TITLE II—CONSOLIDATED SUPERVISION AND
REGULATION OF LARGE, INTERCONNECTED
FINANCIAL FIRMS

SEC. 201. SHORT TITLE.

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

SEC. 202. FINDINGS AND PURPOSES.

(a) The Congress finds that—

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

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

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

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

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

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

SEC. 203. DEFINITIONS.

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

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

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

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

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

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

“(2) in whole or in part engaged in, directly or indirectly, including through a
branch in the United States, activities in the United States that are financial in nature.

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

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

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

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

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

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

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

“(1) DESIGNATION.—

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

“(i) the amount and nature of the company’s financial assets;
“(ii) the amount and types of the company’s liabilities, including the degree of reliance on short-term funding;
“(iii) the extent of the company’s off-balance sheet exposures;
“(iv) the extent of the company’s transactions and relationships with other major financial companies;
“(v) the company’s importance as a source of credit for households, businesses and State and local governments and as a source of liquidity for the financial system;
“(vi) the recommendation, if any, of the Financial Services Oversight Council; and
“(vii) any other factors that the Board deems appropriate.

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

“(i) the amount and nature of the company’s United States financial assets;
“(ii) the amount and types of the company’s liabilities used to fund activities and operations in the United States, including the degree of
reliance on short-term funding;

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

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

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

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

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

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

“(D) NOTICE AND OPPORTUNITY FOR HEARING AND OF FINAL DETERMINATION.—The Board shall provide a company notice of the Board’s proposed determination to designate or rescind the designation of the company as a Tier 1 financial holding company. Within 30 days from the date of any notice of
the proposed designation or rescission of designation, the company may request in writing an opportunity for a written or oral hearing before the Board to contest the proposed designation or rescission of the designation of the company as a Tier 1 financial holding company. Upon receipt of a timely request, the Board shall fix a time (not more than 30 days after receipt of the request) and place at which such company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Board, oral testimony and oral argument). Within 60 days of any such hearing, the Board shall notify the company of its final determination, which shall contain a statement of the basis for the Board’s decision. If the company does not make a timely request for a hearing, the Board shall notify the company, in writing, of its final determination under subparagraph (A), (B), or (C), as appropriate not later than ten days after the expiration of the date by which the company may request a hearing.

“(E) EMERGENCY EXCEPTION.—The Board may waive or modify the requirements of subparagraph (D) with respect to a company if the Board determines, by an affirmative vote of not less than five members or if there are fewer than five members then serving by a unanimous vote of all available members then serving, that such waiver or modification is necessary or appropriate to prevent or mitigate threats posed by the company to financial stability. The Board shall provide notice of such waiver or modification to the company concerned as soon as practicable, which shall be no later than 24 hours after the waiver or modification. The Board shall also allow such company to request in writing an opportunity for a written or oral hearing before the Board to
contest the waiver or modification within 10 days of the receipt of notice of the waiver or modification by the company. Upon receipt of a timely request, the Board shall fix a time (not more than 15 days after receipt of the request) and place at which such company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Board, oral testimony and oral argument). Within 30 days of any such hearing, the Board shall notify the company of its final determination, which shall contain a statement of the basis for the Board’s decision.

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

“(2) COLLECTION OF INFORMATION.—

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

“(i) $10 billion or more in assets;

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

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

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

“(B) FOREIGN FINANCIAL COMPANY.—The Board may require any
Foreign financial company that, based on its most recent audited or unaudited financial statements available, has—

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

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

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

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

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

“(4) EXAMINATION.—If the Board is unable to determine whether a United States financial company’s financial activities pose a threat to financial stability based on regulatory reports obtained under paragraph (3), discussions with management, and publicly available information, the Board may conduct an examination of the United States financial company for the sole purpose of determining whether to designate the company as a United States Tier 1 financial holding company.
“(b) REGISTRATION OF TIER 1 FINANCIAL HOLDING COMPANIES.—Within one hundred and eighty days after receipt of the Board order or regulation designating a company as a Tier 1 financial holding company, each Tier 1 financial holding company shall register with the Board on forms prescribed by the Board, which shall include such information as the Board may deem necessary or appropriate to carry out the purposes of this title. The Board may, in its discretion, extend the time within which a Tier 1 financial holding company shall—

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

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

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

“(1) PRUDENTIAL STANDARDS FOR U.S. TIER 1 FINANCIAL HOLDING COMPANIES.—In order to mitigate the risks to United States financial stability and the United States economy posed by United States Tier 1 financial holding companies, the Board shall prescribe, by regulation or order, prudential standards for United States Tier 1 financial holding companies to maximize financial stability at the least cost to long-term financial and economic growth. The prudential standards shall be more stringent than the standards applicable to bank holding companies to reflect the potential risk posed to financial stability by United States Tier 1 financial holding companies and shall include, but not be limited to—

“(A) risk-based capital requirements;

“(B) leverage limits;

“(C) liquidity requirements; and

“(D) overall risk management requirements.

“(2) PRUDENTIAL STANDARDS FOR FOREIGN TIER 1 FINANCIAL HOLDING
COMPANIES.— In order to mitigate the risks to United States financial stability or the United States economy posed by Foreign Tier 1 financial holding companies, the Board shall prescribe, by regulation or order, prudential standards for Foreign Tier 1 financial holding companies giving due regard to the principle of national treatment and equality of competitive opportunity. The Board shall prescribe such prudential standards with a view to maximize financial stability at the least cost to long-term financial and economic growth. The prudential standards shall, at a minimum, include—

“(A) risk-based capital requirements;

“(B) leverage limits;

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

“(D) overall risk management requirements.

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

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

“(5) WELL CAPITALIZED AND WELL MANAGED.—A Tier 1 financial holding company shall at all times after it files its registration statement be well capitalized and well managed.
“(d) REPORTS, EXAMINATIONS OF, AND PUBLIC DISCLOSURES BY TIER 1 FINANCIAL HOLDING COMPANIES AND THEIR SUBSIDIARIES.—

“(1) REPORTS.—

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

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

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

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

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

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

“(iii) the nature and extent to which other Tier 1 financial holding
companies have credit exposure to the Tier 1 financial holding company.

“(C) USE OF EXISTING REPORTS.—

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

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

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

“(III) externally audited financial statements.

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

“(2) EXAMINATION—

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

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

“(ii) to inform the Board of—

“(I) the financial, operational and other risks within the holding company that may pose a threat to the safety and
soundness of any depository institution subsidiary of such holding company or financial stability;

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

and

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

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

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

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

“(B) FEDERAL DEPOSIT INSURANCE CORPORATION BACK-UP EXAMINATION AUTHORITY.—
“(i) REFERRAL.—If the Federal Deposit Insurance Corporation has reasonable cause to believe that a condition, practice, or activity of a Tier 1 financial holding company or one of its subsidiaries does not comply with this Act or the rules or orders prescribed by the Board under this Act or otherwise poses a material risk to an affiliated depository institution or the Tier 1 financial holding company as a whole, the Federal Deposit Insurance Corporation may recommend in writing to the Board that the Board examine the Tier 1 financial holding company or one of its subsidiaries. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

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

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

“(c) ENFORCEMENT.—

“(1) IN GENERAL.—Except as provided in paragraph (2), a Tier 1 financial holding company and its subsidiaries (other than a bank) shall be subject to the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C.
1818) in the same manner and to the same extent as if the Tier 1 financial holding company were a bank holding company and its subsidiaries (other than a bank) were State member insured depository institutions as provided in section 8(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(3)).

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

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

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

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

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

“(2) DESIGNATION REGULATION.—The Board shall prescribe regulations, in
consultation with the Secretary of the Treasury and the Financial Services Oversight Council, containing the criteria for designation of Tier 1 financial holding companies.

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

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

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

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

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

“(ii) notified, in writing, the relevant Federal regulatory agency of its belief under clause (i) with supporting documentation included and
with a recommendation that the relevant Federal regulatory agency take
one or more specific supervisory actions against the subsidiary; and
“(iii) not been notified, in writing, by the relevant Federal
regulatory agency of the commencement of a supervisory action
recommended by the Board against the subsidiary within 30 days from the
date of the notification under clause (ii).
“(g) FIVE-YEAR TRANSITION.
“(1) PHASE-IN.—A company that is designated by the Board as a Tier 1
financial holding company under subsection (a) shall conform its activities to the
requirements of section 4 of the Bank Holding Company Act of 1956 (12 U.S.C.
1843) and any applicable regulation or orders prescribed by the Board under this
chapter before the end of the five-year period beginning on the date of the Board’s
written notification under subsection (a)(1)(D).
“(2) NON-FINANCIAL ACTIVITIES.—After the five-year period described in
paragraph (1), a Tier 1 financial holding company shall be subject to the same
activity restrictions applicable to financial holding companies under section 4 of
“(3) ESTABLISHMENT OF SINGLE INTERMEDIATE HOLDING COMPANY.—Any
United States Tier 1 financial holding company which is engaged predominantly
in activities which are not financial in nature shall, in accordance with regulations
prescribed by the Board, establish and conduct its activities which are financial in
nature through a single intermediate holding company during the phase-in period
described in paragraph (1).
“(4) DATE OF ESTABLISHMENT.—A Tier 1 financial holding company described in paragraph (3) shall establish an intermediate holding company as required by paragraph (3) no later than 90 days after it has been notified that it has been designated a Tier 1 financial holding company pursuant to subsection (a).

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

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

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

“(i) ACQUISITIONS.—

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

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

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

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

“(D) STANDARDS FOR REVIEW.—

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

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

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

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

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

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

(b) PROMPT CORRECTIVE ACTION FOR TIER 1 FINANCIAL HOLDING COMPANIES.—The Bank
Holding Company Act of 1956 is amended by adding after section 6, as amended by this Act, the following new section:

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

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

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

“(1) CAPITAL CATEGORIES.—

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

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

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

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

“(2) OTHER DEFINITIONS.—

“(A) AVERAGE.—The ‘average’ of an accounting item (such as total assets or tangible equity) during a given period means the sum of that item at the close
of business on each business day during that period divided by the total number of business days in that period.

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

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

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

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

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

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

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

“(F) REQUIRED MINIMUM LEVEL.—The term ‘required minimum level’ means, with respect to each relevant capital measure, the minimum acceptable capital level specified by the Board by regulation.
“(G) SENIOR EXECUTIVE OFFICER. The term ‘senior executive officer’ has
the same meaning as the term ‘executive officer’ in section 22(h) of the Federal

“(c) CAPITAL STANDARDS.—

“(1) RELEVANT CAPITAL MEASURES.—

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

“(i) a leverage limit; and

“(ii) a risk-based capital requirement.

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

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

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

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

“(3) CRITICAL CAPITAL.—

“(A) BOARD TO SPECIFY LEVEL.—

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

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

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

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

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

“(d) CAPITAL DISTRIBUTIONS RESTRICTED.—

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

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

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

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

“(e) PROVISIONS APPLICABLE TO UNDERCAPITALIZED TIER 1 FINANCIAL HOLDING
COMPANIES.—

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

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

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

“(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.

“(2) CAPITAL RESTORATION PLAN REQUIRED.—

“(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).

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

“(i) specify—

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

“(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;

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

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

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

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

“(i) complies with subparagraph (B);

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

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

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

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

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

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

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

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

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

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

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

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

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

“(5) DISCRETIONARY SAFEGUARDS.— The Board may, with respect to any undercapitalized Tier 1 financial holding company, take actions described in any subparagraph of subsection (f)(2) if the Board determines that those actions are
“(f) PROVISIONS APPLICABLE TO SIGNIFICANTLY UNDERCAPITALIZED TIER 1 FINANCIAL HOLDING COMPANIES AND UNDERCAPITALIZED TIER 1 FINANCIAL HOLDING COMPANIES THAT FAIL TO SUBMIT AND IMPLEMENT CAPITAL RESTORATION PLANS.—

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

“(A) is significantly undercapitalized; or

“(B) is undercapitalized and—

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

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

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

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

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

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

“(iii) Requiring the Tier 1 financial holding company to be acquired by or combine with another company.
“(B) Restricting Transactions with Affiliates.—

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

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

“(C) Restricting Asset Growth.—Restricting the Tier 1 financial holding company's asset growth more stringently than subsection (e)(3), or requiring the Tier 1 financial holding company to reduce its total assets.

“(D) Restricting Activities.—Requiring the Tier 1 financial holding company or any of its subsidiaries to alter, reduce, or terminate any activity that the Board determines poses excessive risk to the Tier 1 financial holding company.

“(E) Improving Management.—Doing one or more of the following—

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

“(ii) Dismissing directors or senior executive officers.—Requiring the Tier 1 financial holding company to dismiss from office any director or senior executive officer who had held office for more than 180 days immediately before the Tier 1 financial holding company became undercapitalized. Dismissal under this clause shall not be construed to be a removal under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).
“(iii) Employing qualified senior executive officers.— Requiring the Tier 1 financial holding company to employ qualified senior executive officers (who, if the Board so specifies, shall be subject to approval by the Board).

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

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

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

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

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

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

“(A) IN GENERAL.—The Tier 1 financial holding company shall not do any of the following without the prior written approval of the Board—
“(i) Pay any bonus to any senior executive officer.

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

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

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

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

“(1) IN GENERAL.—If the Board determines (after notice and an opportunity for hearing) that a Tier 1 financial holding company is in an unsafe or unsound condition or, pursuant to section 8(b)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(8)), deems the Tier 1 financial holding company to be engaging in an unsafe or unsound practice, the Board may—
“(A) if the Tier 1 financial holding company is well capitalized, require the Tier 1 financial holding company to comply with one or more provisions of subsections (d) and (e), as if the institution were undercapitalized; or

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

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

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

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

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

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

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

“(k) CONSULTATION.—The Board and the Secretary of the Treasury shall consult with their foreign counterparties and through appropriate multilateral organizations to reach
agreement to extend comprehensive and robust prudential supervision and regulation to all
highly leveraged and substantially interconnected financial companies. In its regulation and
supervision of Foreign Tier 1 financial holding companies, the Board shall take into account the
extent to which such companies are subject to standards comparable to those applied to United
States Tier 1 financial companies.”.

“(l) ADMINISTRATIVE REVIEW OF DISMISSAL ORDERS.—

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

“(2) PROCEDURE.—

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

“(i) submit written materials in support of the petition; and
“(ii) appear, personally or through counsel, before 1 or more
members of the Board or designated employees of the Board.

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

“(i) schedule the hearing referred to in subparagraph (A)(ii)
promptly after the petition is filed; and
“(ii) hold the hearing not later than 30 days after the petition is
filed, unless the petitioner requests that the hearing be held at a later time.

“(C) DEADLINE FOR DECISION.—Not later than 60 days after the date of the
hearing, the Board shall—
“(i) by order, grant or deny the petition;

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

“(iii) notify the petitioner of the order.

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

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

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

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

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

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

(c) AUTHORITY TO FILE INVOLUNTARY PETITION FOR BANKRUPTCY.—Section 303 of title
11, United States Code, is amended—

(1) in subsection (h)—

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

(B) by striking the period at the end of paragraph (2) and inserting ‘; or’;

and

(C) by adding the following new paragraph—

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

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

SECTION 6B. CONCENTRATION LIMITS FOR TIER 1 FINANCIAL HOLDING COMPANIES.

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

“(b) LIMITATION ON CREDIT EXPOSURE.—The regulations prescribed by the Board shall prohibit each Tier 1 financial holding company from having credit exposure to any unaffiliated
company that exceeds 25% of the Tier 1 financial holding company’s capital stock and surplus
or such lower amount as the Board may determine by regulation to be necessary to mitigate risks
to financial stability.

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

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

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

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

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

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

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

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

“(d) ATTRIBUTION RULE.—For purposes of this section, any transaction by a Tier 1
financial holding company with any person is a transaction with an company to the extent that
the proceeds of the transaction are used for the benefit of, or transferred to that company.
“(c) RULEMAKING.— The Board may issue such regulations and orders, including definitions consistent with this section, as may be necessary to administer and carry out the purpose of this section.

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

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