

1 **TITLE II—CONSOLIDATED SUPERVISION AND**
2 **REGULATION OF LARGE, INTERCONNECTED**
3 **FINANCIAL FIRMS**

4 **SEC. 201. SHORT TITLE.**

5 This Act may be cited as the “Bank Holding Company Modernization Act of 2009”.

6 **SEC. 202. FINDINGS AND PURPOSES.**

7 (a) The Congress finds that—

8 (1) Inadequate consolidated supervision and regulation of large, highly leveraged,
9 and substantially interconnected financial companies was a key contributor to the recent
10 financial crisis;

11 (2) The sudden collapses of large investment banks and insurance companies
12 based in the United States were among the most destabilizing events of the financial
13 crisis;

14 (3) These companies were ineffectively supervised and regulated on a
15 consolidated basis, and, as a consequence, did not have sufficient capital or liquidity
16 buffers to withstand the deterioration in financial conditions that occurred in 2008; and

17 (4) Although most of these financial companies owned federally insured
18 depository institutions, many chose to own depository institutions that were not
19 considered ‘banks’ under the Bank Holding Company Act of 1956. By doing so, these
20 financial companies chose to be subject to consolidated supervision and regulation under
21 statutory frameworks or voluntary agreements that were inherently weaker than the
22 framework applicable to bank holding companies.

1 (b) The purposes of this Act are to—

2 (1) Help ensure the financial distress, rapid deleveraging, or disorderly failure of
3 large, highly leveraged, and substantially interconnected financial companies does not
4 harm the financial system or the United States economy; and

5 (2) Mitigate threats to financial stability by subjecting all large, highly leveraged,
6 and substantially interconnected financial companies and their subsidiaries to
7 comprehensive and robust prudential supervision and regulation by the Board of
8 Governors of the Federal Reserve System.

9 **SEC. 203. DEFINITIONS.**

10 Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), is amended by
11 adding at the end the following new subsections--

12 “(r) UNITED STATES FINANCIAL COMPANY.— The term ‘United States financial company’
13 means a bank holding company or any other company that is—

14 “(1) incorporated or organized under the laws of the United States or any State,
15 territory, or possession of the United States, the District of Columbia, Commonwealth of
16 Puerto Rico, Commonwealth of Northern Mariana Islands, Guam, American Samoa, or
17 the United States Virgin Islands; and

18 “(2) in whole or in part engaged in, directly or indirectly, activities in the United
19 States that are financial in nature.

20 “(s) FOREIGN FINANCIAL COMPANY.— The term ‘Foreign financial company’ means a
21 bank holding company or any other company that is—

22 “(1) incorporated or organized in a country other than the United States; and

23 “(2) in whole or in part engaged in, directly or indirectly, including through a

1 branch in the United States, activities in the United States that are financial in nature.

2 “(t) TIER 1 FINANCIAL HOLDING COMPANY.—The term ‘Tier 1 financial holding company’
3 means a United States financial company or a Foreign financial company that is designated by
4 the Board as a Tier 1 financial holding company in accordance with section 6.

5 “(u) UNITED STATES TIER 1 FINANCIAL HOLDING COMPANY.—The term ‘United States
6 Tier 1 financial holding company’ means a United States financial company that has been
7 designated by the Board as a Tier 1 financial holding company.

8 “(v) FOREIGN TIER 1 FINANCIAL HOLDING COMPANY.—The term ‘Foreign Tier 1
9 financial holding company’ means a Foreign financial company that has been designated by the
10 Board as a Tier 1 financial holding company.

11 **SEC. 204. SUPERVISION AND REGULATION OF TIER 1 FINANCIAL HOLDING**
12 **COMPANIES.**

13 (a) REGULATION OF TIER 1 FINANCIAL HOLDING COMPANIES.—Section 6 of the Bank
14 Holding Company Act of 1956 (12 U.S.C. 1845), is amended to read as follows—

15 **“SEC. 6. SUPERVISION AND REGULATION OF TIER 1 FINANCIAL HOLDING**
16 **COMPANIES.**

17 “(a) AUTHORITY TO DESIGNATE TIER 1 FINANCIAL HOLDING COMPANIES.—

18 “(1) DESIGNATION.—

19 “(A) UNITED STATES FINANCIAL COMPANIES.— The Board, on a non-
20 delegable basis, may designate, by regulation or order, any United States financial
21 company as a United States Tier 1 financial holding company, if it determines that
22 material financial distress at the company could pose a threat to global or United
23 States financial stability or the global or United States economy during times of

1 economic stress based on a consideration of the following criteria:

2 “(i) the amount and nature of the company’s financial assets;

3 “(ii) the amount and types of the company’s liabilities, including
4 the degree of reliance on short-term funding;

5 “(iii) the extent of the company’s off-balance sheet exposures;

6 “(iv) the extent of the company’s transactions and relationships
7 with other major financial companies;

8 “(v) the company’s importance as a source of credit for
9 households, businesses and State and local governments and as a source of
10 liquidity for the financial system;

11 “(vi) the recommendation, if any, of the Financial Services
12 Oversight Council; and

13 “(vii) any other factors that the Board deems appropriate.

14 “(B) FOREIGN FINANCIAL COMPANIES.—The Board, on a non-delegable
15 basis, may designate, by regulation or order, any Foreign financial company as a
16 Foreign Tier 1 financial holding company, if it determines that material financial
17 distress at the company could pose a threat to United States financial stability or
18 the United States economy taking into consideration the principles of national
19 treatment and equality of competitive opportunity and the following criteria:

20 “(i) the amount and nature of the company’s United States
21 financial assets;

22 “(ii) the amount and types of the company’s liabilities used to fund
23 activities and operations in the United States, including the degree of

1 reliance on short-term funding;

2 “(iii) the extent of the company’s United States-related off-balance
3 sheet exposures;

4 “(iv) the extent of the company’s transactions or relationships with
5 other major United States financial companies;

6 “(v) the company’s importance as a source of credit for United
7 States households, businesses and State and local governments and as a
8 source of liquidity for the financial system;

9 “(vi) the recommendation, if any, of the Financial Services
10 Oversight Council; and

11 “(vii) any other factors that the Board deems appropriate, except
12 that the Board may not make any such designation of a Foreign financial
13 company that does not have substantial assets or operations in the United
14 States.

15 “(C) REEVALUATION AND RESCISSION.—The Board shall at least annually
16 reevaluate its designations under subparagraphs (A) and (B). The Board shall, by
17 order, in accordance with subparagraph (D), rescind a designation of a company
18 as a Tier 1 financial holding company if the Board determines that the company
19 no longer meets the standards for designation under subparagraph (A) or (B).

20 “(D) NOTICE AND OPPORTUNITY FOR HEARING AND OF FINAL
21 DETERMINATION.—The Board shall provide a company notice of the Board’s
22 proposed determination to designate or rescind the designation of the company as
23 a Tier 1 financial holding company. Within 30 days from the date of any notice of

1 the proposed designation or rescission of designation, the company may request in
2 writing an opportunity for a written or oral hearing before the Board to contest the
3 proposed designation or rescission of the designation of the company as a Tier 1
4 financial holding company. Upon receipt of a timely request, the Board shall fix a
5 time (not more than 30 days after receipt of the request) and place at which such
6 company may appear, personally or through counsel, to submit written materials
7 (or, at the sole discretion of the Board, oral testimony and oral argument). Within
8 60 days of any such hearing, the Board shall notify the company of its final
9 determination, which shall contain a statement of the basis for the Board's
10 decision. If the company does not make a timely request for a hearing, the Board
11 shall notify the company, in writing, of its final determination under subparagraph
12 (A), (B), or (C), as appropriate not later than ten days after the expiration of the
13 date by which the company may request a hearing.

14 “(E) EMERGENCY EXCEPTION.—The Board may waive or modify the
15 requirements of subparagraph (D) with respect to a company if the Board
16 determines, by an affirmative vote of not less than five members or if there are
17 fewer than five members then serving by a unanimous vote of all available
18 members then serving, that such waiver or modification is necessary or
19 appropriate to prevent or mitigate threats posed by the company to financial
20 stability. The Board shall provide notice of such waiver or modification to the
21 company concerned as soon as practicable, which shall be no later than 24 hours
22 after the waiver or modification. The Board shall also allow such company to
23 request in writing an opportunity for a written or oral hearing before the Board to

1 contest the waiver or modification within 10 days of the receipt of notice of the
2 waiver or modification by the company. Upon receipt of a timely request, the
3 Board shall fix a time (not more than 15 days after receipt of the request) and
4 place at which such company may appear, personally or through counsel, to
5 submit written materials (or, at the sole discretion of the Board, oral testimony
6 and oral argument). Within 30 days of any such hearing, the Board shall notify
7 the company of its final determination, which shall contain a statement of the
8 basis for the Board’s decision.

9 “(F) CONSULTATION.—If the company has one or more functionally
10 regulated subsidiaries, the Board shall consult with the primary Federal regulatory
11 agency for each subsidiary before making any determination under subparagraph
12 (A), (B), or (C).

13 “(2) COLLECTION OF INFORMATION.—

14 “(A) UNITED STATES FINANCIAL COMPANY.—The Board may require any
15 United States financial company that, based on the most recent audited or
16 unaudited financial statements available, has—

17 “(i) \$10 billion or more in assets;

18 “(ii) \$100 billion or more in assets under management; or

19 “(iii) \$2 billion or more in gross annual revenue,

20 to submit such information that the Board may reasonably require for the sole
21 purpose of determining whether to designate the company as a United States Tier
22 1 financial holding company.

23 “(B) FOREIGN FINANCIAL COMPANY.—The Board may require any

1 Foreign financial company that, based on its most recent audited or unaudited
2 financial statements available, has—

3 “(i) \$10 billion or more in assets in the United States;

4 “(ii) \$100 billion or more in assets under management in the
5 United States; or

6 “(iii) \$2 billion or more in gross annual revenue in the United
7 States,

8 to submit such information that the Board may reasonably require for the sole
9 purpose of determining whether to designate the company as a Foreign Tier 1
10 financial holding company.

11 “(3) ADVANCE COORDINATION.—Before collecting any information under
12 paragraph (2) from a company which has a primary Federal regulatory agency, the Board
13 shall coordinate with such agency to determine if the information requested is available
14 from or may be obtained by the Federal regulatory agency in the form, format, or detail
15 required by the Board. Notwithstanding any other provision of law, each such relevant
16 Federal regulatory agency is authorized to provide to the Board requested information
17 about a company for which it is the regulator.

18 “(4) EXAMINATION.—If the Board is unable to determine whether a United States
19 financial company’s financial activities pose a threat to financial stability based on
20 regulatory reports obtained under paragraph (3), discussions with management, and
21 publicly available information, the Board may conduct an examination of the United
22 States financial company for the sole purpose of determining whether to designate the
23 company as a United States Tier 1 financial holding company.

1 “(b) REGISTRATION OF TIER 1 FINANCIAL HOLDING COMPANIES.—Within one hundred and
2 eighty days after receipt of the Board order or regulation designating a company as a Tier 1
3 financial holding company, each Tier 1 financial holding company shall register with the Board
4 on forms prescribed by the Board, which shall include such information as the Board may deem
5 necessary or appropriate to carry out the purposes of this title. The Board may, in its discretion,
6 extend the time within which a Tier 1 financial holding company shall—

7 “(1) register and file the requisite information; or

8 “(2) comply with the standards prescribed by the Board under subsection (c).

9 “(c) STANDARDS FOR TIER 1 FINANCIAL HOLDING COMPANIES.

10 “(1) PRUDENTIAL STANDARDS FOR U.S. TIER 1 FINANCIAL HOLDING COMPANIES.—

11 In order to mitigate the risks to United States financial stability and the United States
12 economy posed by United States Tier 1 financial holding companies, the Board shall
13 prescribe, by regulation or order, prudential standards for United States Tier 1 financial
14 holding companies to maximize financial stability at the least cost to long-term financial
15 and economic growth. The prudential standards shall be more stringent than the
16 standards applicable to bank holding companies to reflect the potential risk posed to
17 financial stability by United States Tier 1 financial holding companies and shall include,
18 but not be limited to—

19 “(A) risk-based capital requirements;

20 “(B) leverage limits;

21 “(C) liquidity requirements; and

22 “(D) overall risk management requirements.

23 “(2) PRUDENTIAL STANDARDS FOR FOREIGN TIER 1 FINANCIAL HOLDING

1 COMPANIES.— In order to mitigate the risks to United States financial stability or the
2 United States economy posed by Foreign Tier 1 financial holding companies, the Board
3 shall prescribe, by regulation or order, prudential standards for Foreign Tier 1 financial
4 holding companies giving due regard to the principle of national treatment and equality
5 of competitive opportunity. The Board shall prescribe such prudential standards with a
6 view to maximize financial stability at the least cost to long-term financial and economic
7 growth. The prudential standards shall, at a minimum, include—

8 “(A) risk-based capital requirements;

9 “(B) leverage limits;

10 “(C) liquidity requirements for operations in the United States; and

11 “(D) overall risk management requirements.

12 “(3) CATEGORIZATION AND TIERING.— In prescribing prudential standards under
13 paragraphs (1) and (2), the Board may differentiate among Tier 1 financial holding
14 companies taking into consideration their risk, complexity, financial activities, the
15 financial activities of their subsidiaries, and any other factors the Board deems
16 appropriate.

17 “(4) CONSULTATION WITH THE FINANCIAL SERVICES OVERSIGHT COUNCIL.—The
18 Board shall consult with the Financial Services Oversight Council regarding proposed
19 regulations or guidance adopting, implementing, or revising material prudential standards
20 for Tier 1 financial holding companies.

21 “(5) WELL CAPITALIZED AND WELL MANAGED.—A Tier 1 financial holding
22 company shall at all times after it files its registration statement be well capitalized and
23 well managed.

1 “(d) REPORTS, EXAMINATIONS OF, AND PUBLIC DISCLOSURES BY TIER 1 FINANCIAL
2 HOLDING COMPANIES AND THEIR SUBSIDIARIES.—

3 “(1) REPORTS.—

4 “(A) IN GENERAL.—The Board may require each Tier 1 financial holding
5 company and any of its subsidiaries to submit reports under oath to keep the
6 Board informed as to —

7 “(i) its financial condition, systems for monitoring and controlling
8 financial, operating and other risks, transactions with any depository
9 institution subsidiaries, and the extent to which the activities and
10 operations of the company and its subsidiaries pose a threat to financial
11 stability; and

12 “(ii) compliance by the company or its subsidiaries with applicable
13 provisions of this chapter or any other Federal law that the Board has
14 specific jurisdiction to enforce against such company or subsidiary.

15 “(B) RAPID AND ORDERLY RESOLUTION; CREDIT EXPOSURES.—The Board
16 shall require each United States Tier 1 financial holding company to report
17 periodically to the Board on:

18 “(i) its plan for rapid and orderly resolution in the event of severe
19 financial distress;

20 “(ii) the nature and extent to which the Tier 1 financial holding
21 company has credit exposure to other Tier 1 financial holding companies;
22 and

23 “(iii) the nature and extent to which other Tier 1 financial holding

1 companies have credit exposure to the Tier 1 financial holding company.

2 “(C) USE OF EXISTING REPORTS.—

3 “(i) IN GENERAL.—For purposes of compliance with this
4 paragraph, the Board shall, to the fullest extent possible, use:

5 “(I) reports that a Tier 1 financial holding company or any
6 functionally regulated subsidiary of such company has been
7 required to provide to other Federal or State regulatory agencies;

8 “(II) information that is otherwise required to be reported
9 publicly; and

10 “(III) externally audited financial statements.

11 “(ii) AVAILABILITY.—A Tier 1 financial holding company or any
12 subsidiary of such company shall provide to the Board, at the request of
13 the Board, a report referred to in subclause (i)(I).

14 “(2) EXAMINATION—

15 “(A) IN GENERAL.—The Board may make examinations of each United
16 States Tier 1 financial holding company, each subsidiary of such company, and
17 any United States subsidiaries, branches, or agencies of a Foreign Tier 1 financial
18 holding company in order—

19 “(i) to inform the Board of the nature of the operations and
20 financial condition of the company and such subsidiaries;

21 “(ii) to inform the Board of—

22 “(I) the financial, operational and other risks within the
23 holding company that may pose a threat to the safety and

1 soundness of any depository institution subsidiary of such holding
2 company or financial stability;

3 “(II) the systems for monitoring and controlling such risks;
4 and

5 “(III) compliance with the provisions of this chapter or any
6 other Federal law that the Board has specific jurisdiction to enforce
7 against such company or subsidiary and those governing
8 transactions and relationships between the company and any other
9 Tier 1 financial holding company.

10 “(B) USE OF EXAMINATION REPORTS.—The Board shall, as far as possible,
11 for the purposes of this paragraph, use reports of examination of United States
12 Tier 1 financial holding companies and their functionally regulated subsidiaries
13 made by other Federal or State regulatory authorities.

14 “(3) FEDERAL DEPOSIT INSURANCE CORPORATION BACK-UP EXAMINATION
15 AUTHORITY FOR TIER 1 FINANCIAL HOLDING COMPANIES.—

16 “(A) FEDERAL DEPOSIT INSURANCE CORPORATION ACCESS TO BOARD
17 EXAMINATION REPORTS.—The Board shall provide to the Federal Deposit
18 Insurance Corporation, at the request of the Federal Deposit Insurance
19 Corporation, any report prepared by the Board in connection with an examination
20 of a Tier 1 financial holding company or one of its subsidiaries under this
21 paragraph.

22 “(B) FEDERAL DEPOSIT INSURANCE CORPORATION BACK-UP EXAMINATION
23 AUTHORITY.—

1 “(i) REFERRAL.—If the Federal Deposit Insurance Corporation has
2 reasonable cause to believe that a condition, practice, or activity of a Tier
3 1 financial holding company or one of its subsidiaries does not comply
4 with this Act or the rules or orders prescribed by the Board under this Act
5 or otherwise poses a material risk to an affiliated depository institution or
6 the Tier 1 financial holding company as a whole, the Federal Deposit
7 Insurance Corporation may recommend in writing to the Board that the
8 Board examine the Tier 1 financial holding company or one of its
9 subsidiaries. The recommendation shall be accompanied by a written
10 explanation of the concerns giving rise to the recommendation.

11 “(ii) BACK-UP AUTHORITY.—If the Board does not, before the end
12 of the 60-day period beginning on the date on which the Board receives a
13 recommendation under clause (i), initiate the examination recommended
14 by the Federal Deposit Insurance Corporation, the Federal Deposit
15 Insurance Corporation may initiate an examination.”

16 “(4) ENHANCED PUBLIC DISCLOSURES.—In order to support market evaluation of a
17 Tier 1 financial holding company’s risk profile, capital adequacy, and risk management
18 capabilities, the Board shall require a Tier 1 financial holding company to make such
19 periodic public disclosures as the Board may, by regulation, prescribe.

20 “(e) ENFORCEMENT.—

21 “(1) IN GENERAL.—Except as provided in paragraph (2), a Tier 1 financial holding
22 company and its subsidiaries (other than a bank) shall be subject to the provisions of
23 subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C.

1 1818) in the same manner and to the same extent as if the Tier 1 financial holding
2 company were a bank holding company and its subsidiaries (other than a bank) were
3 State member insured depository institutions as provided in section 8(b)(3) of the Federal
4 Deposit Insurance Act (12 U.S.C. 1818(b)(3)).

5 “(2) ENFORCEMENT AUTHORITY FOR FUNCTIONALLY REGULATED SUBSIDIARIES.—

6 “(A) REFERRAL.—If the Board believes that a condition, practice, or
7 activity of a functionally regulated subsidiary of a Tier 1 financial holding
8 company does not comply with this title or the regulations or orders prescribed by
9 the Board under this title or otherwise poses a threat to financial stability, the
10 Board may recommend in writing to the primary Federal regulatory agency for
11 the subsidiary that it initiate a supervisory action or enforcement proceeding. The
12 recommendation shall be accompanied by a written explanation of the concerns
13 giving rise to the recommendation.

14 “(B) BACKSTOP AUTHORITY.—If the Federal regulatory agency does not,
15 before the end of the 30-day period beginning on the date on which the Federal
16 regulatory agency receives a recommendation under subparagraph (A), initiate a
17 supervisory action or enforcement proceeding, the Board may initiate a
18 supervisory action or enforcement proceeding.

19 “(f) REGULATIONS; ORDERS; INTERPRETATIONS; GUIDELINES.—

20 “(1) IN GENERAL.—The Board is authorized to issue such regulations, orders,
21 interpretations, or guidelines as to enable it to administer and carry out the purposes of
22 this title and prevent evasions thereof.

23 “(2) DESIGNATION REGULATION.—The Board shall prescribe regulations, in

1 consultation with the Secretary of the Treasury and the Financial Services Oversight
2 Council, containing the criteria for designation of Tier 1 financial holding companies.

3 “(3) EXCEPTIONAL PRUDENTIAL REGULATIONS.—In order to mitigate any risk to
4 financial stability posed by functionally regulated subsidiaries of Tier 1 financial holding
5 companies, the Board may, under subsections (c) through (e), prescribe, by regulation or
6 order, examine, and enforce more stringent prudential standards on functionally regulated
7 subsidiaries if the Board determines it necessary or appropriate to prevent or mitigate
8 such risk.

9 “(4) LIMITATIONS ON EXCEPTIONAL PRUDENTIAL REGULATIONS AND ORDERS.—

10 “(A) REGULATIONS.—In addition to consulting with the Financial Services
11 Oversight Council on material prudential regulations as provided in paragraph
12 (c)(4), the Board, prior to issuing regulations applicable to specific categories or
13 classifications of functionally regulated subsidiaries, shall consult with the
14 appropriate Federal regulatory agencies for such subsidiaries.

15 “(B) ORDERS.—The Board may issue an order regarding a functionally
16 regulated subsidiary of a Tier 1 financial holding company only if the Board
17 has—

18 “(i) reasonable cause to believe that the functionally regulated
19 subsidiary is engaged in conduct, activities, transactions, or arrangements
20 that could pose a threat to global or United States financial stability or the
21 global or United States economy;

22 “(ii) notified, in writing, the relevant Federal regulatory agency of
23 its belief under clause (i) with supporting documentation included and

1 with a recommendation that the relevant Federal regulatory agency take
2 one or more specific supervisory actions against the subsidiary; and

3 “(iii) not been notified, in writing, by the relevant Federal
4 regulatory agency of the commencement of a supervisory action
5 recommended by the Board against the subsidiary within 30 days from the
6 date of the notification under clause (ii).

7 “(g) FIVE-YEAR TRANSITION.

8 “(1) PHASE-IN.—A company that is designated by the Board as a Tier 1
9 financial holding company under subsection (a) shall conform its activities to the
10 requirements of section 4 of the Bank Holding Company Act of 1956 (12 U.S.C.
11 1843) and any applicable regulation or orders prescribed by the Board under this
12 chapter before the end of the five-year period beginning on the date of the Board’s
13 written notification under subsection (a)(1)(D).

14 “(2) NON-FINANCIAL ACTIVITIES.—After the five-year period described in
15 paragraph (1), a Tier 1 financial holding company shall be subject to the same
16 activity restrictions applicable to financial holding companies under section 4 of
17 the Bank Holding Company Act of 1956 (12 U.S.C. 1843).

18 “(3) ESTABLISHMENT OF SINGLE INTERMEDIATE HOLDING COMPANY.—Any
19 United States Tier 1 financial holding company which is engaged predominantly
20 in activities which are not financial in nature shall, in accordance with regulations
21 prescribed by the Board, establish and conduct its activities which are financial in
22 nature through a single intermediate holding company during the phase-in period
23 described in paragraph (1).

1 “(4) DATE OF ESTABLISHMENT.—A Tier 1 financial holding company
2 described in paragraph (3) shall establish an intermediate holding company as
3 required by paragraph (3) no later than 90 days after it has been notified that it has
4 been designated a Tier 1 financial holding company pursuant to subsection (a).

5 “(5) SUPERVISION OF SINGLE INTERMEDIATE HOLDING COMPANY.—The
6 Board is authorized to require registration, prescribe standards, collect
7 information, require public disclosures, examine, and take enforcement action
8 against any such intermediate holding company in the same manner and to the
9 same extent as if the intermediate holding company were a Tier 1 financial
10 holding company under subsections (b) through (e).

11 “(6) RESTRICTIONS ON AFFILIATE TRANSACTIONS.—Transactions between
12 any such intermediate holding company and its affiliates shall be subject to the
13 restrictions and limitations contained in section 23A and 23B of the Federal
14 Reserve Act as if the intermediate holding company were a member bank.

15 “(h) AVOIDING DUPLICATION.—The Board shall take any action the Board deems
16 appropriate to avoid imposing duplicative requirements under this chapter for Tier 1 financial
17 holding companies that are also bank holding companies. Nothing contained in this section shall
18 be construed as altering, modifying, or revising the applicability of any provision of this Act to a
19 bank holding company.

20 “(i) ACQUISITIONS.—

21 “(1) ACQUISITIONS OF BANKS; TREATMENT AS A BANK HOLDING COMPANY.—For
22 purposes of section 3, a Tier 1 financial holding company shall be deemed to be, and
23 shall be treated as, a bank holding company.

1 “(2) ACQUISITION OF NONBANK COMPANIES.

2 “(A) PRIOR NOTICE FOR LARGE ACQUISITIONS.—Notwithstanding section
3 4(k)(6)(B), a Tier 1 financial holding company shall not acquire direct or indirect
4 ownership or control of any voting shares of any company engaged in nonbanking
5 activities with total consolidated assets of \$10 billion or greater without providing
6 written notice to the Board in advance of the transaction.

7 “(B) EXEMPTIONS.—The prior notice requirement in subparagraph (A)
8 shall not apply with regard to the acquisition of shares that would qualify for the
9 exemptions in section 4(c) or section 4(k)(4)(E).

10 “(C) NOTICE PROCEDURES.—The notice procedures set forth in section
11 4(j)(1), without regard to section 4(j)(3), shall apply to an acquisition of any
12 company (other than an insured depository institution) by a Tier 1 financial
13 holding company as described in subparagraph (A), including a company engaged
14 in activities described in section 4(k).

15 “(D) STANDARDS FOR REVIEW.—

16 “(i) CRITERIA.—In addition to the standards provided in section
17 4(j)(2), the Board shall consider the extent to which the proposed
18 acquisition would result in greater or more concentrated risks to global or
19 United States financial stability or the global or United States economy.

20 “(ii) WELL CAPITALIZED AND WELL MANAGED.—The Board shall
21 deny any proposed acquisition for which notice has been submitted
22 pursuant to subparagraph (A) by a Tier 1 financial holding company
23 unless before and immediately after the proposed acquisition the Tier 1

1 financial holding company is and will be well capitalized and well
2 managed.

3 “(E) APPLICATION OF BANK HOLDING COMPANY REQUIREMENTS.—

4 Nothing in this subsection is intended to nor shall it be deemed to annul, alter, or
5 otherwise modify any requirement to which a Tier 1 financial holding company is
6 otherwise subject as a result of its status as a bank holding company or financial
7 holding company other than section 4(k)(6)(B), which shall be inapplicable to an
8 acquisition of voting shares of any company engaged in nonbanking activities by
9 a Tier 1 financial holding company that is subject to the filing requirement in
10 subparagraph (A).

11 “(j) SAVINGS CLAUSE FOR FOREIGN TIER 1 FINANCIAL HOLDING COMPANIES.— A Foreign
12 Tier 1 financial holding company shall be subject to the provisions of section 2(h)(2) (12 U.S.C.
13 1841(h)(2)) in the same manner and to the same extent as if the Foreign Tier 1 financial holding
14 company were a bank holding company.

15 “(k) PROHIBITION AGAINST MANAGEMENT INTERLOCKS BETWEEN TIER 1 FINANCIAL
16 HOLDING COMPANIES.—A Tier 1 financial holding company shall be treated as a bank holding
17 company for purposes of the Depository Institutions Management Interlocks Act (12 U.S.C.
18 3201 et seq.), except that the Board shall not exercise the authority provided in section 7 of that
19 Act (12 U.S.C. 3207) to permit service by a management official of a United States Tier 1
20 financial holding company as a management official of any other nonaffiliated United States Tier
21 1 financial holding company (other than to provide a temporary exemption for interlocks
22 resulting from a merger, acquisition, or consolidation).

23 (b) PROMPT CORRECTIVE ACTION FOR TIER 1 FINANCIAL HOLDING COMPANIES.—The Bank

1 Holding Company Act of 1956 is amended by adding after section 6, as amended by this Act, the
2 following new section:

3 **“SECTION 6A. PROMPT CORRECTIVE ACTION FOR TIER 1 FINANCIAL**
4 **HOLDING COMPANIES.**

5 “(a) PROMPT CORRECTIVE ACTION REQUIRED.—The Board shall take prompt corrective
6 action to resolve the problems of United States Tier 1 financial holding companies.

7 “(b) DEFINITIONS.—For purposes of this section—

8 “(1) CAPITAL CATEGORIES.—

9 “(A) WELL CAPITALIZED.—A Tier 1 financial holding company is ‘well
10 capitalized’ if it exceeds the required minimum level for each relevant capital
11 measure.

12 “(B) UNDERCAPITALIZED.—A Tier 1 financial holding company is
13 ‘undercapitalized’ if it fails to meet the required minimum level for any relevant
14 capital measure.

15 “(C) SIGNIFICANTLY UNDERCAPITALIZED.—A Tier 1 financial holding
16 company is ‘significantly undercapitalized’ if it is significantly below the required
17 minimum level for any relevant capital measure.

18 “(D) CRITICALLY UNDERCAPITALIZED.—A Tier 1 financial holding
19 company is ‘critically undercapitalized’ if it fails to meet any level specified in
20 subsection (c)(3)(A).

21 “(2) OTHER DEFINITIONS.—

22 “(A) AVERAGE.—The ‘average’ of an accounting item (such as total assets
23 or tangible equity) during a given period means the sum of that item at the close

1 of business on each business day during that period divided by the total number of
2 business days in that period.

3 “(B) CAPITAL DISTRIBUTION.— The term ‘capital distribution’ means—

4 “(i) a distribution of cash or other property by a Tier 1 financial
5 holding company to its owners made on account of that ownership, but not
6 including any dividend consisting only of shares of the Tier 1 financial
7 holding company or rights to purchase such shares;

8 “(ii) a payment by a Tier 1 financial holding company to
9 repurchase, redeem, retire, or otherwise acquire any of its shares or other
10 ownership interests, including any extension of credit to finance any
11 person’s acquisition of those shares or interests; or

12 “(iii) a transaction that the Board determines, by order or
13 regulation, to be in substance a distribution of capital to the owners of the
14 Tier 1 financial holding company.

15 “(C) CAPITAL RESTORATION PLAN.—The term ‘capital restoration plan’
16 means a plan submitted under subsection (e)(2).

17 “(D) COMPENSATION.—The term ‘compensation’ includes any payment of
18 money or provision of any other thing of value in consideration of employment.

19 “(E) RELEVANT CAPITAL MEASURE.—The term ‘relevant capital measure’
20 means the measures described in subsection (c).

21 “(F) REQUIRED MINIMUM LEVEL.—The term ‘required minimum level’
22 means, with respect to each relevant capital measure, the minimum acceptable
23 capital level specified by the Board by regulation.

1 “(G) SENIOR EXECUTIVE OFFICER. The term ‘senior executive officer’ has
2 the same meaning as the term ‘executive officer’ in section 22(h) of the Federal
3 Reserve Act (12 U.S.C. § 375b).

4 “(c) CAPITAL STANDARDS.—

5 “(1) RELEVANT CAPITAL MEASURES.—

6 “(A) IN GENERAL.—Except as provided in subparagraph (B)(ii), the capital
7 standards prescribed by the Board under subsection 6(c) of the Bank Holding
8 Company Act of 1956 (12 U.S.C. § 1845(c)) shall include—

9 “(i) a leverage limit; and

10 “(ii) a risk-based capital requirement.

11 “(B) OTHER CAPITAL MEASURES.—The Board may by regulation—

12 “(i) establish any additional relevant capital measures to carry out
13 this section; or

14 “(ii) rescind any relevant capital measure required under
15 subparagraph (A) upon determining that the measure is no longer an
16 appropriate means for carrying out this section.

17 “(2) CAPITAL CATEGORIES GENERALLY.—The Board shall, by regulation, specify
18 for each relevant capital measure the levels at which a Tier 1 financial holding company
19 is well capitalized, undercapitalized, and significantly undercapitalized.

20 “(3) CRITICAL CAPITAL.—

21 “(A) BOARD TO SPECIFY LEVEL.—

22 “(i) LEVERAGE LIMIT.—The Board shall, by regulation, specify the
23 ratio of tangible equity to total assets at which a Tier 1 financial holding

1 company is critically undercapitalized.

2 “(ii) OTHER RELEVANT CAPITAL MEASURES.—The Board may, by
3 regulation, specify for 1 or more other relevant capital measures, the level
4 at which a Tier 1 financial holding company is critically undercapitalized.

5 “(B) LEVERAGE LIMIT RANGE.— The level specified under subparagraph
6 (A)(i) shall require tangible equity in an amount—

7 “(i) not less than 2 percent of total assets; and

8 “(ii) except as provided in clause (i), not more than 65 percent of
9 the required minimum level of capital under the leverage limit.

10 “(d) CAPITAL DISTRIBUTIONS RESTRICTED.—

11 “(1) IN GENERAL.—A Tier 1 financial holding company shall make no capital
12 distribution if, after making the distribution, the Tier 1 financial holding company would
13 be undercapitalized.

14 “(2) EXCEPTION.— Notwithstanding paragraph (1), the Board may permit a Tier 1
15 financial holding company to repurchase, redeem, retire, or otherwise acquire shares or
16 ownership interests if the repurchase, redemption, retirement, or other acquisition—

17 “(A) is made in connection with the issuance of additional shares or
18 obligations of the Tier 1 financial holding company in at least an equivalent
19 amount; and

20 “(B) will reduce the Tier 1 financial holding company's financial
21 obligations or otherwise improve the Tier 1 financial holding company's financial
22 condition.

23 “(e) PROVISIONS APPLICABLE TO UNDERCAPITALIZED TIER 1 FINANCIAL HOLDING

1 COMPANIES.—

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“(1) MONITORING REQUIRED.—The Board shall—

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“(A) closely monitor the condition of any undercapitalized Tier 1 financial holding company;

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“(B) closely monitor compliance by any undercapitalized Tier 1 financial holding company with capital restoration plans, restrictions, and requirements imposed under this section; and

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“(C) periodically review the plan, restrictions, and requirements applicable to any undercapitalized Tier 1 financial holding company to determine whether the plan, restrictions, and requirements are effective.

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“(2) CAPITAL RESTORATION PLAN REQUIRED.—

13

“(A) IN GENERAL.—Any undercapitalized Tier 1 financial holding company shall submit an acceptable capital restoration plan to the Board within the time allowed by the Board under subparagraph (D).

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“(B) CONTENTS OF PLAN.—The capital restoration plan shall—

17

“(i) specify—

18

“(I) the steps the Tier 1 financial holding company will take to become well capitalized;

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“(II) the levels of capital to be attained by the Tier 1 financial holding company during each year in which the plan will be in effect;

21

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23

“(III) how the Tier 1 financial holding company will comply with the restrictions or requirements then in effect under

24

1 this section; and

2 “(IV) the types and levels of activities in which the Tier 1
3 financial holding company will engage; and

4 “(ii) contain such other information that the Board may require.

5 “(C) CRITERIA FOR ACCEPTING PLAN.—The Board shall not accept a
6 capital restoration plan unless it determines that the plan—

7 “(i) complies with subparagraph (B);

8 “(ii) is based on realistic assumptions, and is likely to succeed in
9 restoring the Tier 1 financial holding company's capital; and

10 “(iii) would not appreciably increase the risk (including credit risk,
11 interest-rate risk, and other types of risk) to which the Tier 1 financial
12 holding company is exposed.

13 “(D) DEADLINES FOR SUBMISSION AND REVIEW OF PLANS.—The Board
14 shall, by regulation, establish deadlines that—

15 “(i) provide Tier 1 financial holding companies with reasonable
16 time to submit capital restoration plans, and generally require a Tier 1
17 financial holding company to submit a plan not later than 45 days after it
18 becomes undercapitalized; and

19 “(ii) require the Board to act on capital restoration plans
20 expeditiously, and generally not later than 60 days after the plan is
21 submitted.

22 “(3) ASSET GROWTH RESTRICTED.—An undercapitalized Tier 1 financial holding
23 company shall not permit its average total assets during any calendar quarter to exceed its

1 average total assets during the preceding calendar quarter unless—

2 “(A) the Board has accepted the Tier 1 financial holding company's capital
3 restoration plan;

4 “(B) any increase in total assets is consistent with the plan; and

5 “(C) the Tier 1 financial holding company's ratio of tangible equity to total
6 assets increases during the calendar quarter at a rate sufficient to enable it to
7 become well capitalized within a reasonable time.

8 “(4) PRIOR APPROVAL REQUIRED FOR ACQUISITIONS AND NEW LINES OF
9 BUSINESS.—An undercapitalized Tier 1 financial holding company shall not, directly or
10 indirectly, acquire any interest in any company or insured depository institution, or
11 engage in any new line of business, unless—

12 “(A) the Board has accepted the Tier 1 financial holding company's capital
13 restoration plan, the Tier 1 financial holding company is implementing the plan,
14 and the Board determines that the proposed action is consistent with and will
15 further the achievement of the plan;

16 “(B) the Board determines that the specific proposed action is appropriate;
17 or

18 “(C) the Board has exempted the Tier 1 financial holding company from
19 the requirements of this paragraph with respect to the class of acquisitions that
20 includes the proposed action.

21 “(5) DISCRETIONARY SAFEGUARDS.— The Board may, with respect to any
22 undercapitalized Tier 1 financial holding company, take actions described in any
23 subparagraph of subsection (f)(2) if the Board determines that those actions are

1 necessary.

2 “(f) PROVISIONS APPLICABLE TO SIGNIFICANTLY UNDERCAPITALIZED TIER 1 FINANCIAL
3 HOLDING COMPANIES AND UNDERCAPITALIZED TIER 1 FINANCIAL HOLDING COMPANIES THAT
4 FAIL TO SUBMIT AND IMPLEMENT CAPITAL RESTORATION PLANS.—

5 “(1) IN GENERAL.—This subsection shall apply with respect to any Tier 1 financial
6 holding company that—

7 “(A) is significantly undercapitalized; or

8 “(B) is undercapitalized and—

9 “(i) fails to submit an acceptable capital restoration plan within the
10 time allowed by the Board under subsection (e)(2)(D); or

11 “(ii) fails in any material respect to implement a capital restoration
12 plan accepted by the Board.

13 “(2) SPECIFIC ACTIONS AUTHORIZED.—The Board shall carry out this subsection
14 by taking 1 or more of the following actions—

15 “(A) REQUIRING RECAPITALIZATION.—Doing one or more of the
16 following—

17 “(i) Requiring the Tier 1 financial holding company to sell enough
18 shares or obligations of the Tier 1 financial holding company so that the
19 Tier 1 financial holding company will be well capitalized after the sale.

20 “(ii) Further requiring that instruments sold under clause (i) be
21 voting shares.

22 “(iii) Requiring the Tier 1 financial holding company to be
23 acquired by or combine with another company.

1 “(B) RESTRICTING TRANSACTIONS WITH AFFILIATES.—

2 “(i) Requiring the Tier 1 financial holding company to comply
3 with section 23A of the Federal Reserve Act (12 U.S.C. 371c), as if it
4 were a member bank.

5 “(ii) Further restricting the Tier 1 financial holding company's
6 transactions with affiliates and insiders.

7 “(C) RESTRICTING ASSET GROWTH.—Restricting the Tier 1 financial
8 holding company's asset growth more stringently than subsection (e)(3), or
9 requiring the Tier 1 financial holding company to reduce its total assets.

10 “(D) RESTRICTING ACTIVITIES.—Requiring the Tier 1 financial holding
11 company or any of its subsidiaries to alter, reduce, or terminate any activity that
12 the Board determines poses excessive risk to the Tier 1 financial holding
13 company.

14 “(E) IMPROVING MANAGEMENT.—Doing one or more of the following—

15 “(i) New election of directors.—Ordering a new election for the
16 Tier 1 financial holding company's board of directors.

17 “(ii) Dismissing directors or senior executive officers.—Requiring
18 the Tier 1 financial holding company to dismiss from office any director
19 or senior executive officer who had held office for more than 180 days
20 immediately before the Tier 1 financial holding company became
21 undercapitalized. Dismissal under this clause shall not be construed to be a
22 removal under section 8 of the Federal Deposit Insurance Act (12 U.S.C.
23 1818).

1 “(iii) Employing qualified senior executive officers.— Requiring
2 the Tier 1 financial holding company to employ qualified senior executive
3 officers (who, if the Board so specifies, shall be subject to approval by the
4 Board).

5 “(F) REQUIRING DIVESTITURE.—Requiring the Tier 1 financial holding
6 company to divest itself of or liquidate any subsidiary if the Board determines that
7 the subsidiary is in danger of becoming insolvent, poses a significant risk to the
8 Tier 1 financial holding company, or is likely to cause a significant dissipation of
9 the Tier 1 financial holding company's assets or earnings.

10 “(G) REQUIRING OTHER ACTION.—Requiring the Tier 1 financial holding
11 company to take any other action that the Board determines will be better carry
12 out the purpose of this section than any of the actions described in this paragraph.

13 “(3) PRESUMPTION IN FAVOR OF CERTAIN ACTIONS.—In complying with paragraph
14 (2), the Board shall take the following actions, unless the Board determines that the
15 actions would not be appropriate—

16 “(A) The action described in clause (i) or (iii) of paragraph (2)(A) (relating
17 to requiring the sale of shares or obligations, or requiring the Tier 1 financial
18 holding company to be acquired by or combine with another company).

19 “(B) The action described in paragraph (2)(B)(i) (relating to restricting
20 transactions with affiliates).

21 “(4) SENIOR EXECUTIVE OFFICERS’ COMPENSATION RESTRICTED.—

22 “(A) IN GENERAL.—The Tier 1 financial holding company shall not do any
23 of the following without the prior written approval of the Board—

1 “(i) Pay any bonus to any senior executive officer.

2 “(ii) Provide compensation to any senior executive officer at a rate
3 exceeding that officer's average rate of compensation (excluding bonuses,
4 stock options, and profit-sharing) during the 12 calendar months preceding
5 the calendar month in which the Tier 1 financial holding company became
6 undercapitalized.

7 “(B) FAILING TO SUBMIT PLAN.—The Board shall not grant any approval
8 under subparagraph (A) with respect to a Tier 1 financial holding company that
9 has failed to submit an acceptable capital restoration plan.

10 “(5) CONSULTATION WITH OTHER REGULATORS.—Before the Board makes a
11 determination under paragraph (2)(F) with respect to a subsidiary that is a broker, dealer,
12 government securities broker, government securities dealer, investment company, or
13 investment adviser, the Board shall consult with the Securities and Exchange
14 Commission and, in the case of any other subsidiary which is subject to any financial
15 responsibility or capital requirement, any other appropriate regulator of such subsidiary
16 with respect to the proposed determination of the Board and actions pursuant to such
17 determination.

18 “(g) MORE STRINGENT TREATMENT BASED ON OTHER SUPERVISORY CRITERIA.—

19 “(1) IN GENERAL.—If the Board determines (after notice and an opportunity for
20 hearing) that a Tier 1 financial holding company is in an unsafe or unsound condition or,
21 pursuant to section 8(b)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(8)),
22 deems the Tier 1 financial holding company to be engaging in an unsafe or unsound
23 practice, the Board may—

1 “(A) if the Tier 1 financial holding company is well capitalized, require
2 the Tier 1 financial holding company to comply with one or more provisions of
3 subsections (d) and (e), as if the institution were undercapitalized; or

4 “(B) if the Tier 1 financial holding company is undercapitalized, take any
5 one or more actions authorized under subsection (f)(2) as if the Tier 1 financial
6 holding company were significantly undercapitalized.

7 “(2) CONTENTS OF PLAN.—A plan that may be required pursuant to paragraph
8 (1)(A) shall specify the steps that the Tier 1 financial holding company will take to
9 correct the unsafe or unsound condition or practice.

10 “(h) MANDATORY BANKRUPTCY PETITION FOR CRITICALLY UNDERCAPITALIZED TIER 1
11 FINANCIAL HOLDING COMPANIES.—The Board shall, not later than 90 days after a Tier 1 financial
12 holding company becomes critically undercapitalized—

13 “(1) require the Tier 1 financial holding company to file a petition for bankruptcy
14 under section 301 of title 11, United States Code; or

15 “(2) file a petition for bankruptcy against the Tier 1 financial holding company
16 under section 303 of title 11, United States Code.

17 “(i) IMPLEMENTATION.—The Board shall prescribe such regulations, issue such orders,
18 and take such other actions the Board determines to be necessary to carry out this section.

19 “(j) OTHER AUTHORITY NOT AFFECTED.—This section does not limit any authority of the
20 Board, any other Federal regulatory agency, or a State to take action in addition to (but not in
21 derogation of) that required under this section.

22 “(k) CONSULTATION.—The Board and the Secretary of the Treasury shall consult with
23 their foreign counterparties and through appropriate multilateral organizations to reach

1 agreement to extend comprehensive and robust prudential supervision and regulation to all
2 highly leveraged and substantially interconnected financial companies. In its regulation and
3 supervision of Foreign Tier 1 financial holding companies, the Board shall take into account the
4 extent to which such companies are subject to standards comparable to those applied to United
5 States Tier 1 financial companies.”.

6 “(I) ADMINISTRATIVE REVIEW OF DISMISSAL ORDERS.—

7 “(1) TIMELY PETITION REQUIRED.—A director or senior executive officer
8 dismissed pursuant to an order under subsection (f)(2)(E)(ii) may obtain review of that
9 order by filing a written petition for reinstatement with the Board not later than 10 days
10 after receiving notice of the dismissal.

11 “(2) PROCEDURE.—

12 “(A) HEARING REQUIRED.—The Board shall give the petitioner an
13 opportunity to—

14 “(i) submit written materials in support of the petition; and

15 “(ii) appear, personally or through counsel, before 1 or more
16 members of the Board or designated employees of the Board.

17 “(B) DEADLINE FOR HEARING.—The Board shall—

18 “(i) schedule the hearing referred to in subparagraph (A)(ii)
19 promptly after the petition is filed; and

20 “(ii) hold the hearing not later than 30 days after the petition is
21 filed, unless the petitioner requests that the hearing be held at a later time.

22 “(C) DEADLINE FOR DECISION.—Not later than 60 days after the date of the
23 hearing, the Board shall—

1 “(i) by order, grant or deny the petition;

2 “(ii) if the order is adverse to the petitioner, set forth the basis for
3 the order; and

4 “(iii) notify the petitioner of the order.

5 “(3) STANDARD FOR REVIEW OF DISMISSAL ORDERS.—The petitioner shall bear the
6 burden of proving that the petitioner's continued employment would materially
7 strengthen the Tier 1 financial holding company's ability—

8 “(A) to become well capitalized, to the extent that the order is based on the
9 Tier 1 financial holding company's capital level or failure to submit or implement
10 a capital restoration plan; and

11 “(B) to correct the unsafe or unsound condition or unsafe or unsound
12 practice, to the extent that the order is based on subsection (g)(1).”.

13 “(m) ENFORCEMENT AUTHORITY FOR FOREIGN TIER 1 FINANCIAL HOLDING COMPANY.—

14 “(1) TERMINATION AUTHORITY.—If the Board believes that a condition, practice,
15 or activity of a Foreign Tier 1 financial holding company does not comply with this title
16 or the rules or orders prescribed by the Board under this title or otherwise poses a threat
17 to financial stability, the Board may, after notice and opportunity for a hearing, order a
18 Foreign Tier 1 financial holding company that operates a branch, agency or subsidiary in
19 the United States to terminate the activities of such branch, agency, or subsidiary.

20 “(2) DISCRETION TO DENY HEARING.—The Board may issue an order under
21 paragraph (1) without providing for an opportunity for a hearing if the Board determines
22 that expeditious action is necessary in order to protect the public interest.”.

23 (c) AUTHORITY TO FILE INVOLUNTARY PETITION FOR BANKRUPTCY.—Section 303 of title

1 11, United States Code, is amended—

2 (1) in subsection (h)—

3 (A) by striking ‘or’ at the end of paragraph (1);

4 (B) by striking the period at the end of paragraph (2) and inserting “; or”;

5 and

6 (C) by adding the following new paragraph—

7 “(m) Notwithstanding subsections (a) and (b) of this section, an involuntary case may be
8 commenced by the Board of Governors of the Federal Reserve System against a Tier 1 financial
9 holding company as defined in section 2(t) of the Bank Holding Company Act of 1956. Such
10 involuntary case may be commenced on the ground that the Tier 1 financial holding company is
11 critically undercapitalized as defined in section 6A(b) of the Bank Holding Company Act of
12 1956.”.

13 (d) CONCENTRATION LIMITS FOR TIER 1 FINANCIAL HOLDING COMPANIES.— The Bank
14 Holding Company Act of 1956 is amended by adding after section 6A, as amended by this Act,
15 the following new section:

16 **“SECTION 6B. CONCENTRATION LIMITS FOR TIER 1 FINANCIAL HOLDING**
17 **COMPANIES.**

18 “(a) STANDARDS.—In order to limit the risks that the failure of any company could pose
19 to a Tier 1 holding company and to the stability of the United States financial system, the Board,
20 by regulation, shall prescribe standards that limit the risks posed by a Tier 1 financial holding
21 company’s exposure to any other company.

22 “(b) LIMITATION ON CREDIT EXPOSURE.—The regulations prescribed by the Board shall
23 prohibit each Tier 1 financial holding company from having credit exposure to any unaffiliated

1 company that exceeds 25% of the Tier 1 financial holding company’s capital stock and surplus
2 or such lower amount as the Board may determine by regulation to be necessary to mitigate risks
3 to financial stability.

4 “(c) CREDIT EXPOSURE.—For purposes of subsection (b), a Tier 1 financial holding
5 company’s “credit exposure” to a company means—

6 “(1) All extensions of credit to the company, including loans, deposits, and lines
7 of credit;

8 “(2) All repurchase agreements and reverse repurchase agreement with the
9 company;

10 “(3) All securities borrowing and lending transactions with the company to the
11 extent that such transactions create credit exposure of the Tier 1 financial holding
12 company to the company;

13 “(4) All guarantees, acceptances, or letters of credit (including endorsement or
14 standby letters of credit) issued on behalf of the company;

15 “(5) All purchases of or investment in securities issued by the company;

16 “(6) Counterparty credit exposure to the company in connection with a derivative
17 transaction between the Tier 1 financial holding company and the company; and

18 “(7) Any other similar transactions that the Board by regulation determines to be a
19 credit exposure for purposes of this section.

20 “(d) CONTRIBUTION RULE.—For purposes of this section, any transaction by a Tier 1
21 financial holding company with any person is a transaction with an company to the extent that
22 the proceeds of the transaction are used for the benefit of, or transferred to that company.

1 “(e) RULEMAKING.— The Board may issue such regulations and orders, including
2 definitions consistent with this section, as may be necessary to administer and carry out the
3 purpose of this section.

4 “(f) EXEMPTIONS.—The Board may by regulation or order, exempt transactions, in whole
5 or in part, from the definition of credit exposure if it finds that the exemption is in the public
6 interest and consistent with the purpose of this section.

7 “(g) TRANSITION PERIOD.—This section and any regulations and order of the Board under
8 the authority of this section shall not be effective until three years from the effective date of this
9 section. The Board can extend it for up to an additional two years to promote financial stability.