

SA 4143. Mr. DODD submitted an amendment intended to be proposed to amendment SA 4081 submitted by Mr. HATCH and intended to be proposed to the 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 4144. Mr. WYDEN submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4145. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 3776 proposed by Mr. SPECTER (for himself, Mr. REED, Mr. KAUFMAN, Mr. DURBIN, Mr. HARKIN, Mr. LEAHY, Mr. LEVIN, Mr. MENENDEZ, Mr. WHITEHOUSE, Mr. FRANKEN, Mr. FEINGOLD, and Mr. MERKLEY) to the 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 4146. Mr. ENSIGN proposed an amendment to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra.

SA 4147. Mr. DODD (for Mr. CARPER (for himself, Ms. COLLINS, Mr. LIEBERMAN, and Mr. VOINOVICH)) proposed an amendment to the bill S. 920, to amend section 11317 of title 40, United States Code, to improve the transparency of the status of information technology investments, to require greater accountability for cost overruns on Federal information technology investment projects, to improve the processes agencies implement to manage information technology investments, to reward excellence in information technology acquisition, and for other purposes.

#### TEXT OF AMENDMENTS

**SA 4115.** Mr. MERKLEY (for himself and Mr. LEVIN) proposed an amendment to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) 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; as follows:

At the appropriate place, insert the following:

**SEC. —. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.**

Notwithstanding any other provision of this Act, section 619 of this act shall have no force or effect, and 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 en-

gages 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 issue 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 in-

terest, 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.—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 23A and 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. 7. 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 4116.** Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) 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 end of the amendment, insert the following:

(g) **FEDERAL RESERVE MAXIMUM RESERVE RATIOS.**—Effective 90 days after the date of enactment of this Act, the authority of the Federal Reserve to vary the maximum reserve ratios for depository institutions shall be—

- (1) 0 to 25 (with respect to transaction deposits); and
- (2) 0 to 25 (with respect to time) deposits.

**SA 4117.** Mr. LEAHY submitted an amendment intended to be proposed to amendment SA 3794 submitted by Mr. LEAHY (for himself, Mr. GRASSLEY, and Mr. SPECTER, and Mr. KAUFMAN) and intended to be proposed 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 6, strike line 24 and all that follows through page 11, line 8, and insert the following:

(c) **AMENDMENTS TO THE FALSE CLAIMS ACT RELATING TO LIMITATIONS ON ACTIONS.**—Section 3730(h) of title 31, United States Code, is amended—

(1) in paragraph (1), by striking “or agent on behalf of the employee, contractor, or agent or associated others in furtherance of other efforts to stop 1 or more violations of this subchapter” and inserting “agent or associated others in furtherance of an action under this section or other efforts to stop 1 or more violations of this subchapter”; and

(2) by adding at the end the following:

“(3) **LIMITATION ON BRINGING CIVIL ACTION.**—A civil action under this subsection may not be brought more than 3 years after the date when the retaliation occurred.”

(d) **PROMOTING CRIMINAL ACCOUNTABILITY.**—

(1) **DEFINITIONS.**—In this subsection, the terms “Bureau”, “consumer financial product or service”, “designated transfer date”, and “Federal consumer financial law” have the meanings given those terms in section 1002.

(2) **NOTICE AND COORDINATION.**—

(A) **NOTICE OF OTHER ACTIONS.**—In addition to any notice required under section 1054(d), the Bureau shall notify the Attorney General concerning any action, suit, or proceeding to which the Bureau is a party, except an action, suit, or proceeding that involves the offering or provision of consumer financial products or services.

(B) **COORDINATION.**—In order to avoid conflicts and promote consistency regarding litigation of matters under Federal law, the Attorney General and the Bureau shall consult regarding the coordination of investigations and proceedings, including by negotiating an agreement for coordination by not later than 180 days after the designated transfer date. The agreement under this subparagraph shall include provisions to ensure that parallel investigations and proceedings involving the Federal consumer financial laws are conducted in a manner that avoids conflicts and does not impede the ability of the Attorney General to prosecute violations of Federal criminal laws.

(C) **RULE OF CONSTRUCTION.**—Nothing in this paragraph shall be construed to limit the authority of the Bureau under title X, including the authority to interpret Federal consumer financial law.

**SA 4118.** Mr. MCCONNELL 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:

Strike all after (a), add the following:

**EXCLUSION FOR AUTO DEALERS.**

(a) **IN GENERAL.**—The Director and the Bureau may not exercise any rulemaking, supervisory, enforcement, or any other authority, including authority to order assessments over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.

(b) **CERTAIN FUNCTIONS EXCEPTED.**—The provisions of subsection (a) shall not apply to any person, to the extent that such person—

(1) provides consumers with any services related to residential or commercial mortgages and self-financing transactions involving real property;

(2) operates a line of business that involves the extension of retail credit or retail leases involving motor vehicles, and in which—

(A) the extension of retail credit or retail leases are provided directly to consumers; and

(B) the contract governing such extension of retail credit or retail leases is not predominantly assigned to a third-party finance or leasing source; or

(3) offers or provides a consumer financial product or service not involving or related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or other servicing of motor vehicles, motor vehicle parts, or any related or ancillary product or service.

(c) **NO IMPACT ON PRIOR AUTHORITY.**—Nothing in this section shall be construed to modify, limit, or supersede the rulemaking or enforcement authority over motor vehicle dealers that could be exercised by any Federal department or agency on the day before the date of enactment of this Act.

(d) **NO TRANSFER OF CERTAIN AUTHORITY.**—Notwithstanding any other provision of this Act, the consumer financial protection functions of the Board of Governors and the Federal Trade Commission shall not be transferred to the Director or the Bureau to the extent such functions are with respect to a person described under subsection (a).

(e) **COORDINATION WITH OFFICE OF SERVICE MEMBER AFFAIRS.**—The Board of Governors and the Federal Trade Commission shall coordinate with the Office of Service Member Affairs, to ensure that—

(1) service members and their families are educated and empowered to make better informed decisions regarding consumer financial products and services offered by motor vehicle dealers, with a focus on motor vehicle dealers in the proximity of military installations; and

(2) complaints by service members and their families concerning such motor vehicle dealers are effectively monitored and responded to, and where appropriate, enforcement action is pursued by the authorized agencies.

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

(1) **MOTOR VEHICLE.**—The term “motor vehicle” means—

(A) any self-propelled vehicle designed for transporting persons or property on a street, highway, or other road;

(B) recreational boats and marine equipment;

(C) motorcycles;

(D) motor homes, recreational vehicle trailers, and slide-in campers, as those terms are defined in sections 571.3 and 575.103 (d) of title 49, Code of Federal Regulations, or any successor thereto; and

(E) other vehicles that are titled and sold through dealers.

(2) **MOTOR VEHICLE DEALER.**—The term “motor vehicle dealer” means any person or resident in the United States, or any territory of the United States, who is licensed by a State, a territory of the United States, or the District of Columbia to engage in the sale of motor vehicles.

**SA 4119.** Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) 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 1032, strike lines 7 through 11 and insert the following:

(7) **CREDIT.**—The term “credit” means—

(A) the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase; and

(B) such right is subject to a finance charge.

**SA 4120.** Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 3883 proposed by Ms. SNOWE (for herself and Mr. PRYOR) 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 1032, strike lines 7 through 11 and insert the following:

(7) **CREDIT.**—The term “credit” means—

(A) the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase; and

(B) such right is subject to a finance charge.

**SA 4121.** Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 3746 proposed by Mr. WHITEHOUSE (for himself, Mr. MERKLEY, Mr. DURBIN, Mr. SANDERS, Mr. LEVIN, and Mr. BURRIS) 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 1032, strike lines 7 through 11 and insert the following:

(7) CREDIT.—The term “credit” means—

(A) the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase; and

(B) such right is subject to a finance charge.

**SA 4122.** Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4055 submitted by Mrs. HUTCHISON (for herself, Mrs. HAGAN, and Mr. CORNYN) and intended to be proposed 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 \_\_\_\_, line \_\_\_\_, of the amendment 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 4123.** Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 3944 submitted by Mr. CORKER and intended to be proposed 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 \_\_\_\_, line \_\_\_\_, of the amendment 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 4124.** Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4081 submitted by Mr. HATCH and intended to be proposed 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 \_\_\_\_, line \_\_\_\_, of the amendment 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 4125.** Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4083 submitted by Mr. BROWN of Massachusetts and intended to be proposed 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 \_\_\_\_, line \_\_\_\_, of the amendment 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 4126.** Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4083 submitted by Mr. BROWN of Massachusetts and intended to be proposed 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. 13. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.**

Notwithstanding any other provision of this Act, section 619 of this act shall have no force or effect, and 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 issue 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 char-

tered 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.—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 23A and 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. \_\_. 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 4127.** Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4081 submitted by Mr. HATCH and intended to be proposed 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. \_\_. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.

Notwithstanding any other provision of this Act, section 619 of this act shall have no



force or effect, and 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 issue 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 trust-

ee 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.—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 23A and 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 super-

vised 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. (i). 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 4128.** Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to

amendment SA 4055 submitted by Mrs. HUTCHISON (for herself, Mrs. HAGAN, and Mr. CORNYN) and intended to be proposed 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. —. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.

Notwithstanding any other provision of this Act, section 619 of this act shall have no force or effect, and 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 issue 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 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.—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 sections 23A and 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. \_\_. 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 4129.** Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4052 submitted by Mr. CORKER and intended to be proposed 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. \_\_. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.

Notwithstanding any other provision of this Act, section 619 of this act shall have no force or effect, and 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 issue 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 (1) 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.—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 23A and 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. \_\_. 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 4130.** Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4086 submitted by Ms. CANTWELL (for herself and Mrs. LINCOLN) and intended to be proposed 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 \_\_\_, line \_\_\_, of the amendment 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 in-

terest 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 4131.** Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4052 submitted by Mr. CORKER and intended to be proposed 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 \_\_\_, line \_\_\_, of the amendment 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 4132.** Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 4086 submitted by Ms. CANTWELL (for herself and Mrs. LINCOLN) and intended to be proposed 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. \_\_. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.**

Notwithstanding any other provision of this Act, section 619 of this act shall have no force or effect, and 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 issue 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.—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 23A and 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. —(i) 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 enti-

ty, 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 4133.** Mr. MERKLEY (for himself and Mr. LEVIN) submitted an amendment intended to be proposed to amendment SA 3944 submitted by Mr. CORKER and intended to be proposed 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. — PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.

Notwithstanding any other provision of this Act, section 619 of this act shall have no force or effect, and 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 issue 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 char-

tered 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 (1) 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 pro-

vided 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.—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 23A and 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 en-

tity 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. . 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 4134.** Mr. REED submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBAC (for himself, Mr. BOND, and Mr. INHOFE) 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 end, add the following:

(g) **EXCLUSION NOT APPLICABLE TO MILITARY LENDING.**—

(1) **IN GENERAL.**—Subsection (a) shall not apply to any person that extends credit or arranges for the extension of retail credit or retail leases—

(A) subject to paragraph (2), to a consumer who is a covered member of the Armed Forces or a dependent of a covered member of the Armed Forces, as such terms are de-

fined in section 670(a) of the John Warner National Defense Authorization Act for Fiscal Year 2007 (10 U.S.C. 987(i)(1) and 10 U.S.C. 987(i)(2)); or

(B) for the purchase or lease of motor vehicles if such person sells, leases, or otherwise delivers motor vehicles to consumers from a physical location that is within 50 miles of a United States military installation.

(2) **RULE OF CONSTRUCTION.**—A person shall be deemed to comply with the exclusion under subparagraph (1)(A) if such person uses reasonable and appropriate procedures, in accordance with rules prescribed by the Bureau, to determine that all applicants are not consumers described in subparagraph (1)(A).

**SA 4135.** Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. REED) submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBAC (for himself, Mr. BOND, and Mr. INHOFE) 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 end of the amendment, add the following:

**SEC. . PROHIBITION ON NEGATIVELY AMORTIZING MORTGAGES.**

(a) **PROHIBITION ON NEGATIVELY AMORTIZING MORTGAGES.**—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by adding at the end following:

“(n) **PROHIBITION ON NEGATIVELY AMORTIZING MORTGAGES.**—

“(1) **IN GENERAL.**—Any person who sells, transfers, or plans to sell or transfer at least 1,000 mortgages, mortgage-backed securities, or similar financial instruments within a calendar year shall not include or reference in any of such financial instruments any mortgage in which the loan balance may negatively amortize.

“(2) **APPLICABILITY.**—This subsection does not apply to home equity conversion mortgages, as defined under section 255 of the National Housing Act (commonly referred to as ‘reverse mortgages’) that are otherwise regulated by a Federal or State agency.

“(3) **RULE OF CONSTRUCTION.**—As used in this section, the term ‘mortgage’ shall not be construed to be restricted or limited only to mortgages referred to in section 103(aa).”.

(b) **EFFECTIVE DATE.**—The requirements under subsection (n)(1) of section 129 of the Truth in Lending Act (as added by subsection (b)) shall take effect not later than 180 days after the date of the enactment of this Act.

**SA 4136.** Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. FRANKEN) submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBAC (for himself, Mr. BOND, and Mr. INHOFE) 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 end of the amendment, add the following:

**SEC. . RELIANCE ON REPORTS.**

Notwithstanding section 932, section 15E(s)(4) of the Securities Exchange Act (15 U.S.C. 78o-7), as amended by section 932, is amended by adding at the end 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 4137.** Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. FRANKEN) submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBAC (for himself, Mr. BOND, and Mr. INHOFE) 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 end of the amendment, add the following:

**SEC. . STANDARDS AND OVERSIGHT.**

Notwithstanding section 932, section 15E(c)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-7(c)(2)) is amended to read as follows:

“(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.”.

**SA 4138.** Mr. LEVIN (for himself, Mr. KAUFMAN, Mr. REED, and Mrs. MCCASKILL) submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBAC (for himself, Mr. BOND, and Mr. INHOFE) 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 end of the amendment, add the following:

**SEC. . 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 4139.** Mr. LEVIN (for himself, Mr. KAUFMAN, and Mr. REED) submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) 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 end of the amendment, add the following:

**SEC. \_\_\_\_ . 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 under this Act, title II of the Restoring American Financial Stability Act of 2010, or otherwise applicable Federal law—

“(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 4140.** Mr. BROWN of Massachusetts submitted an amendment intended to be proposed to amendment SA 3883 proposed by Ms. SNOWE (for herself and Mr. PRYOR) 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 end of the amendment, add the following:

**SEC. \_\_\_\_ . PROPRIETARY TRADING.**

(a) DEFINITION.—Notwithstanding section 619(a), for purposes of section 619, 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)).

(b) EXCEPTIONS.—Notwithstanding section 619(c), for purposes of section 619, 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—

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

(2) 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;

(3) such institution, company, or subsidiary—

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

(B) 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;

(4) 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);

(5) 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

(6) 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 4141.** Mr. CARDIN submitted an amendment intended to be proposed to amendment SA 3789 proposed by Mr. BROWNBACK (for himself, Mr. BOND, and Mr. INHOFE) 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:

In lieu of the matter proposed to be inserted, insert the following:

**SEC. 1030. ENERGY AND ENVIRONMENTAL MARKETS ADVISORY COMMITTEE.**

(a) **REPEAL.**—Notwithstanding any other provision of this Act, section 911 of this Act is repealed, effective on the date of enactment of this Act, and shall have no force or effect on or after that date of enactment.

(b) **INVESTOR ADVISORY COMMITTEE ESTABLISHED.**—Title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following:

**“SEC. 39. INVESTOR ADVISORY COMMITTEE.**

“(a) **ESTABLISHMENT AND PURPOSE.**—

“(1) **ESTABLISHMENT.**—There is established within the Commission the Investor Advisory Committee (referred to in this section as the ‘Committee’).

“(2) **PURPOSE.**—The Committee shall—

“(A) advise and consult with the Commission on—

“(i) regulatory priorities of the Commission;

“(ii) issues relating to the regulation of securities products, trading strategies, and fee structures, and the effectiveness of disclosure;

“(iii) initiatives to protect investor interests, including initiatives to protect investors against the material risks to investors associated with companies in the extractive industries sector; including—

“(I) unique tax and reputational risks, in the form of country-specific taxes and regulations;

“(II) the substantial capital employed in the extractive industries, and the often opaque and unaccountable management of natural resource revenues by foreign governments; and

“(III) the potential for unstable and high-cost operating environments for multinational companies operating in foreign countries; and

“(iv) initiatives to promote investor confidence and the integrity of the securities marketplace; and

“(B) submit to the Commission such findings and recommendations as the Committee determines are appropriate, including recommendations for proposed legislative changes.

“(b) **MEMBERSHIP.**—

“(1) **IN GENERAL.**—The members of the Committee shall be—

“(A) the Investor Advocate;

“(B) a representative of State securities commissions;

“(C) a representative of the interests of senior citizens; and

“(D) not fewer than 10, and not more than 20, members appointed by the Commission, from among individuals who—

“(i) represent the interests of individual equity and debt investors, including investors in mutual funds;

“(ii) represent the interests of institutional investors, including the interests of pension funds and registered investment companies;

“(iii) are knowledgeable about investment issues and decisions; and

“(iv) have reputations of integrity.

“(2) **TERM.**—Each member of the Committee appointed under paragraph (1)(B) shall serve for a term of 4 years.

“(3) **MEMBERS NOT COMMISSION EMPLOYEES.**—Members appointed under paragraph (1)(B) shall not be deemed to be employees or agents of the Commission solely because of membership on the Committee.

“(c) **CHAIRMAN; VICE CHAIRMAN; SECRETARY; ASSISTANT SECRETARY.**—

“(1) **IN GENERAL.**—The members of the Committee shall elect, from among the members of the Committee—

“(A) a chairman, who may not be employed by an issuer;

“(B) a vice chairman, who may not be employed by an issuer;

“(C) a secretary; and

“(D) an assistant secretary.

“(2) **TERM.**—Each member elected under paragraph (1) shall serve for a term of 3 years in the capacity for which the member was elected under paragraph (1).

“(d) **MEETINGS.**—

“(1) **FREQUENCY OF MEETINGS.**—The Committee shall meet—

“(A) not less frequently than twice annually, at the call of the chairman of the Committee; and

“(B) from time to time, at the call of the Commission.

“(2) **NOTICE.**—The chairman of the Committee shall give the members of the Committee written notice of each meeting, not later than 2 weeks before the date of the meeting.

“(e) **COMPENSATION AND TRAVEL EXPENSES.**—Each member of the Committee who is not a full-time employee of the United States shall—

“(1) be compensated at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day during which the member is engaged in the actual performance of the duties of the Committee; and

“(2) while away from the home or regular place of business of the member in the performance of services for the Committee, be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

“(f) **STAFF.**—The Commission shall make available to the Committee such staff as the chairman of the Committee determines are necessary to carry out this section.

“(g) **REVIEW BY COMMISSION.**—The Commission shall—

“(1) review the findings and recommendations of the Committee

“(2) make recommendations to the Commission on the advisability of making public the information required to be disclosed under section 13(p)(2); and

“(3) each time the Committee submits a finding or recommendation to the Commission under paragraph (1), issue a public statement—

“(A) assessing the finding or recommendation of the Committee; and

“(B) disclosing the action, if any, the Commission intends to take with respect to the finding or recommendation.

“(h) **COMMITTEE FINDINGS.**—Nothing in this section shall require the Commission to agree to or act upon any finding or recommendation of the Committee.

“(i) **FEDERAL ADVISORY COMMITTEE ACT.**—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the Committee and its activities.

“(j) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to the Commission such sums as are necessary to carry out this section.”.

(c) **DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS.**—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by this Act, is amended by adding at the end the following:

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

“(1) **DEFINITIONS.**—In this subsection—

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

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

“(C) the term ‘payment’—

“(i) means a payment that is—

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

“(II) not de minimis; and

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

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

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

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

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

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

“(2) **DISCLOSURE.**—

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

“(i) the type and total amount of such payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals; and

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

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

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

“(D) INTERACTIVE DATA STANDARD.—

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

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

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

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

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

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

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

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

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

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

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

“(3) AVAILABILITY OF INFORMATION.—

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

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

**SA 4142.** Mr. SCHUMER submitted an amendment intended to be proposed to amendment SA 4050 submitted by Mr. CARDIN (for himself, Mr. LUGAR, Mr. DURBIN, Mr. SCHUMER, Mr. FEINGOLD, Mr. MERKLEY, Mr. JOHNSON, and Mr. WHITEHOUSE) 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:

In lieu of the matter proposed to be inserted, insert the following: “effective.

#### **SEC. 995. ENERGY AND ENVIRONMENTAL MARKETS ADVISORY COMMITTEE.**

(a) REPEAL.—Notwithstanding any other provision of this Act, section 911 of this Act is repealed, effective on the date of enactment of this Act, and shall have no force or effect on or after that date of enactment.

(b) INVESTOR ADVISORY COMMITTEE ESTABLISHED.—Title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following:

#### **“SEC. 39. INVESTOR ADVISORY COMMITTEE.**

“(a) ESTABLISHMENT AND PURPOSE.—

“(1) ESTABLISHMENT.—There is established within the Commission the Investor Advisory Committee (referred to in this section as the ‘Committee’).

“(2) PURPOSE.—The Committee shall—

“(A) advise and consult with the Commission on—

“(i) regulatory priorities of the Commission;

“(ii) issues relating to the regulation of securities products, trading strategies, and fee structures, and the effectiveness of disclosure;

“(iii) initiatives to protect investor interests, including initiatives to protect investors against the material risks to investors associated with companies in the extractive industries sector, including—

“(I) unique tax and reputational risks, in the form of country-specific taxes and regulations;

“(II) the substantial capital employed in the extractive industries, and the often opaque and unaccountable management of natural resource revenues by foreign governments; and

“(III) the potential for unstable and high-cost operating environments for multinational companies operating in foreign countries; and

“(iv) initiatives to promote investor confidence and the integrity of the securities marketplace; and

“(B) submit to the Commission such findings and recommendations as the Committee determines are appropriate, including recommendations for proposed legislative changes.

“(b) MEMBERSHIP.—

“(1) IN GENERAL.—The members of the Committee shall be—

“(A) the Investor Advocate;

“(B) a representative of State securities commissions;

“(C) a representative of the interests of senior citizens; and

“(D) not fewer than 10, and not more than 20, members appointed by the Commission, from among individuals who—

“(i) represent the interests of individual equity and debt investors, including investors in mutual funds;

“(ii) represent the interests of institutional investors, including the interests of pension funds and registered investment companies;

“(iii) are knowledgeable about investment issues and decisions; and

“(iv) have reputations of integrity.

“(2) TERM.—Each member of the Committee appointed under paragraph (1)(B) shall serve for a term of 4 years.

“(3) MEMBERS NOT COMMISSION EMPLOYEES.—Members appointed under paragraph (1)(B) shall not be deemed to be employees or agents of the Commission solely because of membership on the Committee.

“(c) CHAIRMAN; VICE CHAIRMAN; SECRETARY; ASSISTANT SECRETARY.—

“(1) IN GENERAL.—The members of the Committee shall elect, from among the members of the Committee—

“(A) a chairman, who may not be employed by an issuer;

“(B) a vice chairman, who may not be employed by an issuer;

“(C) a secretary; and

“(D) an assistant secretary.

“(2) TERM.—Each member elected under paragraph (1) shall serve for a term of 3 years in the capacity for which the member was elected under paragraph (1).

“(d) MEETINGS.—

“(1) FREQUENCY OF MEETINGS.—The Committee shall meet—

“(A) not less frequently than twice annually, at the call of the chairman of the Committee; and

“(B) from time to time, at the call of the Commission.

“(2) NOTICE.—The chairman of the Committee shall give the members of the Committee written notice of each meeting, not later than 2 weeks before the date of the meeting.

“(e) COMPENSATION AND TRAVEL EXPENSES.—Each member of the Committee who is not a full-time employee of the United States shall—

“(1) be compensated at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day during which the member is engaged in the actual performance of the duties of the Committee; and

“(2) while away from the home or regular place of business of the member in the performance of services for the Committee, be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

“(f) STAFF.—The Commission shall make available to the Committee such staff as the chairman of the Committee determines are necessary to carry out this section.

“(g) REVIEW BY COMMISSION.—The Commission shall—

“(1) review the findings and recommendations of the Committee

“(2) make recommendations to the Commission on the advisability of making public the information required to be disclosed under section 13(p)(2); and

“(3) each time the Committee submits a finding or recommendation to the Commission under paragraph (1), issue a public statement—

“(A) assessing the finding or recommendation of the Committee; and

“(B) disclosing the action, if any, the Commission intends to take with respect to the finding or recommendation.

“(h) COMMITTEE FINDINGS.—Nothing in this section shall require the Commission to agree to or act upon any finding or recommendation of the Committee.

“(i) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the Committee and its activities.

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

(c) DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by this Act, is amended by adding at the end the following:

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

“(1) DEFINITIONS.—In this subsection—



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

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

“(C) the term ‘payment’—

“(i) means a payment that is—

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

“(II) not de minimis; and

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

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

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

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

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

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

“(2) DISCLOSURE.—

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

“(i) the type and total amount of such payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals; and

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

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

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

“(D) INTERACTIVE DATA STANDARD.—

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

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

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

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

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

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

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

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

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

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

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

“(3) AVAILABILITY OF INFORMATION.—

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

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

**SA 4143.** Mr. DODD submitted an amendment intended to be proposed to amendment SA 4081 submitted by Mr. HATCH and intended to be proposed 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 1, after “page 1235,” strike “line 10” and all that follows through line 3, and insert: “on line 6, strike “the Bureau” and all that follows through line 10 and insert: “the Bureau shall consider the potential benefits and costs to covered persons and to consumers, including costs arising from the potential reduction of access by consumers to consumer financial products or service resulting from such rule and, when promulgating a final rule, shall set forth in the adopting release such consideration of the potential benefits and costs of the rule;”.

**SA 4144.** Mr. WYDEN 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 A of title I, add the following:

#### **SEC. 122. DISCLOSURE OF CONFLICTS OF INTERESTS.**

(a) RECOMMENDATION BY COUNCIL.—The Council shall issue recommendations to the primary financial regulatory agencies to require, as applicable, bank holding companies or nonbank financial companies under their respective jurisdictions to make appropriate disclosures to any purchaser or prospective purchaser of financial products from such companies, if such companies have a direct financial interest that is in material conflict with the interests of the purchaser or prospective purchaser with respect to the transaction involving such financial products.

(b) PROCEDURES AND IMPLEMENTATION.—The procedural and implementation provisions of subsection (b) and (c) of section 120 shall apply to recommendations of the Council under this section. In issuing such recommendations, the Council shall take into account the existence of, and firewalls between, separate business units of such companies.

**SA 4145.** Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 3776 proposed by Mr. SPECTER (for himself, Mr. REED, Mr. KAUFMAN, Mr. DURBIN, Mr. HARKIN, Mr. LEAHY, Mr. LEVIN, Mr. MENENDEZ, Mr. WHITEHOUSE, Mr. FRANKEN, Mr. FEINGOLD, and Mr. MERKLEY) 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:

In lieu of the matter proposed to be inserted, insert the following:

#### **SEC. 929D. AUTHORITY TO IMPOSE CIVIL PENALTIES IN CEASE-AND-DESIST PROCEEDINGS.**

(a) UNDER THE SECURITIES ACT OF 1933.—Section 8A of the Securities Act of 1933 (15 U.S.C. 77h-1) is amended by adding at the end the following:

“(g) AUTHORITY TO IMPOSE MONEY PENALTIES.—

“(1) GROUNDS.—In any cease-and-desist proceeding under subsection (a), the Commission may impose a civil penalty on a person, if the Commission finds, on the record, after notice and opportunity for hearing, that—

“(A) the person—

“(i) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

“(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder; and

“(B) the imposition of the penalty is in the public interest.

“(2) MAXIMUM AMOUNT OF PENALTY.—

“(A) FIRST TIER.—The maximum amount of a penalty for each act or omission described in paragraph (1) shall be \$7,500 for a natural person or \$75,000 for any other person.

“(B) SECOND TIER.—Notwithstanding subparagraph (A), if the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless

disregard of a regulatory requirement, the maximum amount of penalty for each act or omission shall be \$75,000 for a natural person or \$375,000 for any other person.

“(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), the maximum amount of penalty for each act or omission described in paragraph (1) shall be \$150,000 for a natural person or \$725,000 for any other person, if—

“(i) the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

“(ii) the act or omission directly or indirectly resulted in—

“(I) substantial losses or created a significant risk of substantial losses to other persons; or

“(II) substantial pecuniary gain to the person who committed the act or omission.

“(3) EVIDENCE CONCERNING ABILITY TO PAY.—In any proceeding in which the Commission may impose a penalty under this section, a respondent may present evidence of the ability of the respondent to pay such penalty. The Commission may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may relate to the extent of the ability of the respondent to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon the assets of the respondent and the amount of the assets of the respondent.”

(b) UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Section 21B(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78u-2(a)) is amended—

(1) by striking the undesignated matter immediately following paragraph (4);

(2) in the matter preceding paragraph (1), by inserting after “opportunity for hearing,” the following: “that such penalty is in the public interest and”;

(3) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively, and adjusting the subparagraph margins accordingly;

(4) by striking “In any proceeding” and inserting the following:

“(1) IN GENERAL.—In any proceeding”;

(5) by adding at the end the following:

“(2) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted under section 21C against any person, the Commission may impose a civil penalty, if the Commission finds, on the record after notice and opportunity for hearing, that such person—

“(A) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

“(B) is or was a cause of the violation of any provision of this title, or any rule or regulation issued under this title.”

(c) UNDER THE INVESTMENT COMPANY ACT OF 1940.—Section 9(d)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-9(d)(1)) is amended—

(1) by striking the matter immediately following subparagraph (C);

(2) in the matter preceding subparagraph (A), by inserting after “opportunity for hearing,” the following: “that such penalty is in the public interest, and”;

(3) by redesignating subparagraphs (A) through (C) as clauses (i) through (iii), respectively, and adjusting the clause margins accordingly;

(4) by striking “In any proceeding” and inserting the following:

“(A) IN GENERAL.—In any proceeding”;

(5) by adding at the end the following:

“(B) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted pursuant to subsection (f) against any person, the Commission may impose a civil penalty if the Com-

mission finds, on the record, after notice and opportunity for hearing, that such person—

“(i) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

“(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation issued under this title.”

(d) UNDER THE INVESTMENT ADVISERS ACT OF 1940.—Section 203(i)(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(i)(1)) is amended—

(1) by striking the undesignated matter immediately following subparagraph (D);

(2) in the matter preceding subparagraph (A), by inserting after “opportunity for hearing,” the following: “that such penalty is in the public interest and”;

(3) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively, and adjusting the clause margins accordingly;

(4) by striking “In any proceeding” and inserting the following:

“(A) IN GENERAL.—In any proceeding”;

(5) by adding at the end the following:

“(B) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted pursuant to subsection (k) against any person, the Commission may impose a civil penalty if the Commission finds, on the record, after notice and opportunity for hearing, that such person—

“(i) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

“(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation issued under this title.”

**SA 4146.** Mr. ENSIGN proposed an amendment 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 1273, delete lines 17–18.

**SA 4147.** Mr. DODD (for Mr. CARPER (for himself, Ms. COLLINS, Mr. LIEBERMAN, and Mr. VOINOVICH)) proposed an amendment to the bill S. 920, to amend section 11317 of title 40, United States Code, to improve the transparency of the status of information technology investments, to require greater accountability for cost overruns on Federal information technology investment projects, to improve the processes agencies implement to manage information technology investments, to reward excellence in information technology acquisition, and for other purposes; as follows:

In lieu of the matter proposed to be inserted, insert the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Information Technology (IT) Investment Oversight Enhancement and Waste Prevention Act of 2009”.

#### SEC. 2. FINDINGS.

Congress finds the following:

(1) The effective deployment of information technology can make the Federal Government more efficient, effective, and transparent.

(2) Historically, the Federal Government has struggled to properly plan, manage, and deliver information technology investments on time, on budget, and performing as planned.

(3) The Office of Management and Budget has made significant progress overseeing information technology investments made by Federal agencies, but continues to struggle to ensure that such investments meet cost, schedule, and performance expectations.

(4) Congress has limited knowledge of the actual cost, schedule, and performance of agency information technology investments and has difficulty providing the necessary oversight.

(5) In July 2008, an official of the Government Accountability Office testified before the Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security of the Committee on Homeland Security and Governmental Affairs of the Senate, stating that—

(A) agencies self-report inaccurate and unreliable project management data to the Office of Management and Budget and Congress; and

(B) the Office of Management and Budget should establish a mechanism that would provide real-time project management information and force agencies to improve the accuracy and reliability of the information provided.

#### SEC. 3. REAL-TIME TRANSPARENCY OF IT INVESTMENT PROJECTS.

Section 11302(c)(1) of title 40, United States Code, is amended by striking the period at the end and inserting the following: “, including ensuring the effective operation of a Web site, updating the Web site, at a minimum, on a quarterly basis, and including on the Web site, not later than 90 days after the date of the enactment of the Information Technology (IT) Investment Oversight Enhancement and Waste Prevention Act of 2009—

“(1) the accurate cost, schedule, and performance information since the commencement of the project of all major information technology investments reported in a manner consistent with policy established by the Office of Management and Budget on the use of earned-value management data, which should be based on the ANSI-EIA-748-B standard or another objective performance-based management system approved by the E-Government Administrator;

“(2) a graphical depiction of trend information, to the extent practicable, since the commencement of the major IT investment;

“(3) a clear delineation of major IT investments that have experienced cost, schedule, or performance variance greater than 10 percent over the life cycle of the investment, and the extent of the variation;

“(4) an explanation of the reasons the investment deviated from the benchmark established at the commencement of the project; and

“(5) the number of times investments were rebaselined and the dates on which such rebaselines occurred.”

#### SEC. 4. IT INVESTMENT PROJECTS.

(a) SIGNIFICANT AND GROSS DEVIATIONS.—Section 11317 of title 40, United States Code, is amended to read as follows:

##### “SEC. 11317. SIGNIFICANT AND GROSS DEVIATIONS.

“(a) DEFINITIONS.—In this subchapter:

“(1) AGENCY HEAD.—The term ‘Agency Head’ means the head of the Federal agency that is primarily responsible for the IT investment project under review.

“(2) ANSI EIA-748-B STANDARD.—The term ‘ANSI EIA-748-B Standard’ means the measurement tool jointly developed by the American National Standards Institute and the

Electronic Industries Alliance to analyze Earned Value Management systems.

“(3) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ‘appropriate congressional committees’ means—

“(A) the Committee on Homeland Security and Governmental Affairs of the Senate;

“(B) the Committee on Oversight and Government Reform of the House of Representatives;

“(C) the Committee on Appropriations of the Senate;

“(D) the Committee on Appropriations of the House of Representatives; and

“(E) any other relevant congressional committee with jurisdiction over an agency required to take action under this section.

“(4) CHIEF INFORMATION OFFICER.—The term ‘Chief Information Officer’ means the Chief Information Officer designated under section 3506(a)(2) of title 44 of the Executive department (as defined in section 101 of title 5) that is primarily responsible for the IT investment project under review.

“(5) CORE IT INVESTMENT PROJECT.—The terms ‘core IT investment project’ and ‘core project’ mean a mission critical IT investment project designated as such by the Chief Information Officer, with approval by the Agency Head under subsection (b).

“(6) DIRECTOR.—The term ‘Director’ means the Director of the Office of Management and Budget.

“(7) EARNED VALUE MANAGEMENT.—The term ‘Earned Value Management’ means the cost, schedule, and performance data used to determine project status and developed in accordance with the ANSI EIA-748-B Standard.

“(8) GROSSLY DEVIATED.—The term ‘grossly deviated’ means cost, schedule, or performance variance that is at least 40 percent from the Original Baseline.

“(9) INDEPENDENT COST ESTIMATE.—The term ‘independent cost estimate’ means a pragmatic and neutral analysis, assessment, and quantification of all costs and risks associated with acquisitions related to an IT investment project, which—

“(A) is based on programmatic and technical specifications provided by the office within the agency with primary responsibility for the development, procurement, and delivery of the project;

“(B) is formulated and provided by an entity other than the office within the agency with primary responsibility for the development, procurement, and delivery of the project;

“(C) contains sufficient detail to inform the selection of an Earned Value Management baseline benchmark measure under the ANSI EIA-748-B standard; and

“(D) accounts for the full life cycle cost plus associated operations and maintenance expenses over the usable life of the project’s deliverables.

“(10) LIFE CYCLE COST.—The term ‘life cycle cost’ means the total cost of an IT investment project for planning, research and development, modernization, enhancement, operation, and maintenance.

“(11) MAJOR IT INVESTMENT PROJECT.—The terms ‘major IT investment project’ and ‘project’ mean an information technology system or information technology acquisition that—

“(A) requires special management attention because of its importance to the mission or function of the agency, a component of the agency, or another organization;

“(B) is for financial management and obligates more than \$500,000 annually;

“(C) has significant program or policy implications;

“(D) has high executive visibility;

“(E) has high development, operating, or maintenance costs;

“(F) is funded through other than direct appropriations; or

“(G) is defined as major by the agency’s capital planning and investment control process.

“(12) ORIGINAL BASELINE.—

“(A) IN GENERAL.—Except as provided under subparagraph (B), the term ‘Original Baseline’ means the ANSI EIA-748-B Standard-compliant Earned Value Management benchmark or an equivalent benchmark approved by the Office of Management and Budget and established at the commencement of an IT investment project.

“(B) GROSSLY DEVIATED PROJECT.—If an IT investment project grossly deviates from its Original Baseline (as defined in subparagraph (A)), the term ‘Original Baseline’ means the ANSI EIA-748-B Standard-compliant Earned Value Management benchmark or an equivalent benchmark approved by the Office of Management and Budget and established under subsection (e)(3)(C).

“(13) SIGNIFICANTLY DEVIATED.—The term ‘significantly deviated’ means cost, schedule, or performance variance that is at least 20 percent from the Original Baseline.

“(b) CORE IT INVESTMENT PROJECTS DESIGNATION.—Each Chief Information Officer, with approval by the Agency Head, shall—

“(1) identify the major IT investments that are the most critical to the agency; and

“(2) designate any project as a ‘core IT investment project’ or a ‘core project’, upon determining that the project is a mission critical IT investment project that—

“(A) represents a significant high dollar value relative to the average IT investment project in the agency’s portfolio;

“(B) delivers a capability critical to the successful completion of the agency mission, or a portion of such mission;

“(C) incorporates unproven or previously undeveloped technology to meet primary project technical requirements; or

“(D) would have a significant negative impact on the successful completion of the agency mission if the project experienced significant cost, schedule, or performance deviations.

“(c) COST, SCHEDULE, AND PERFORMANCE REPORTS.—

“(1) QUARTERLY REPORTS.—Not later than 14 days after the end of each fiscal quarter, the project manager designated by the Agency Head for an IT investment project shall submit information to the Chief Information Officer that includes, as of the last day of the applicable quarter—

“(A) a description of the cost, schedule, and performance of all projects under the project manager’s supervision;

“(B) the original and current project cost, schedule, and performance benchmarks for each project under the project manager’s supervision;

“(C) the quarterly and cumulative cost, schedule, and performance variance related to each IT investment project under the project manager’s supervision since the commencement of the project;

“(D) for each project under the project manager’s supervision, any known, expected, or anticipated changes to project schedule milestones or project performance benchmarks included as part of the original or current baseline description;

“(E) the current cost, schedule, and performance status of all projects under supervision that were previously identified as significantly deviated or grossly deviated; and

“(F) any corrective actions taken to address problems discovered under subparagraphs (C) through (E).

“(2) INTERIM REPORTS.—If the project manager for an IT investment project determines that there is reasonable cause to believe that an IT investment project has significantly

deviated or grossly deviated since the issuance of the latest quarterly report, the project manager shall submit to the Chief Information Officer, not later than 21 days after such determination, information on the project that includes, as of the date of the report—

“(A) a description of the original and current program cost, schedule, and performance benchmarks;

“(B) the cost, schedule, or performance variance related to the IT investment project since the commencement of the project;

“(C) any known, expected, or anticipated changes to the project schedule milestones or project performance benchmarks included as part of the original or current baseline description;

“(D) the major reasons underlying the significant or gross deviation of the project; and

“(E) a corrective action plan to correct such deviations.

“(d) DETERMINATION OF SIGNIFICANT DEVIATION.—

“(1) CHIEF INFORMATION OFFICER.—Upon receiving information under subsection (c), the Chief Information Officer shall—

“(A) determine if any IT investment project has significantly deviated; and

“(B) report such determination to the Agency Head.

“(2) CONGRESSIONAL NOTIFICATION.—If the Chief Information Officer determines under paragraph (1) that an IT investment project has significantly deviated and the Agency Head has not submitted information to the appropriate congressional committees of a significant deviation for that project under this section since the project was last required to be rebaselined under this section, the Agency Head shall submit information to the appropriate congressional committees, the Director, and the Government Accountability Office that includes—

“(A) notification of such determination;

“(B) the date on which such determination was made;

“(C) the amount of the cost increases and the extent of the schedule delays with respect to such project;

“(D) any requirements that—

“(i) were added subsequent to the original baseline; or

“(ii) were originally contracted for, but were changed by deferment or deletion from the original baseline, or were otherwise no longer included in the requirements contracted for;

“(E) an explanation of the differences between—

“(i) the estimate at completion between the project manager, any contractor, and any independent analysis; and

“(ii) the original budget at completion;

“(F) a statement of the reasons underlying the project’s significant deviation; and

“(G) a summary of the plan of action to remedy the significant deviation.

“(3) DEADLINE.—

“(A) NOTIFICATION BASED ON QUARTERLY REPORT.—If the determination of significant deviation is based on information submitted under subsection (c)(1), the Agency Head shall notify Congress and the Director in accordance with paragraph (2) not later than 21 days after the end of the quarter upon which such information is based.

“(B) NOTIFICATION BASED ON INTERIM REPORT.—If the determination of significant deviation is based on information submitted under subsection (c)(2), the Agency Head shall notify Congress and the Director in accordance with paragraph (2) not later than 21 days after the submission of such information.

“(e) DETERMINATION OF GROSS DEVIATION.—

“(1) CHIEF INFORMATION OFFICER.—Upon receiving information under subsection (c), the Chief Information Officer shall—

“(A) determine if any IT investment project has grossly deviated; and

“(B) report any such determination to the Agency Head.

“(2) CONGRESSIONAL NOTIFICATION.—If the Chief Information Officer determines under paragraph (1) that an IT investment project has grossly deviated and the Agency Head has not submitted information to the appropriate congressional committees of a gross deviation for that project under this section since the project was last required to be rebaselined under this section, the Agency Head shall submit information to the appropriate congressional committees, the Director, and the Government Accountability Office that includes—

“(A) notification of such determination, which—

“(i) identifies the date on which such determination was made; and

“(ii) indicates whether or not the project has been previously reported as a significant or gross deviation by the Chief Information Officer, and the date of any such report;

“(B) incorporations by reference of all prior reports to Congress on the project required under this section;

“(C) updated accounts of the items described in subparagraphs (C) through (G) of subsection (d)(2);

“(D) the original estimate at completion for the project manager, any contractor, and any independent analysis;

“(E) a graphical depiction that shows monthly planned expenditures against actual expenditures since the commencement of the project;

“(F) the amount, if any, of incentive or award fees any contractor has received since the commencement of the contract and the reasons for receiving such incentive or award fees;

“(G) the project manager's estimated cost at completion and estimated completion date for the project if current requirements are not modified;

“(H) the project manager's estimated cost at completion and estimated completion date for the project based on reasonable modification of such requirements;

“(I) an explanation of the most significant occurrence contributing to the variance identified, including cost, schedule, and performance variances, and the effect such occurrence will have on future project costs and program schedule;

“(J) a statement regarding previous or anticipated rebaselining or replanning of the project and the names of the individuals responsible for approval;

“(K) the original life cycle cost of the investment and the expected life cycle cost of the investment expressed in constant base year dollars and in current dollars; and

“(L) a comprehensive plan of action to remedy the gross deviation, and milestones established to control future cost, schedule, and performance deviations in the future.

“(3) REMEDIAL ACTION.—

“(A) IN GENERAL.—If the Chief Information Officer determines under paragraph (1)(A) that an IT investment project has grossly deviated, the Agency Head, in consultation with the Chief Information Officer and the appropriate project manager, shall develop and implement a remedial action plan that includes—

“(i) a report that—

“(I) describes the primary business case and key functional requirements for the project;

“(II) describes any portions of the project that have technical requirements of suffi-

cient clarity that such portions may be feasibly procured under fixed-price contracts;

“(III) includes a certification by the Agency Head, after consultation with the Chief Information Officer, that all technical and business requirements have been reviewed and validated to ensure alignment with the reported business case;

“(IV) describes any changes to the primary business case or key functional requirements which have occurred since project inception; and

“(V) includes an independent government cost estimate for the project conducted by an entity approved by the Director;

“(ii) an analysis that—

“(I) describes agency business goals that the project was originally designed to address;

“(II) includes a gap analysis of what project deliverables remain in order for the agency to accomplish the business goals referred to in subclause (I);

“(III) identifies the 3 most cost-effective alternative approaches to the project which would achieve the business goals referred to in subclause (I); and

“(IV) includes a cost-benefit analysis, which compares—

“(aa) the completion of the project with the completion of each alternative approach, after factoring in future costs associated with the termination of the project; and

“(bb) the termination of the project without pursuit of alternatives, after factoring in foregone benefits; and

“(iii) a new baseline of the project is established that is consistent with the independent government cost estimate required under clause (i)(V); and

“(iv) the project is designated as a core IT investment project and subjected to the requirements under subsection (f).

“(B) SUBMISSION TO CONGRESS.—The remedial action plan and all corresponding reports, analyses, and actions under this paragraph shall be submitted to the appropriate congressional committees and the Director.

“(C) REPORTING AND ANALYSIS EXEMPTIONS.—

“(i) IN GENERAL.—The Chief Information Officer, in coordination with the Agency Head and the Director, may forego the completion of any element of a report or analysis under clause (i) or (ii) of subparagraph (A) if the Chief Information Officer determines that such element is not relevant to the understanding of the challenges facing the project or that such element does not further the remedial steps necessary to ensure that the project is completed in a timely and cost-efficient manner.

“(ii) IDENTIFICATION OF REASONS.—The Chief Information Officer shall include the reasons for not including any element referred to in clause (i) in the report submitted to Congress under subparagraph (B).

“(4) DEADLINE AND FUNDING CONTINGENCY.—

“(A) NOTIFICATION AND REMEDIAL ACTION BASED ON QUARTERLY REPORT.—

“(i) IN GENERAL.—If the determination of gross deviation is based on a report submitted under subsection (c)(1), the Agency Head shall—

“(I) not later than 45 days after the end of the quarter upon which such report is based, notify the appropriate congressional committees and the Director in accordance with paragraph (2); and

“(II) not later than 180 days after the end of the quarter upon which such report is based, ensure the completion of remedial action under paragraph (3).

“(ii) FAILURE TO MEET DEADLINES.—If the Agency Head fails to meet the deadline described in clause (i)(II), additional funds may not be obligated to support expenditures associated with the project until the require-

ments of this subsection have been fulfilled, except for expenditures to address reporting notifications, remedial actions, and other requirements under this Act.

“(B) NOTIFICATION AND REMEDIAL ACTION BASED ON INTERIM REPORT.—

“(i) IN GENERAL.—If the determination of gross deviation is based on a report submitted under subsection (c)(2), the Agency Head shall—

“(I) not later than 45 days after the submission of such report, notify the appropriate congressional committees in accordance with paragraph (2); and

“(II) not later than 180 days after the submission of such report, ensure the completion of remedial action in accordance with paragraph (3).

“(ii) FAILURE TO MEET DEADLINES.—If the Agency Head fails to meet the deadline described in clause (i)(II), additional funds may not be obligated to support expenditures associated with the project until the requirements of this subsection have been fulfilled, except for expenditures to address reporting notifications, remedial actions, and other requirements under this Act.

“(f) ADDITIONAL REQUIREMENTS FOR CORE IT INVESTMENT PROJECT REPORTS.—

“(1) INITIAL REPORT.—If a remedial action plan described in subsection (e)(3)(A) has not been submitted for a core IT investment project, the Agency Head, in coordination with the Chief Information Officer and responsible program managers, shall prepare an initial report for inclusion in the first budget submitted to Congress under section 1105(a) of title 31, United States Code, after the designation of a project as a core IT investment project, which includes—

“(A) a description of the primary business case and key functional requirements for the project;

“(B) an identification and description of any portions of the project that have technical requirements of sufficient clarity that such portions may be feasibly procured under fixed-price contracts;

“(C) an independent cost estimate for the project;

“(D) certification by the Chief Information Officer that all technical and business requirements have been reviewed and validated to ensure alignment with the reported business case; and

“(E) any changes to the primary business case or key functional requirements which have occurred since project inception.

“(2) QUARTERLY REVIEW OF BUSINESS CASE.—The Agency Head, in coordination with the Chief Information Officer and responsible program managers, shall—

“(A) monitor the primary business case and core functionality requirements reported to Congress and the Director for designated core IT investment projects; and

“(B) if changes to the primary business case or key functional requirements for a core IT investment project occur in any fiscal quarter, submit a report to Congress and the Director not later than 14 days after the end of such quarter that details the changes and describes the impact the changes will have on the cost and ultimate effectiveness of the project.

“(3) ALTERNATIVE SIGNIFICANT DEVIATION DETERMINATION.—If the Chief Information Officer determines, subsequent to a change in the primary business case or key functional requirements, that without such change the project would have significantly deviated—

“(A) the Chief Information Officer shall notify the Agency Head of the significant deviation; and

“(B) the Agency Head shall fulfill the requirements under subsection (d)(2) in accordance with the deadlines under subsection (d)(3).

“(4) ALTERNATIVE GROSS DEVIATION DETERMINATION.—If the Chief Information Officer determines, subsequent to a change in the primary business case or key functional requirements, that without such change the project would have grossly deviated—

“(A) the Chief Information Officer shall notify the Agency Head of the gross deviation; and

“(B) the Agency Head shall fulfill the requirements under subsections (e)(2) and (e)(3) in accordance with subsection (e)(4).

“(g) METHOD OF DELIVERY.—Reports and other information required under this section may be submitted through the Web site established under section 11302(c)(1) in a manner consistent with guidance from the Office of Management and Budget to satisfy reporting requirements and to reduce paperwork.

“(h) DEPARTMENT OF DEFENSE ACQUISITIONS.—The requirements of section 2445a of title 10, United States Code, shall apply to the information technology investment projects of the Department of Defense instead of the requirements under this section.”

(b) INCLUSION IN THE BUDGET SUBMITTED TO CONGRESS.—Section 1105(a) of title 31, United States Code, is amended—

(1) in the matter preceding paragraph (1), by striking “include in each budget the following:” and inserting “include in each budget—”;

(2) by redesignating the second paragraph (33) (as added by section 889(a) of Public Law 107-296) as paragraph (35);

(3) in each of paragraphs (1) through (34), by striking the period at the end and inserting a semicolon;

(4) in paragraph (35), as redesignated by paragraph (2), by striking the period at the end and inserting “; and”; and

(5) by adding at the end the following:

“(36) the reports prepared under section 11317(f) of title 40, United States Code, relating to the core IT investment projects of the agency.”

(c) IMPROVEMENT OF INFORMATION TECHNOLOGY ACQUISITION AND DEVELOPMENT.—Subchapter II of chapter 113 of title 40, United States Code, is amended by adding at the end the following:

**“SEC. 11319. ACQUISITION AND DEVELOPMENT.**

“(a) PURPOSE.—The objective of this section is to significantly reduce—

“(1) cost overruns and schedule slippage from the estimates established at the time the program is initially approved;

“(2) the number of requirements and business objectives at the time the program is approved that are not met by the delivered products; and

“(3) the number of critical defects and serious defects in delivered information technology.

“(b) OMB GUIDANCE.—The Director of the Office of Management and Budget shall—

“(1) not later than 180 days after the date of the enactment of this section, prescribe uniformly applicable guidance for agencies to implement the requirements of this section, which shall not include any exemptions to such requirements not specifically authorized under this section; and

“(2) take any actions that are necessary to ensure that Federal agencies are in compliance with the guidance prescribed pursuant to paragraph (1) not later than 1 year after the date of the enactment of this section.

“(c) ESTABLISHMENT OF PROGRAM.—Not later than 180 days after the date of the enactment of this section, each Agency Head (as defined in section 11317(a) of title 40, United States Code) shall establish a program to improve the information technology (referred to in this section as ‘IT’) processes overseen by the Chief Information Officer.

“(d) PROGRAM REQUIREMENTS.—Each program established pursuant to this section shall include—

“(1) a documented process for IT acquisition planning, requirements development and management, project management and oversight, earned-value management, and risk management;

“(2) the development of appropriate metrics that can be implemented and monitored on a real-time dashboard for performance measurement of—

“(A) processes and development status of investments;

“(B) continuous process improvement of the program; and

“(C) achievement of program and investment outcomes;

“(3) a process to ensure that key program personnel have an appropriate level of experience, training, and education, at an institution or institutions approved by the Director, in the planning, acquisition, execution, management, and oversight of IT;

“(4) a process to ensure that the agency implements and adheres to established processes and requirements relating to the planning, acquisition, execution, management, and oversight of IT programs and developments; and

“(5) a process for the Chief Information Officer to intervene or stop the funding of an IT investment if it is at risk of not achieving major project milestones.

“(e) ANNUAL REPORT TO OMB.—Not later than the last day of February of each year, the Agency Head shall submit a report to the Office of Management and Budget that includes—

“(1) a detailed summary of the accomplishments of the program established by the Agency Head pursuant to this section;

“(2) the status of completeness of implementation of each of the program requirements, and the date each such requirement was deemed to be completed;

“(3) the percentage of Federal IT projects covered under the program compared to all of the IT projects of the agency, listed by number of programs and by annual dollars expended;

“(4) a detailed breakdown of the sources and uses of the amounts spent by the agency during the previous fiscal year to support the activities of the program;

“(5) a copy of any guidance issued under the program and a statement regarding whether each such guidance is mandatory;

“(6) the identification of the metrics developed in accordance with subsection (b)(2);

“(7) a description of how paragraphs (3) and (4) of subsection (b) have been implemented and any related agency guidance; and

“(8) a description of how agencies will continue to review and update the implementation and objectives of such guidance.

“(f) ANNUAL REPORT TO CONGRESS.—The Director of the Office of Management and Budget shall provide an annual report to Congress on the status and implementation of the program established pursuant to this section.

“(g) DEPARTMENT OF DEFENSE ACQUISITIONS.—The requirements of section 2223a of title 10, United States Code, shall apply to the information technology investment projects of the Department of Defense instead of the requirements under this section.”

(d) CLERICAL AMENDMENTS.—The table of sections for chapter 113 of title 40, United States Code, is amended—

(1) by striking the item relating to section 11317 and inserting the following:

“11317. Significant and gross deviations.”; and

(2) by inserting after the item relating to section 11318 the following:

“11319. Acquisition and development.”.

**SEC. 5. MAJOR AUTOMATED INFORMATION SYSTEM PROGRAMS OF THE DEPARTMENT OF DEFENSE.**

(a) PROGRAM TO IMPROVE INFORMATION TECHNOLOGY PROCESSES.—Chapter 131 of title 10, United States Code, is amended by adding after section 2223 the following:

**“§ 2223a. Information technology acquisition planning and oversight requirements**

“(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Defense shall establish a program to improve the planning and oversight processes for the acquisition of major automated information systems by the Department of Defense.

“(b) PROGRAM COMPONENTS.—The program established under subsection (a) shall include—

“(1) a documented process for information technology acquisition planning, requirements development and management, project management and oversight, earned value management, and risk management;

“(2) the development of appropriate metrics that can be implemented and monitored on a real-time basis for performance measurement of—

“(A) processes and development status of investments in major automated information system programs;

“(B) continuous process improvement of the program; and

“(C) achievement of program and investment outcomes;

“(3) a process to ensure that key program personnel have an appropriate level of experience, training, and education in the planning, acquisition, execution, management, and oversight of information technology systems;

“(4) a process to ensure that military departments and defense agencies adhere to established processes and requirements relating to the planning, acquisition, execution, management, and oversight of information technology programs and developments; and

“(5) a process under which an appropriate Department of Defense official may intervene or terminate the funding of an information technology investment if the investment is at risk of not achieving major project milestones.”.

(b) ANNUAL REPORT TO CONGRESS.—Section 2445b(b) of title 10, United States Code is amended by adding at the end the following:

“(5) For each major automated information system program for which such information has not been provided in a previous annual report—

“(A) a description of the primary business case and key functional requirements for the program;

“(B) a description of the analysis of alternatives conducted with regard to the program;

“(C) an assessment of the extent to which the program, or portions of the program, have technical requirements of sufficient clarity that the program, or portions of the program, may be feasibly procured under firm, fixed-price contracts;

“(D) the most recent independent cost estimate or cost analysis for the program provided by the Director of Cost Assessment and Program Evaluation in accordance with section 2334(a)(6);

“(E) a certification by a Department of Defense acquisition official with responsibility for the program that all technical and business requirements have been reviewed and validated to ensure alignment with the business case; and

“(F) an explanation of the basis for the certification described in subparagraph (E).

“(6) For each major automated information system program for which the information required under paragraph (5) has been provided in a previous annual report, a summary of any significant changes to the information previously provided.”.

#### SEC. 6. IT SWAT TEAM.

(a) PURPOSE.—The Director of the Office of Management of Budget (referred to in this section as the “Director”), in consultation with the Administrator of the Office of Electronic Government and Information and Technology at the Office of Management and Budget (referred to in this section as the “E-Gov Administrator”), shall assist agencies in avoiding significant and gross deviations in the cost, schedule, and performance of IT investment projects (as such terms are defined in section 11317(a) of title 40, United States Code).

##### (b) IT SWAT TEAM.—

(1) ESTABLISHMENT.—Not later than 180 days after the date of the enactment of this Act, the Director shall promulgate policy and guidance for the head of each Federal agency that establishes procedures for the creation of a small group of individuals (referred to in this section as the “IT SWAT Team”) to carry out the purpose described in subsection (a).

(2) QUALIFICATIONS.—Individuals selected for the IT SWAT Team—

(A) shall be certified at the Senior/Expert level according to the Federal Acquisition Certification for Program and Project Managers (FAC-P/PM);

(B) shall have comparable education, certification, training, and experience to successfully manage high-risk IT investment projects; or

(C) shall have expertise in the successful management or oversight of planning, architecture, process, integration, or other technical and management aspects using proven process best practices on high-risk IT investment projects.

(3) NUMBER.—The Director, in consultation with the E-Gov Administrator and the head of the agency primarily responsible for the IT investment, shall determine the number of individuals who will be selected for the IT SWAT Team.

##### (c) OUTSIDE CONSULTANTS.—

(1) IDENTIFICATION.—The E-Gov Administrator and representatives of the Chief Information Officers Council shall identify consultants in the private sector who have expert knowledge in IT program management and program management review teams. Not more than 20 percent of such consultants may be formally associated with any 1 of the following types of entities:

(A) Commercial firms.

(B) Nonprofit entities.

(C) Federally funded research and development centers.

##### (2) USE OF CONSULTANTS.—

(A) IN GENERAL.—Consultants identified under paragraph (1) may be used to assist the IT SWAT Team in assessing and improving IT investment projects.

(B) LIMITATION.—Consultants with a formally established relationship with an organization may not participate in any assessment involving an IT investment project for which such organization is under contract to provide technical support.

(C) EXCEPTION.—The limitation described in subparagraph (B) may not be construed as precluding access to anyone having relevant information helpful to the conduct of the assessment.

(3) CONTRACTS.—The E-Gov Administrator, in conjunction with the Administrator of the General Services Administration (GSA), may establish competitively bid contracts with 1 or more qualified consultants, independent of any GSA schedule.

(d) INITIAL RESPONSE TO ANTICIPATED SIGNIFICANT OR GROSS DEVIATION.—If the head of the Federal agency primarily responsible for the major IT investment or the E-Gov Administrator determines that there is reasonable cause to believe that a major IT investment project is likely to significantly or grossly deviate (as defined in section 11317(a) of title 40, United States Code), including the receipt of inconsistent or missing data, or if such agency head or the E-Gov Administrator determines that the assignment of 1 or more members of the IT SWAT Team could meaningfully reduce the possibility of significant or gross deviation, such agency head or the E-Gov Administrator shall carry out the following activities:

(1) Recommend the assignment of 1 or more members of the IT SWAT Team to assess the project in accordance with the scope and time period described in section 11317(c)(1) of title 40, United States Code, beginning not later than 14 days after such recommendation. No member of the SWAT Team who is associated with the department or agency whose IT investment project is the subject of the assessment may be assigned to participate in this assessment. Such limitation may not be construed as precluding access to anyone having relevant information helpful to the conduct of the assessment.

(2) If such agency head or the E-Gov Administrator determines that 1 or more qualified consultants are needed to support the efforts of the IT SWAT Team under paragraph (1), negotiate a contract with the consultant to provide such support during the period in which the IT SWAT Team is conducting the assessment described in paragraph (1).

(3) Ensure that the costs of an assessment under paragraph (1) and the support services of 1 or more consultants under paragraph (2) are paid for by the agency being assessed.

(4) Monitor the progress made by the IT SWAT Team in assessing the project.

(e) REDUCTION OF SIGNIFICANT OR GROSS DEVIATION.—If the agency head described in subsection (d) or the E-Gov Administrator determines that the assessment conducted under subsection (d) confirms that a major IT investment project is likely to significantly or grossly deviate, such agency head or the E-Gov Administrator shall take steps to reduce the deviation, which may include—

(1) providing training, education, or mentoring to improve the qualifications of the program manager;

(2) replacing the program manager or other staff;

(3) supplementing the program management team with Federal Government employees or independent contractors;

(4) terminating the project; or

(5) hiring an independent contractor to report directly to senior management and the E-Gov Administrator.

(f) ENFORCEMENT OF ACCOUNTABILITY.—The Director may use the actions directed under section 11303(b)(5) of title 5, United States Code, to enforce accountability of the head of the agency and for the investments made by the agency in information technology.

(g) REPORT TO CONGRESS.—The Director shall include in the annual Report to Congress on the Benefits of E-Government Initiatives a detailed summary of the composition and activities of the IT SWAT Team, including—

(1) the number and qualifications of individuals on the IT SWAT Team;

(2) a description of the IT investment projects that the IT SWAT Team has worked during the previous fiscal year;

(3) the major issues that necessitated the involvement of the IT SWAT Team to assist agencies with assessing and managing IT investment projects and whether such issues were satisfactorily resolved;

(4) if the issues referred to in paragraph (3) were not satisfactorily resolved, the issues still needed to be resolved and the Agency Head's plan for resolving such issues;

(5) a detailed breakdown of the sources and uses of the amounts spent by the Office of Management and Budget and other Federal agencies during the previous fiscal year to support the activities of the IT SWAT Team; and

(6) a determination of whether the IT SWAT Team has been effective in—

(A) preventing projects from deviating from the original baseline; and

(B) assisting agencies in conducting appropriate analysis and planning before a project is funded.

#### SEC. 7. AWARDS FOR PERSONNEL FOR EXCELLENCE IN THE ACQUISITION OF INFORMATION SYSTEMS AND INFORMATION TECHNOLOGY.

(a) IN GENERAL.—Not later than 180 days after the enactment of this Act, the Director of the Office of Personnel Management shall develop policy and guidance for agencies to develop a program to recognize excellent performance by Federal Government employees and teams of such employees in the acquisition of information systems and information technology for the agency.

(b) ELEMENTS.—The program referred to in subsection (a) shall, to the extent practicable—

(1) obtain objective outcome measures; and

(2) include procedures for—

(A) the nomination of Federal Government employees and teams of such employees for eligibility for recognition under the program; and

(B) the evaluation of nominations for recognition under the program by 1 or more agency panels of individuals from government, academia, and the private sector who have such expertise, and are appointed in such a manner, as the Director of the Office of Personnel Management shall establish for purposes of the program.

(c) AWARD OF CASH BONUSES AND OTHER INCENTIVES.—As part of the program referred to in subsection (a), the Director of the Office of Personnel Management, in consultation with the Director of the Office of Management and Budget, shall establish policies and guidance for agencies to reward any Federal Government employee or teams of such employees recognized pursuant to the program—

(1) by awarding a cash bonus authorized by any other provision of law to the extent that the performance of such individual so recognized warrants the award of such bonus under such provision of law;

(2) through promotions and other non-monetary awards;

(3) by publicizing acquisition accomplishments by individual employees and, as appropriate, the tangible end benefits that resulted from such accomplishments; and

(4) through other awards, incentives, or bonuses that the head of the agency considers appropriate.

#### AUTHORITY FOR COMMITTEES TO MEET

##### COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to hold a meeting during the session of the Senate on May 19, 2010, at 2:30 p.m., in room 253 of the Russell Senate Office Building.

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