SEC. 1. FINDINGS AND PURPOSE

SEC. 2. SHORT TITLE.

Sec. 3. Definitions.

(a) In General.—As used in this Act—

(1) the term "affiliate" has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(2) the term "appropriate Federal banking agency'' has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

(3) the term "bank holding company" has the same meaning as in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

(4) the term "foreign bank" has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(5) the term "insured depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(6) the term "savings and loan holding company" has the same meaning as in section 10 of the Home Owners Loan Act (10 U.S.C. 1467a).

(7) the term "subsidiary" has the same meaning as in section 1 of the Bank Holding Company Act (12 U.S.C. 1841).

SEC. 4. Equity Capital Requirements.

(a) Equity Capital Requirements for Bank Holding Companies, Subsidiaries, and Affiliates.

(1) EQUITY CAPITAL REQUIREMENTS.—

(A) In general.—The Board, the Corporation, and the Comptroller shall, within 1 year of the date of enactment, establish capital requirements for the ratio of equity capital to total consolidated assets for all insured depository institutions, bank holding companies, savings and loan holding companies, and U.S. affiliates of foreign banks.

(B) Such requirements shall reflect historical equity capital ratios chosen by large depository institutions before the advent of the Federal Reserve, federal deposit insurance, and the income tax encouraged depositories to favor more highly leveraged deposit and debt funding;

(C) In no case may the requirements issued under this subsection require any insured depository institution, bank holding company, savings and loan holding company, or U.S. affiliate of a foreign bank to have less than 10 percent of equity capital to total assets.-

(2)(A) CAPITAL SURCHARGE FOR THE LARGEST FINANCIAL INSTITUTIONS.—

(i) The Board, the Corporation, and the Comptroller shall establish equity capital

surcharges for all insured depository institutions, Bank Holding Companies, savings and loan holding companies, and U.S. affiliates of foreign banks with at least $400,000,000,000 in total consolidated assets.

(ii) Such capital requirements may increase continuously as a percentage of total consolidated assets as an institution's total consolidated assets increase;

(iii) In no case may the rules issued under this paragraph require any such insured depository institution, bank holding company, savings and loan holding company, or U.S. affiliate of a foreign bank to have an additional 5 percent of equity capital to total assets.

(B) ANTI-EVASION.—

(i) IN GENERAL.—Any attempt to structure any activity or transaction in such a manner that the purpose or effect of such activity or affiliation is to evade or attempt to evade the asset threshold that gives rise to the surcharge provided in paragraph (A) shall be considered a violation of the Federal Deposit Insurance Act, section 24 of the Revised Statutes of the United States, and the Bank Holding Company Act of 1956, respectively.

(ii) RESTRICTING ACTIVITIES.—

(aa) IN GENERAL.—Notwithstanding any other provision of law, whenever the Board, the Corporation, or the Comptroller has reasonable cause to believe that a bank holding company, savings and loan holding company, U.S. affiliate of a foreign bank, affiliate of an insured depository institution, or any affiliate of such institutions has engaged in an activity or affiliation in a manner that functions as an evasion of the prohibitions described in paragraph (1) or otherwise violates such provisions, the appropriate Federal banking agency shall order, after due notice and opportunity for hearing, the bank holding company or affiliate to restrict or divest the activities of any such bank holding company or affiliate.

(bb) CONSTRUCTION.—Nothing in this subparagraph shall be construed to limit the inherent authority of any Federal agency or State regulatory authority to further raise capital under otherwise applicable provisions of law.

(C) Institutions shall be required to comply with the capital requirements provided under paragraphs (a)(1) and (2) no later than 5 years from the date that final regulations implementing such capital requirements are published in the Federal Register

(3) Any institution failing to meet the equity capital requirements established under paragraph (A) or (B) of this subsection shall be considered undercapitalized, as defined in section 38 of the Federal Deposit Insurance Act.

(4)(A) EQUITY CAPITAL REQUIREMENTS FOR AFFILIATES AND SUBSIDIARIES OF BANK HOLDING COMPANIES.—Notwithstanding any other provision of law applicable to insured depository institutions, the Board, the Corporation, and the Comptroller shall promulgate regulations establishing capital requirements for all affiliates and subsidiaries of bank holding companies, savings and loan holding companies, U.S. affiliates of foreign banks, and affiliates of insured depository institutions with [total consolidated non-bank assets

equal to or greater than $50,000,000,000.]

(B) Amendment to Bank Holding Company Act.—strike section 5(c)(3) of the Bank Holding Company Act of 1956 and replace with the following:

"(3) Capital rules for insurance companies.—Notwithstanding section 4(a)(4)(A) of [THIS ACT], the Federal Reserve shall not establish capital requirements for—

"(A) any affiliate that conducts insurance agency and brokerage activities and activities as principal conducted in an insurance company, with respect to insurance activities of the insurance company and activities incidental to such insurance activities, that is subject to supervision by a State insurance regulator, subject to section 104 of the Gramm-Leach-Bliley Act; or

"(B) the insurance company affiliate of a savings association controlled by a savings and loan holding company, as described in section 10(c)(9)(C) of the Home Owners' Loan Act (12 U.S.C. 1467a(c)(9)(C))."

(4) SPECIFIC ELEMENTS OF CAPITAL REQUIREMENTS.—For the purposes of calculating equity capital requirements under this section—

(A) NUMERATOR.—equity capital shall consist of tangible common equity, defined as common stockholders' equity less goodwill and intangible assets plus retained earnings.

(B) DENOMINATOR.—for the purpose of calculating total consolidated assets—

(i) derivative exposures shall include the fair value of the derivative exposures without recognizing the benefits of any netting arrangement, unless—

(aa) the netting arrangement is documented under a formal master netting agreement or other formal arrangement with a derivatives clearing organization; and

(bb) the bank holding company, as a matter of ongoing business practice, exchanges collateral on a daily basis for the fulfillment of variation margin requirements on a net basis, and fulfills all contractual payment requirements, including payments for contract termination, on a net basis, with such net exchange of collateral and payments encompassing all derivative exposures covered by the formal arrangement.

(ii) off-balance-sheet assets shall be included, including financings of assets for which the issuer has more than minimal economic or reputational risks or rewards. These include commitments (including liquidity facilities), unconditionally cancellable commitments, direct credit substitutes, acceptances, standby letters of credit, trade letters of credit, failed transactions, and unsettled securities.

(b) RISK-BASED CAPITAL REQUIREMENTS PERMITTED.—Nothing in this section shall be interpreted to prevent the appropriate federal banking regulators from establishing supplemental risk-based capital requirements for any bank holding company, savings and loan holding company, or U.S. affiliate of a foreign bank with more than $20 billion in total consolidated assets, or any affiliate or subsidiary of such institutions for the purpose of measuring the relative risk of certain assets and preventing investment in excessive amounts of riskier assets.

(c) Treatment of Basel III International Accord.—the Corporation, the Board, and the

Comptroller shall be prohibited from any further implementation of the [Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems].

SEC. 5. Prohibition of Affiliate Transactions.

Section 23A of the Federal Reserve Act (12 U.S.C. 371c) is amended—

(a) by inserting at the beginning the following, and renumbering all subsequent subsections:

"(a) Prohibition Against Transactions With Affiliates.

"(1) AFFILIATE TRANSACTIONS PROHIBITED.—A member bank and its affiliates and subsidiaries may not engage in a covered transaction with another affiliate or subsidiary.

"(2) COVERED TRANSACTIONS.—With respect to an affiliate or a subsidiary of a member bank, a covered transaction shall include—

"(A) a loan or extension of credit to the affiliate;

"(B) a purchase of or an investment in securities issued by the affiliate;

"(C) a purchase of assets, including assets subject to an agreement to repurchase, from the affiliate, except such purchase of real and personal property as may be specifically exempted by the Board, by regulation;

"(D) a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction with an affiliate; or

"(F) the issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, on behalf of an affiliate.".

"(2) EXCEPTIONS.—A member bank and its affiliates or subsidiaries may—

"(A) engage in lawful dividend payments to its holding company; or

"(B) make sales of property or securities to, or accept infusions of capital or other distributions from, its parent holding company, consistent with section 38A of the Federal Deposit Insurance Act (12 U.S.C. 1831p).

(b) by inserting at (b)(1) "with less than $20 billion in total consolidated assets and banks that are affiliated with bank holding companies that are not financial holding companies, as defined under section 2(p) of the Bank Holding Company Act of 1956" following "member bank".

(c) by inserting at (b)(2) "with less than $20 billion in total consolidated assets and banks that are affiliated with bank holding companies that are not financial holding companies, as defined under section 2(p) of the Bank Holding Company Act of 1956" following "member bank";

(d) by inserting at (b)(3) "with less than $20 billion in total consolidated assets and banks that are affiliated with bank holding companies that are not financial holding companies, as defined under section 2(p) of the Bank Holding Company Act of 1956" following "member bank"; and

(e) by inserting at (b)(4) "with less than $20 billion in total consolidated assets and banks that are affiliated with bank holding companies that are not financial holding companies, as defined under section 2(p) of the Bank Holding Company Act of 1956" following "member bank".

SEC. 6. Limitation on the Federal Safety Net.

(a) PROHIBITION AGAINST GOVERNMENT ASSISTANCE TO NON-BANKS.—Any affiliate or

subsidiary of a Bank Holding Company, savings and loan holding company, U.S. branch of a foreign bank, or affiliate of an insured depository institutions, except for any insured depository institution or any institution for which the Corporation is acting as receiver, shall be prohibited from receiving any assistance through—

(1) asset purchases made by the United States Government, loans from the United States Government, investments in debt or equity made by the United State Government, or capital injections from the United States Government;

(2) The Exchange Stabilization Fund, as established under section 2 of the Gold Reserve Act of 1934;

(3) The Deposit Insurance Fund established under section 11(a)(4) of the Federal Deposit Insurance Act (12 U.S.C. § 1821(a)(4));

(4) The Federal Reserve pursuant to its authority under sections 10(b), 13 and 13(a) of the Federal Reserve Act; or

(5) The Federal Reserve pursuant to its authority under the third paragraph of section 13 of the Federal Reserve Act (12 U.S.C. § 343).

(b) PREVENTION OF BACKDOOR BAILOUTS.—strike subsection (a) through subsection (c) of section 806 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

(c) TERMINATION OF SYSTEMIC RISK EXEMPTION.—strike 12 U.S.C. 1823(c)(4)(G).