CREDIT DEFAULT SWAPS BY SWAP DEALERS.—Any swap dealer in credit default swaps seeking to establish, possess, or otherwise obtain a short position as the protection buyer of any credit default swap for more than 60 consecutive calendar days or for more than two-thirds of the days in any calendar quarter, shall demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that—

''(i) the value of the swap dealer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the swap dealer's position in credit default swaps; and

''(ii) the reference entity or entities for the swap dealer's credit default swaps in clause (i), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the swap dealer owns.

''(F) PROHIBITION ON EVASIONS AND STRUCTURING OF TRANSACTIONS.—No person, including any protection buyer, protection seller, or counterparty, may take any action in connection with a credit default swap to structure such swap for the purpose and with the intent of evading the provisions of this subsection.

''(G) AUTHORITY OF THE COMMISSION.—The Commission, in consultation with the Securities and Exchange Commission, may, in the public interest, for the protection of investors, for the protection of market participants, and the maintenance of fair and orderly markets, prohibit any other action, practice, or conduct in connection with or related to the direct or indirect purchase or sale of credit default swaps.

''(4) DETERMINATION OF THE COUNCIL; PHASE IN.—

''(A) EFFECTIVE DATE.—Subject to subparagraph (B), this subsection shall take effect on the earlier of—

''(i) the effective date established under section 753 of the Wall Street Transparency and Accountability Act of 2010; or

''(ii) the date on which the Chairperson of the Financial Stability Oversight Council makes a determination that the prohibitions and limitations established under this subsection would not cause undue market disruptions.

''(B) DETERMINATION OF MARKET DISRUPTION.—Not later than the effective date established under section 753 of the Wall Street Transparency and Accountability Act of 2010, if the Chairperson of the Financial Stability Oversight Council determines that a phase in of the prohibitions and limitations established under this subsection is necessary to avoid undue market disruptions, then the Chairperson shall recommend, and the Commission shall adopt, a phase in period for such prohibitions and limitations. Any phase in period described under this subparagraph shall not exceed 18 months.

''(5) DEFINITIONS.—

''(A) IN GENERAL.—In this subsection, the following definitions shall apply:

''(i) CREDIT DEFAULT SWAP.—The term 'credit default swap'—

''(I) means a swap or security-based swap whose payout is determined by the occurrence of a credit event with respect to a single referenced credit instrument or reference entity or multiple referenced credit instruments or reference entities; and

''(II) is not a debt security registered with the Securities and Exchange Commission and issued by a corporation, State, municipality, or sovereign entity.

''(ii) CREDIT EVENT.—The term 'credit event' includes a default, restructuring, insolvency, bankruptcy, credit downgrade, and a violation of a debt covenant.

''(iii) PROTECTION BUYER.—The term 'protection buyer' means a person that enters into a credit default swap to obtain a payoff from a third party (commonly referred to as the 'protection seller') upon the occurrence of one or more credit events.

''(iv) REFERENCE ENTITY.—The term 'reference entity' means any borrower, such as a corporation, State, municipality, sovereign entity, or special purpose entity, which has issued a public debt obligation or obtained a loan that is referenced by a credit default swap.

''(B) FURTHER DEFINITION OF TERMS.—The Commission and the Securities and Exchange Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, further defining the terms 'credit default swap', 'credit event', 'protection buyer', and 'reference entity'.''.

(b) CLEARING OF CREDIT DEFAULT SWAPS UNDER SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 3C, as added by this title, the following:

''SEC. 3C-1. CLEARING OF CREDIT DEFAULT SWAPS.

''(a) SUBMISSION.—It shall be unlawful for any party to enter into a credit default swap unless that person shall submit such credit default swap for clearing to a clearing agency that is registered under section 17A of this Act.

''(b) PROHIBITION.—Notwithstanding any other provisions in this section or of this Act, if no clearing agency will accept a credit default swap for clearing, it shall be unlawful for any party to enter into the credit default swap.

''(c) LIMITATION ON SHORT POSITIONS.—

''(1) IN GENERAL.—It shall be unlawful for a protection buyer to enter into a credit default swap which establishes a short position in a reference entity's credit unless the protection buyer can demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that the protection buyer—

''(A) is undertaking such action to establish a legitimate short position in credit default swaps; or

''(B) is regulated by the Commission as a security-based swap dealer in credit default swaps, and is acting as a market-maker or otherwise for the purpose of serving clients.

''(2) LEGITIMATE SHORT POSITION IN CREDIT DEFAULT SWAPS.—A protection buyer's short position in credit default swaps shall be considered a legitimate short position in credit default swaps if —

''(A) the value of the protection buyer's holdings in valid credit instruments is equal to or greater than the absolute notional value of the protection buyer's credit default swaps; and

''(B) the reference entity or entities for the protection buyer's credit default swaps in subparagraph (A), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the protection buyer owns.

''(3) DETERMINATION OF THE COMMISSION.—

''(A) IN GENERAL.—The Commission and the Commodity Futures Trading Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, defining the term 'valid credit instrument'.

''(B) CONSIDERATIONS AND REQUIREMENTS.—In defining the term 'valid credit instrument', the Commission and the Commodity Futures Trading Commission shall consider which group, category, type, or class of credit instruments can be effectively hedged using credit default swaps.

''(C) RULE OF CONSTRUCTION.—For purposes of this subsection, any instrument with an equity risk exposure or equity-like features shall not be considered by the Commission to be a valid credit instrument.

''(4) REPORTING.—Each protection buyer shall report all of its legitimate short positions in credit default swaps, as well as any other credit default swap positions and the valid credit instruments that it owns to the Commission, in such manner, in such frequency, and in such form as may be prescribed by the Commission.

''(5) HOLDINGS OF SHORT POSITIONS IN CREDIT DEFAULT SWAPS BY SECURITY-BASED SWAP DEALERS.—Any security-based swap dealer in credit default swaps seeking to establish, possess, or otherwise obtain a short position as the protection buyer of any credit default swap for more than 60 consecutive calendar days or for more than two-thirds of the days in any calendar quarter, shall demonstrate to the Commission, in such manner and in such form as may be prescribed by the Commission, that—

''(A) the value of the security-based swap dealer's long holdings in valid credit instruments is equal to or greater than the absolute notional value of the security-based swap dealer's position in credit default swaps; and

''(B) the reference entity or entities for the security-based swap dealer's credit default swaps in subparagraph (A), whether in a single-name, or a narrow-based index or a broad-based index credit default swap transaction, must be the same as the borrower or issuer, or borrowers or issuers, of the valid credit instrument or valid credit instruments the security-based swaps dealer owns.

''(6) PROHIBITION ON EVASIONS AND STRUCTURING OF TRANSACTIONS.—No person, including any protection buyer, protection seller, or counterparty, may take any action in connection with a credit default swap to structure such swap for the purpose and with the intent of evading the provisions of this section.

''(7) AUTHORITY OF THE COMMISSION.—The Commission, in consultation with the Commodity Futures Trading Commission, may, in the public interest, for the protection of investors, for the protection of market participants, and the maintenance of fair and orderly markets, prohibit any other action, practice, or conduct in connection with or

related to the direct or indirect purchase or sale of credit default swaps.

''(d) DETERMINATION OF THE COUNCIL; PHASE IN.—

''(1) EFFECTIVE DATE.—Subject to paragraph (2), this section shall take effect on the earlier of—

''(A) the effective date established under section 773 of the Wall Street Transparency and Accountability Act of 2010; or

''(B) the date on which the Chairperson of the Financial Stability Oversight Council makes a determination that the prohibitions and limitations established under this subsection would not cause undue market disruptions.

''(2) DETERMINATION OF MARKET DISRUPTION.—Not later than the effective date established under section 773 of the Wall Street Transparency and Accountability Act of 2010, if the Chairperson of the Financial Stability Oversight Council determines that a phase in of the prohibitions and limitations established under this section is necessary to avoid undue market disruptions, then the Chairperson shall recommend, and the Commission shall adopt, a phase in period for such prohibitions and limitations. Any phase in period described under this paragraph shall not exceed 18 months.

''(e) DEFINITIONS.—

''(1) IN GENERAL.—In this section, the following definitions shall apply:

''(A) CREDIT DEFAULT SWAP.—The term 'credit default swap'—

''(i) means a swap or security-based swap whose payout is determined by the occurrence of a credit event with respect to a single referenced credit instrument or reference entity or multiple referenced credit instruments or reference entities; and

''(ii) is not a debt security registered with the Commission and issued by a corporation, State, municipality, or sovereign entity.

''(B) CREDIT EVENT.—The term 'credit event' includes a default, restructuring, insolvency, bankruptcy, credit downgrade, and a violation of a debt covenant.

''(C) PROTECTION BUYER.—The term 'protection buyer' means a person that enters into a credit default swap to obtain a payoff from a third party (commonly referred to as the 'protection seller') upon the occurrence of one or more credit events.

''(D) REFERENCE ENTITY.—The term 'reference entity' means any borrower, such as a corporation, State, municipality, sovereign entity, or special purpose entity, which has issued a public debt obligation or obtained a loan that is referenced by a credit default swap.

''(2) FURTHER DEFINITION OF TERMS.—The Commission and the Commodity Futures Trading Commission, shall jointly establish and adopt rules, regulations, or orders, in accordance with the public interest, further defining the terms 'credit default swap', 'credit event', 'protection buyer', and 'reference entity'.''.

SEC. 775. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.

The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 5 the following:

''SEC. 5A. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.

''(a) DEFINITION.—For purposes of this section, the term 'synthetic asset-backed security' means an asset-backed security, as defined in section 3(a)(77) of the Securities Exchange Act of 1934, with respect to which, by design, the self-liquidating financial assets referenced in the synthetic securitization do not provide any direct payment or cash flow to the holders of the security.

''(b) RESTRICTION.—

''(1) IN GENERAL.—No issuer, underwriter, placement agent, sponsor, or initial purchaser may offer, sell, or transfer a synthetic asset-backed security that has no purpose apart from speculation on a possible future gain or loss associated with the value or condition of the referenced assets. The Commission may determine, by rule or otherwise, whether a security is included within the description set forth in the preceding sentence. Any such determination by the Commission, other than by rule, is not subject to judicial review.

''(2) RULEMAKING.—Not later than 270 days after the date of enactment of this section, the Commission shall issue rules carry out this section and to prevent evasions thereof.''.

NOTICE OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Senate Committee on Energy and Natural Resources. The hearing will be held on Tuesday, May 25, 2010, at 10 a.m., in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of the hearing is to receive testimony on the liability and financial responsibility issues related to offshore oil production, including the Deepwater Horizon accident in the Gulf of Mexico, including S. 3346, a bill to increase the limits on liability under the Outer Continental Shelf Lands Act.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send it to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150, or by e-mail to Abigail_Campbell@energy.senate.gov.

For further information, please contact Linda Lance or Abigail Campbell.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on May 18, 2010, at 2:30 p.m., in room 253 of the Russell Senate Office Building.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate to conduct a hearing on May 18, 2010, at 11 a.m., in room SR–325 of the Russell Senate Office Building.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet during the session of the Senate on May 18, 2010, at 2:30 p.m. in room 106 of the Dirksen Office Building.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on May 18, 2010, at 10 a.m., to hold a hearing entitled ''The New START Treaty.''

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet, during the session of the Senate to conduct a hearing entitled ''ESEA Reauthorization: Supporting Student Health, Physical Education, and Well-Being'' on Tuesday, May 18, 2010. The hearing will commence at 2:30 p.m. in room 430 of the Dirksen Senate Office Building.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. LEAHY. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on May 18, 2010, at 2:30 p.m.

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

SUBCOMMITTEE ON HUMAN RIGHTS AND THE LAW

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on the Judiciary, Subcommittee on Human Rights and the Law, be authorized to meet during the session of the Senate, on May 18, 2010, at 10 a.m. in room SD–226 of the Dirksen Senate Office Building, to conduct a hearing entitled ''Drug Enforcement and the Rule of Law: Mexico and Colombia.''

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

TO CLARIFY HEALTH CARE PROVIDED BY THE SECRETARY OF VETERANS AFFAIRS

Mr. LEVIN. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of H.R. 5014, which was received from the House and is at the desk.

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

The assistant legislative clerk read as follows:

A bill (H.R. 5014) to clarify the health care provided by the Secretary of Veterans Affairs that constitutes minimum essential coverage.