

SEC. 1. SHORT TITLE.

This Act may be cited as the “Resolution Authority for Systemically Significant Financial Companies Act of 2009.”

SEC. 2. GENERAL.

Chapter [] of title [], United States Code, is amended by adding at the end the following.

[]. RESOLUTION AUTHORITY.

“(a) DEFINITIONS.—As used in this title--

“(1) INCORPORATED DEFINITIONS.—For purposes of this Act, the following terms have the meanings ascribed to them in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813): “affiliate,” “bank holding company,” “company,” “control,” “depository institution,” “depository institution holding company,” “foreign bank,” “insured depository institution,” “savings and loan holding company,” and “subsidiary.”

“(2) APPROPRIATE FEDERAL REGULATORY AGENCY.—

“(A) Appropriate Federal Regulatory Agency.—The term “Appropriate Federal Regulatory Agency” means—

“(i) the Corporation, if the financial company is an affiliate of an insured depository institution or an insurance company;

“(ii) the Commission, if the financial company, or an affiliate thereof, is a broker or dealer registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)), as amended, (other than an insured depository institution); and

“(iii) the CFTC, if the financial company, or an affiliate thereof, is a futures commission merchant or a commodity pool operator registered with the CFTC under the Commodity Exchange Act.

“(B) Rules of Construction.—More than one agency may be an Appropriate Federal Regulatory Agency with respect to any given financial company. In such instances where the Corporation is one of the Appropriate Federal Regulatory Agencies, the Corporation shall be the Appropriate Federal Regulatory Agency for purposes of subsection (b). In such instances where the Corporation is not one of the Appropriate Federal Regulatory Agencies, the Appropriate Federal Regulatory Agency shall be, for purposes of subsection (b), determined based on which broker or dealer, futures commission merchant, or commodity pool operator has the largest assets as of the end of previous calendar quarter for which unaudited financial statements are available.

“(3) BRIDGE FINANCIAL COMPANY.—The term “bridge financial company” means a new financial company organized by the Corporation in accordance with subsection (o).

“(4) CFTC.—The term “CFTC” means the Commodity Futures Trading Commission.

“(5) COMMISSION.—The term “Commission” means the Securities and Exchange Commission.

“(6) CORPORATION.—The term “Corporation” means the Federal Deposit Insurance Corporation.

“(7) COVERED FINANCIAL COMPANY.—The term “covered financial

company” means a financial company for which a determination has been made pursuant to and in accordance with subsection (b)(2).

“(8) CUSTOMER PROPERTY.—The term “customer property” has the meaning ascribed to it in the Securities Investor Protection Act of 1970.

“(9) FEDERAL RESERVE BOARD.—The term “Federal Reserve Board” means the Board of Governors of the Federal Reserve System.

“(10) FINANCIAL COMPANY.—The term “financial company” means any company that—

“(A) Is incorporated or organized under Federal law or the laws of any State;

and

“(B) Is—

“(i) A bank holding company;

“(ii) A financial holding company as defined in section 2(p) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841(p)).

“(iii) A savings and loan holding company;

“(iv) A holding company of an insurance company;

“(v) A holding company of a broker or dealer registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)), as amended;

“(vi) A holding company of a futures commission merchant or commodity pool operator; or

“(vii) Any subsidiary of companies described in clauses (i) through (v) (other than an insured depository institution, any subsidiary thereof, any broker or dealer registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)), as amended, which is a member of the SIPC, or an insurance company).

“(11) INSURANCE COMPANY.—The term “insurance company” means a domestic insurance company, as that term is defined for purposes of Title 11 of the United States Code.

“(12) SECRETARY.—The term “Secretary” shall mean the Secretary of the Treasury or his designee.

“(13) SIPC.—The term “SIPC” means the Securities Investor Protection Corporation.

“(14) STATE.—The term “State” means a State of the United States, the District of Columbia, or any commonwealth, territory, or other possession of the United States, including the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the Virgin Islands.

“(b) SYSTEMIC RISK DETERMINATION .

“(1) WRITTEN RECOMMENDATION OF THE FEDERAL RESERVE BOARD AND THE APPROPRIATE FEDERAL REGULATORY AGENCY .

“(A) VOTE REQUIRED.—At the request of the Secretary or the Chairman of the Federal Reserve Board or on their own initiative, the Federal Reserve Board and the Appropriate Federal Regulatory Agency shall consider whether to make the written recommendation provided for in subparagraph (B), which recommendation shall be made upon a vote of not less than two-thirds of the members of the Federal Reserve Board then serving and two-thirds of the members of the board or of the commission then serving of the Appropriate Federal Regulatory Agency, as applicable.

“(B) RECOMMENDATION REQUIRED.—Any written recommendations made by the Federal Reserve Board and the Appropriate Federal Regulatory Agency under subparagraph (A) shall contain the following—

“(i) a description of the effect that the default of the financial company would have on economic conditions or financial stability in the United States; and

“(ii) the nature and the extent of assistance or actions that should be provided or taken by the Corporation regarding the financial company.

“(2) DETERMINATION BY THE SECRETARY.—Notwithstanding any other provision of Federal law or the law of any State, if, upon the written recommendation of the Federal Reserve Board and the board of directors or commission of the Appropriate Federal Regulatory Agency as provided for in paragraph (1)(A), the Secretary (in consultation with the President) determines that—

- “(A) the financial company is in default or is in danger of default;
- “(B) the failure of the financial company and its resolution under otherwise applicable Federal or State law would have serious adverse effects on financial stability or economic conditions in the United States; and
- “(C) any actions or assistance under this section would avoid or mitigate such adverse effects

the Corporation may, with the approval of the Secretary, exercise one or more actions specified in subsection (c) taking into consideration the cost to the general fund of the Treasury and the potential to increase moral hazard on the part of creditors and shareholders in such financial companies.

“(3) DOCUMENTATION AND REVIEW.

“(A) In General.—The Secretary shall—

- “(i) document any determination under paragraph (2); and,
 - “(ii) retain the documentation for review under subparagraph (B).
- “(B) GAO Review.—The Comptroller General of the United States shall review and report to the Congress on any determination under paragraph (2), including—
- “(i) the basis for the determination;
 - “(ii) the purpose for which any action was taken pursuant thereto; and
 - “(iii) the likely effect of the determination and such action on the incentives and conduct of financial companies and their creditors.

“(C) REPORT TO CONGRESS.—Within 30 days after a determination is made under paragraph (2), the Secretary shall provide written notice of any determination to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives. The notice shall include a description of the basis for any determination.

“(4) DEFAULT OR IN DANGER OF DEFAULT.—For purposes of paragraph (2), a financial company shall be considered to be in default or in danger of default if any of the following conditions exist, as determined in accordance with paragraph (2):

- “(A) A case has been, or likely will promptly be, commenced with respect to the financial company under Title 11, United States Code;
- “(B) The financial company is critically undercapitalized, as such term has been or may be defined by the company’s Appropriate Federal Regulatory Agency;
- “(C) The financial company has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the company to avoid such depletion without assistance by the Corporation under this section;
- “(D) The financial company’s assets are, or are likely to be, less than its obligations to creditors and others; or
- “(E) The financial company is, or is likely to be, unable to pay its obligations

(other than those subject to a bona fide dispute) in the normal course of business.

“(c) RESOLUTION; ASSISTANCE.— Upon the Secretary making the determination provided for in subsection (b), the Corporation may, with the approval of the Secretary, exercise any authority provided in this subsection under such terms and conditions that the Corporation deems appropriate including providing the assistance or taking the actions directly or indirectly and separately or in combination, including:

"(1) Making loans to, or purchasing any debt obligation of, the covered financial company or any subsidiary;

"(2) Purchasing assets of the covered financial company or any subsidiary directly or through an entity established by the Corporation for such purpose;

“(3) Assuming or guaranteeing the obligations of the covered financial company or any subsidiary to one or more third parties;

“(4) Acquiring any type of equity interest or security of the covered financial company or any subsidiary;

“(5) Taking a lien on any or all assets of the covered financial company or any subsidiary, including a first priority lien on all unencumbered assets of the company or any subsidiary to secure repayment of any financial assistance provided by the Corporation pursuant to this subsection;

"(6) Selling or transferring all, or any part thereof, of such acquired assets, liabilities, obligations, equity interests or securities of the covered financial company or any subsidiary upon such terms and conditions that the Corporation deems appropriate; and,

“(7) Appoint itself as conservator or receiver for the covered financial company.

“(d) JUDICIAL REVIEW.—If a conservator or receiver is appointed, including the appointment of the Corporation by the Corporation’s board of directors, for a covered financial company under subsection (c)(7), the covered financial company may, not later than 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such covered financial company is located, or in the United States District Court for the District of Columbia, for an order requiring that the conservator or receiver be removed, and the court shall, upon the merits, dismiss such action or direct the conservator or receiver to be removed. Review of such an action shall be limited to the appointment of a conservator or receiver under subsection (c)(7).

“(e) DIRECTORS NOT LIABLE FOR ACQUIESCING IN APPOINTMENT OF AGENCY.—The members of the board of directors (or body performing similar functions) of a covered financial company shall not be liable to the covered financial company’s shareholders or creditors for acquiescing in—

“(1) the Corporation’s acting as conservator or receiver for the covered financial company under this section; or

“(2) an acquisition, combination, or transfer of assets or liabilities under this section.

“(f) TERMINATION AND EXCLUSION OF OTHER ACTIONS.—The Corporation’s acting as conservator or receiver for a covered financial company under this section shall immediately, and by operation of law, terminate any case commenced with respect to the covered financial company under Title 11, United States Code, or any proceeding under any

State insolvency law with respect to the covered financial company, and no such case or proceeding may be commenced with respect to the covered financial company at any time while the Corporation acts as conservator or receiver for the covered financial company.

“(g) RULEMAKING.—The Corporation and the Secretary may jointly promulgate such rules or regulations as they consider necessary or appropriate to implement the provisions of this section.

“(h) POWERS AND DUTIES OF CORPORATION.—

“(1) GENERAL POWERS.—

“(A) SUCCESSOR TO COVERED FINANCIAL COMPANY.—The Corporation shall, upon appointment as conservator or receiver for a covered financial company under this section, and by operation of law, succeed to—

“(i) all rights, titles, powers, and privileges of the covered financial company, and of any stockholder, member, accountholder, depositor, officer, or director of such institution with respect to the covered financial company and the assets of the covered financial company; and

“(ii) title to the books, records, and assets of any previous receiver or other legal custodian of such covered financial company.

“(B) OPERATE THE COVERED FINANCIAL COMPANY.—The Corporation as conservator or receiver for a covered financial company may—

“(i) take over the assets of and operate the covered financial company with all the powers of the members or shareholders, the directors, and the officers of the covered financial company and conduct all business of the covered financial company;

“(ii) collect all obligations and money due the covered financial company;

“(iii) perform all functions of the covered financial company in the name of the covered financial company;

“(iv) preserve and conserve the assets and property of the covered financial company;

“(v) provide by contract for assistance in fulfilling any function, activity, action, or duty of the Corporation as conservator or receiver, and:

“(vi) take, with the approval of the Secretary, any of the actions described in paragraphs (1) through (4) of subsection (c) with respect to the covered financial company in conservatorship or receivership.

“(C) FUNCTIONS OF COVERED FINANCIAL COMPANY’S OFFICERS, DIRECTORS, AND SHAREHOLDERS.—The Corporation may provide for the exercise of any function by any member or stockholder, director, or officer of any covered financial company for which the Corporation has been appointed as conservator or receiver under this section.

“(D) POWERS AS CONSERVATOR.—The Corporation may, as conservator, and subject to all legally enforceable and perfected security interests in the assets of the covered financial company take such action as may be—

“(i) necessary to put the covered financial company in a sound and solvent condition; and

“(ii) appropriate to carry on the business of the covered financial company and preserve and conserve the assets and property of the covered financial company.

“(E) ADDITIONAL POWERS AS RECEIVER.—The Corporation may, as receiver, place the covered financial company in liquidation and proceed to realize upon the assets of the covered financial company in such manner as the Corporation deems appropriate, including through the sale of assets, the transfer of assets to a bridge financial company established under subsection (o), or the

exercise of any other rights or privileges granted to the receiver under this section.

“(F) ORGANIZATION OF NEW COMPANIES.—The Corporation as receiver may organize a bridge financial company under subsection (o).

“(G) MERGER; TRANSFER OF ASSETS AND LIABILITIES.—

“(i) IN GENERAL.—Subject to clause (ii), the Corporation as conservator or receiver may—

“(I) merge the covered financial company with another company; or

“(II) transfer any asset or liability of the covered financial company (including assets and liabilities associated with any trust or custody business) without obtaining any approval, assignment, or consent with respect to such transfer.

“(ii) FEDERAL AGENCY APPROVAL; ANTITRUST REVIEW.—

“(I) IN GENERAL.—If a transaction described in clause (i) requires approval by a Federal agency, the transaction may not be consummated before the 5th calendar day after the date of approval by the Federal agency responsible for such approval with respect thereto. If, in connection with any such approval, a report on competitive factors is required, the Federal agency responsible for such approval shall promptly notify the Attorney General of the proposed transaction and the Attorney General shall provide the required report within 10 days of the request. If a filing is required under the HartScott-Rodino Antitrust Improvements Act of 1976 with the Department of Justice or the Federal Trade Commission, the waiting period shall expire not later than the 30th day following such filing notwithstanding any other provision of Federal law or any attempt by any Federal agency to extend such waiting period, and no further request for information by any Federal agency shall be permitted.

“(II) EMERGENCY.— If the Secretary of the Treasury in consultation with the Chairman of the Federal Reserve Board has found that the Corporation must act immediately to prevent the probable failure of 1 or more of the covered financial companies involved, the approvals and filings referred to in subclause (I) shall not be required and the transaction may be consummated immediately by the Corporation.

“(H) PAYMENT OF VALID OBLIGATIONS.—The Corporation, as conservator or receiver, shall, to the extent funds are available, pay all valid obligations of the covered financial company that are due and payable at the time of the appointment of the Corporation as conservator or receiver in accordance with the prescriptions and limitations of this section.

“(I) SUBPOENA AUTHORITY.—

“(i) IN GENERAL.—The Corporation may, for purposes of carrying out any power, authority, or duty with respect to a covered financial company (including determining any claim against the covered financial company and determining and realizing upon any asset of any person in the course of collecting money due the covered financial company), exercise any power established under section 8(n) of the Federal Deposit Insurance Act as if the covered financial company were an insured depository institution.

“(ii) RULE OF CONSTRUCTION.—This subsection shall not be construed as limiting any rights that the Corporation, in any capacity,

might otherwise have to exercise any powers described in clause (i) under any other provision of law.

“(J) INCIDENTAL POWERS.—The Corporation, as conservator or receiver, may—

“(i) exercise all powers and authorities specifically granted to conservators or receivers under this section and such incidental powers as shall be necessary to carry out such powers; and

“(ii) take any action authorized by this section, which the Corporation determines is in the best interests of the covered financial company, its customers, its creditors, its counterparties, or the stability of the financial system.

“(K) UTILIZATION OF PRIVATE SECTOR.— In carrying out its responsibilities in the management and disposition of assets from a covered financial company, the Corporation, as conservator or receiver, may utilize the services of private persons, including real estate and loan portfolio asset management, property management, auction marketing, legal, and brokerage services, if such services are available in the private sector and the Corporation determines utilization of such services is practicable, efficient, and cost effective.

“(L) SHAREHOLDERS AND CREDITORS OF COVERED FINANCIAL COMPANY.—Notwithstanding any other provision of law, the Corporation as conservator or receiver for a covered financial company pursuant to this section and its succession, by operation of law, to the rights, titles, powers, and privileges described in subsection (h)(1)(A) shall terminate all rights and claims that the stockholders and creditors of the covered financial company may have against the assets of the covered financial company or the Corporation arising out of their status as stockholders or creditors, except for their right to payment, resolution, or other satisfaction of their claims, as permitted under this section.

“(2) AUTHORITY OF CORPORATION TO DETERMINE CLAIMS.—

“(A) IN GENERAL.—The Corporation may, as receiver, determine claims in accordance with the requirements of this subsection and regulations prescribed under paragraph (3).

“(B) NOTICE REQUIREMENTS.—The receiver, in any case involving the liquidation or winding up of the affairs of a covered financial company, shall—

“(i) promptly publish a notice to the covered financial company’s creditors to present their claims, together with proof, to the receiver by a date specified in the notice which shall be not less than 90 days after the publication of such notice; and

“(ii) republish such notice approximately 1 month and 2 months, respectively, after the publication under clause (i).

“(C) MAILING REQUIRED.—The receiver shall mail a notice similar to the notice published under subparagraph (B)(i) at the time of such publication to any creditor shown on the covered financial company’s books—

“(i) at the creditor’s last address appearing in such books; or

“(ii) upon discovery of the name and address of a claimant not appearing on the covered financial company’s books, within 30 days after the discovery of such name and address.

“(3) RULEMAKING AUTHORITY RELATING TO DETERMINATION OF CLAIMS.—

“(A) IN GENERAL.— Subject to subsection (h), the Corporation may prescribe rules and regulations regarding the allowance or disallowance of claims by the Corporation and providing for administrative determination of claims and review of such determination.

“(B) EXISTING RULES.— Subject to subsection (h), the Corporation may elect to use the regulations adopted pursuant to the provisions of section 11 of the Federal Deposit Insurance Act with respect to the determination of claims for a covered financial company as if the covered financial company were an insured depository institution.

“(4) PROCEDURES FOR DETERMINATION OF CLAIMS.—

“(A) DETERMINATION PERIOD.—

“(i) IN GENERAL.— Before the end of the 180-day period beginning on the date any claim against a covered financial company is filed with the Corporation as receiver, the Corporation shall determine whether to allow or disallow the claim and shall notify the claimant of any determination with respect to such claim.

“(ii) EXTENSION OF TIME.— The period described in clause (i) may be extended by a written agreement between the claimant and the Corporation.

“(iii) MAILING OF NOTICE SUFFICIENT.— The requirements of clause (i) shall be deemed to be satisfied if the notice of any determination with respect to any claim is mailed to the last address of the claimant which appears—

“(I) on the covered financial company’s books;

“(II) in the claim filed by the claimant; or

“(III) in documents submitted in proof of the claim.

“(iv) CONTENTS OF NOTICE OF DISALLOWANCE.— If any claim filed under clause (i) is disallowed, the notice to the claimant shall contain—

“(I) a statement of each reason for the disallowance; and

“(II) the procedures available for obtaining agency review of the determination to disallow the claim or judicial determination of the claim.

“(B) ALLOWANCE OF PROVEN CLAIM.— The Corporation shall allow any claim received on or before the date specified in the notice published under paragraph (2)(B)(i) by the Corporation from any claimant which is proved to the satisfaction of the Corporation.

“(C) DISALLOWANCE OF CLAIMS FILED AFTER END OF FILING PERIOD.—

“(i) IN GENERAL.— Except as provided in clause (ii), claims filed after the date specified in the notice published under paragraph (2)(B)(i) shall be disallowed and such disallowance shall be final.

“(ii) CERTAIN EXCEPTIONS.— Clause (i) shall not apply with respect to any claim filed by any claimant after the date specified in the notice published under paragraph (2)(B)(i) and such claim may be considered by the receiver if—

“(I) the claimant did not receive notice of the appointment of the receiver in time to file such claim before such date; and

“(II) such claim is filed in time to permit payment of such claim.

“(D) AUTHORITY TO DISALLOW CLAIMS.—

“(i) IN GENERAL.— The Corporation may disallow any portion of any claim by a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the Corporation.

“(ii) PAYMENTS TO LESS THAN FULLY SECURED CREDITORS.— In the case of a claim of a creditor against a covered financial company which is secured by any property or other asset of

such covered financial company, the receiver—

“(I) may treat the portion of such claim which exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim against the covered financial company; and

“(II) may not make any payment with respect to such unsecured portion of the claim other than in connection with the disposition of all claims of unsecured creditors of the covered financial company.

“(iii) EXCEPTIONS.—No provision of this paragraph shall apply with respect to—

“(I) any extension of credit from any Federal Reserve bank, or the Secretary, to any covered financial company; or,

“(II) subject to clause (ii), any legally enforceable or perfected security interest in the assets of the covered financial company securing any such extension of credit.

“(E) No judicial review of determination pursuant to subparagraph (D).—No court may review the Corporation’s determination pursuant to subparagraph (D) to disallow a claim.

“(F) LEGAL EFFECT OF FILING.—

“(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the Corporation shall constitute a commencement of an action.

“(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (9), the filing of a claim with the Corporation shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the Corporation as receiver for the covered financial company.

“(5) PROVISION FOR JUDICIAL DETERMINATION OF CLAIMS.—

“(A) IN GENERAL.—Before the end of the 60-day period beginning on the earlier of—

“(i) the end of the period described in paragraph (4)(A)(i) (or, if extended by agreement of the Corporation and the claimant, the period described in paragraph (4)(A)(ii)) with respect to any claim against a covered financial company for which the Corporation is receiver; or

“(ii) the date of any notice of disallowance of such claim pursuant to paragraph (4)(A)(i),

the claimant may file suit on a claim (or continue an action commenced before the appointment of the receiver) in the district or territorial court of the United States for the district within which the covered financial company’s principal place of business is located or the United States District Court for the District of Columbia (and such court shall have jurisdiction to hear such claim).

“(B) STATUTE OF LIMITATIONS.—If any claimant fails to file suit on such claim (or continue an action commenced before the appointment of the receiver) before the end of the 60-day period described in subparagraph (A), the claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver) as of the end of such period, such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

“(6) EXPEDITED DETERMINATION OF CLAIMS.—

(A) ESTABLISHMENT REQUIRED.—The Corporation shall establish a procedure for expedited relief outside of the routine claims process established under paragraph (4) for claimants who—

- “(i) allege the existence of legally valid and enforceable or perfected security interests in assets of any covered financial company for which the Corporation has been appointed as receiver; and
 - “(ii) allege that irreparable injury will occur if the routine claims procedure is followed.
 - “(B) DETERMINATION PERIOD.— Before the end of the 90-day period beginning on the date any claim is filed in accordance with the procedures established pursuant to subparagraph (A), the Corporation shall—
 - “(i) determine—
 - “(I) whether to allow or disallow such claim; or
 - “(II) whether such claim should be determined pursuant to the procedures established pursuant to paragraph (4); and
 - “(ii) notify the claimant of the determination, and if the claim is disallowed, provide a statement of each reason for the disallowance and the procedure for obtaining judicial determination.
 - “(C) PERIOD FOR FILING OR RENEWING SUIT.— Any claimant who files a request for expedited relief shall be permitted to file a suit, or to continue such a suit filed before the appointment of the Corporation as receiver, seeking a determination of the claimant’s rights with respect to such security interest after the earlier of—
 - “(i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or
 - “(ii) the date the Corporation denies the claim.
 - “(D) STATUTE OF LIMITATIONS.— If an action described in subparagraph (C) is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action or motion may be filed in accordance with subparagraph (B), the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim which was allowed by the receiver), such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.
 - “(E) LEGAL EFFECT OF FILING.—
 - “(i) STATUTE OF LIMITATION TOLLED.— For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.
 - “(ii) NO PREJUDICE TO OTHER ACTIONS.— Subject to paragraph (9), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the Corporation as receiver for the covered financial company.
 - “(7) AGREEMENTS AGAINST INTEREST OF THE RECEIVER.— No agreement that tends to diminish or defeat the interest of the Corporation as receiver in any asset acquired by the receiver under this section shall be valid against the receiver unless such agreement is in writing and executed by an authorized officer or representative of the covered financial company.
 - “(8) PAYMENT OF CLAIMS.—
 - “(A) IN GENERAL.— The Corporation as receiver may, in its discretion and to the extent funds are available, pay creditor claims, in such manner and amounts as are authorized under this section, which are—
 - “(i) allowed by the receiver;
 - “(ii) approved by the Corporation pursuant to a final determination pursuant to paragraph (6); or
 - “(iii) determined by the final judgment of any court of competent

jurisdiction.

“(B) PAYMENT OF DIVIDENDS ON CLAIMS.--The receiver may, in the receiver's sole discretion and to the extent otherwise permitted by this section, pay dividends on proven claims at any time, and no liability shall attach to the Corporation (in the Corporation’s corporate capacity or as receiver), by reason of any such payment, for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

“(C) RULEMAKING AUTHORITY OF CORPORATION.--The Corporation may prescribe such rules, including definitions of terms, as it deems appropriate to establish a single uniform interest rate for, or to make payments of post insolvency interest to creditors holding proven claims against the receivership estates of a covered financial company following satisfaction by the receiver of the principal amount of all creditor claims.

“(9) SUSPENSION OF LEGAL ACTIONS.—

“(A) IN GENERAL.—After the appointment of the Corporation as conservator or receiver for a covered financial company, the Corporation may request a stay for a period not to exceed—

“(i) 45 days, in the case of any conservator; and

“(ii) 90 days, in the case of any receiver,

in any non-criminal judicial action or proceeding to which such covered financial company is or becomes a party.

“(B) GRANT OF STAY BY ALL COURTS REQUIRED.—Upon receipt of a request by the Corporation pursuant to subparagraph (A) for a stay of any non-criminal judicial action or proceeding in any court with jurisdiction of such action or proceeding, the court shall grant such stay as to all parties.

“(10) ADDITIONAL RIGHTS AND DUTIES.—

“(A) PRIOR FINAL ADJUDICATION.—The Corporation shall abide by any final unappealable judgment of any court of competent jurisdiction which was rendered before the appointment of the Corporation as conservator or receiver.

“(B) RIGHTS AND REMEDIES OF CONSERVATOR OR RECEIVER.—In the event of any appealable judgment, the Corporation as conservator or receiver shall—

“(i) have all the rights and remedies available to the covered financial company (before the appointment of the conservator or receiver under this section) and the Corporation, including but not limited to removal to Federal court and all appellate rights; and

“(ii) not be required to post any bond in order to pursue such remedies.

“(C) NO ATTACHMENT OR EXECUTION.—No attachment or execution may issue by any court upon assets in the possession of the receiver.

“(D) LIMITATION ON JUDICIAL REVIEW.—Except as otherwise provided in this subsection, no court shall have jurisdiction over—

“(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any covered financial company for which the Corporation has been appointed receiver, including any assets which the Corporation may acquire from itself as such receiver; or

“(ii) any claim relating to any act or omission of such covered financial company or the Corporation as receiver.

“(E) DISPOSITION OF ASSETS.—In exercising any right, power, privilege, or authority as conservator or receiver in connection with any covered financial company for which the Corporation is acting as conservator or receiver

under this section, the Corporation shall, to the greatest extent practicable, conduct its operations in a manner which—

- “(i) maximizes the net present value return from the sale or disposition of such assets;
- “(ii) minimizes the amount of any loss realized in the resolution of cases;
- “(iii) minimizes the cost to the general fund of the Treasury;
- “(iv) mitigates the potential for serious adverse effects to the financial system and the U.S. economy;
- “(v) ensures timely and adequate competition and fair and consistent treatment of offerors; and
- “(vi) prohibits discrimination on the basis of race, sex, or ethnic groups in the solicitation and consideration of offers.

“(11) STATUTE OF LIMITATIONS FOR ACTIONS BROUGHT BY RECEIVER.—

“(A) IN GENERAL.—Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Corporation as conservator or receiver shall be—

- “(i) in the case of any contract claim, the longer of
 - “(I) the 6-year period beginning on the date the claim accrues;
 - or
 - “(II) the period applicable under State law; and
- “(ii) in the case of any tort claim, the longer of—
 - “(I) the 3-year period beginning on the date the claim accrues;
 - or
 - “(II) the period applicable under State law.

“(B) DETERMINATION OF THE DATE ON WHICH A CLAIM ACCRUES.—For purposes of subparagraph (A), the date on which the statute of limitations begins to run on any claim described in such subparagraph shall be the later of—

- “(i) the date of the appointment of the Corporation as conservator or receiver under this Act; or
- “(ii) the date on which the cause of action accrues.

“(C) REVIVAL OF EXPIRED STATE CAUSES OF ACTION.—

- “(i) IN GENERAL.—In the case of any tort claim described in clause (ii) for which the statute of limitation applicable under State law with respect to such claim has expired not more than 5 years before the appointment of the Corporation as conservator or receiver, the Corporation may bring an action as conservator or receiver on such claim without regard to the expiration of the statute of limitation applicable under State law.
- “(ii) CLAIMS DESCRIBED.—A tort claim referred to in clause (i) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the covered financial company.

“(12) FRAUDULENT TRANSFERS.—

“(A) IN GENERAL.—The Corporation, as conservator or receiver for any covered financial company, may avoid a transfer of any interest of an institutionaffiliated party, or any person who the Corporation determines is a debtor of the covered financial company, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Corporation was appointed conservator or receiver if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the

intent to hinder, delay, or defraud the covered financial company or the Corporation.

“(B) RIGHT OF RECOVERY.—To the extent a transfer is avoided under subparagraph (A), the Corporation may recover, for the benefit of the covered financial company, the property transferred or, if a court so orders, the value of such property (at the time of such transfer) from—

“(i) the initial transferee of such transfer or the institution-affiliated party or person for whose benefit such transfer was made; or

“(ii) any immediate or mediate transferee of any such initial transferee.

“(C) RIGHTS OF TRANSFEREE OR OBLIGEE.—The Corporation may not recover under subparagraph (B)—

“(i) any transfer that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith, or

“(ii) any immediate or mediate good faith transferee of such transferee.

“(D) RIGHTS UNDER THIS PARAGRAPH.—The rights of the Corporation as receiver of a covered financial company under this paragraph shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency) under title 11, United States Code.

“(E) DEFINITION.—For purposes of this paragraph, the term institutionaffiliated party” means—

“(i) any director, officer, employee, or controlling stockholder of, or agent for, a covered financial company;

“(ii) any shareholder, consultant, joint venture partner, and any other person as determined by the Corporation (by regulation or otherwise) who participates in the conduct of the affairs of a covered financial company; and

“(iii) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in—

“(I) any violation of any law or regulation;

“(II) any breach of fiduciary duty; or

“(III) any unsafe or unsound practice,

which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the covered financial company.

“(13) ATTACHMENT OF ASSETS AND OTHER INJUNCTIVE RELIEF.—Subject to paragraph (14), any court of competent jurisdiction may, at the request of the Corporation, issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the Corporation under the control of the court and appointing a trustee to hold such assets.

“(14) STANDARDS.—

“(A) SHOWING.—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under paragraph (13) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

“(B) STATE PROCEEDING.—If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of such State provide substantially similar protections to such party’s right to due process as Rule 65 (as modified with respect to such proceeding by subparagraph (A)), the relief sought by the Corporation to paragraph (14) may be requested under the laws of such State.

“(15) TREATMENT OF CLAIMS ARISING FROM BREACH OF CONTRACTS EXECUTED BY THE CORPORATION AS RECEIVER OR CONSERVATOR.—

Notwithstanding any other provision of this subsection, any final and unappealable judgment for monetary damages entered against the Corporation as receiver or conservator for a covered financial company for the breach of an agreement executed or approved by the Corporation after the date of its appointment shall be paid as an administrative expense of the receiver or conservator. Nothing in this paragraph shall be construed to limit the power of a receiver or conservator to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinue such agreement.

“(16) ACCOUNTING AND RECORDKEEPING REQUIREMENTS.—

“(A) IN GENERAL.—The Corporation as conservator or receiver shall, consistent with the accounting and reporting practices and procedures established by the Corporation, maintain a full accounting of each conservatorship, receivership or other disposition of any covered financial company.

“(B) ANNUAL ACCOUNTING OR REPORT.—With respect to each conservatorship or receivership to which the Corporation was appointed, the Corporation shall make an annual accounting or report, as appropriate, available to the Secretary and the Comptroller General of the United States.

“(C) AVAILABILITY OF REPORTS.—Any report prepared pursuant to subparagraph (B) shall be made available by the Corporation upon request to any member of the public.

“(D) RECORDKEEPING REQUIREMENT.—

“(i) IN GENERAL.—Except as provided in clause (ii), after the end of the 6-year period beginning on the date the Corporation is appointed as receiver of a covered financial company the Corporation may destroy any records of such covered financial company which the Corporation, in the Corporation’s discretion, determines to be unnecessary unless directed not to do so by a court of competent jurisdiction or governmental agency, or prohibited by law.

“(ii) OLD RECORDS.—Notwithstanding clause (i), the Corporation may destroy records of a covered financial company which are at least 10 years old as of the date on which the Corporation is appointed as the receiver of such company in accordance with clause (i) at any time after such appointment is final, without regard to the 6-year period of limitation contained in clause (i).

“(i) PRIORITY OF EXPENSES AND UNSECURED CLAIMS.—

“(1) IN GENERAL.—Unsecured claims against a covered financial company, or the receiver for such covered financial company under this section, that are proven to the satisfaction of the receiver shall have priority in the following order:

“(A) Administrative expenses of the receiver.

“(B) Any amounts owed to the United States.

“(C) Any other general or senior liability of the covered financial company (which is not a liability described under subparagraph (D) or (E)).

“(D) Any obligation subordinated to general creditors (which is not an obligation described under subparagraph (E)).

“(E) Any obligation to shareholders, members, general partners, limited partners or other persons with interests in the equity of the covered financial company arising as a result of their status as shareholders, members, general partners, limited partners or other persons with interests in the equity of the covered financial company.

“(2) CREDITORS SIMILARLY SITUATED.—All claimants of a covered financial company that are similarly situated under paragraph (1) shall be treated in a similar manner, except that the receiver may take any action (including making

payments) that does not comply with this subsection, if—

“(A) the Corporation determines that such action is necessary to maximize the value of the assets of the covered financial company, to maximize the present value return from the sale or other disposition of the assets of the covered financial company, to minimize the amount of any loss realized upon the sale or other disposition of the assets of the covered financial company, or to contain or address serious adverse effects on financial stability or the U.S. economy; and

“(B) all claimants that are similarly situated under paragraph (1) receive not less than the amount provided in subsection (k)(2).

“(3) DEFINITIONS.—As used in this subsection, the term ‘administrative expenses of the receiver’ includes—

“(A) the actual, necessary costs and expenses incurred by the receiver in preserving the assets of a covered financial company or liquidating or otherwise resolving the affairs of a covered financial company for which the Corporation has been appointed as receiver; and

“(B) any obligations that the receiver determines are necessary and appropriate to facilitate the smooth and orderly liquidation or other resolution of the covered financial company.

“(j) PROVISIONS RELATING TO CONTRACTS ENTERED INTO BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER.

“(1) AUTHORITY TO REPUDIATE CONTRACTS.—In addition to any other rights a conservator or receiver may have, the Corporation as conservator or receiver for any covered financial company may disaffirm or repudiate any contract or lease—

“(A) to which the covered financial company is a party;

“(B) the performance of which the conservator or receiver, in the conservator’s or receiver’s discretion, determines to be burdensome; and

“(C) the disaffirmance or repudiation of which the conservator or receiver determines, in the conservator’s or receiver’s discretion, will promote the orderly administration of the covered financial company’s affairs.

“(2) TIMING OF REPUDIATION.—The conservator or receiver appointed for any covered financial company in accordance with subsection (c) shall determine whether or not to exercise the rights of repudiation under this subsection within a reasonable period following such appointment.

“(3) CLAIMS FOR DAMAGES FOR REPUDIATION.—

“(A) IN GENERAL.—Except as otherwise provided in subparagraph (C) and paragraphs (4), (5), and (6), the liability of the conservator or receiver for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

“(i) limited to actual direct compensatory damages; and

“(ii) determined as of—

“(I) the date of the appointment of the conservator or receiver; or

“(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

“(B) NO LIABILITY FOR OTHER DAMAGES.—For purposes of subparagraph (A), the term “actual direct compensatory damages” does not include—

“(i) punitive or exemplary damages;

“(ii) damages for lost profits or opportunity; or

“(iii) damages for pain and suffering.

“(C) Measure of damages for repudiation of qualified financial contracts.—In the case of any qualified financial contract or agreement to which paragraph (8)

applies, compensatory damages shall be—

“(i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and

“(ii) paid in accordance with this subsection and subsection (k) except as otherwise specifically provided in this subsection.

“(4) LEASES UNDER WHICH THE COVERED FINANCIAL COMPANY IS THE LESSEE.—

“(A) IN GENERAL.—If the conservator or receiver disaffirms or repudiates a lease under which the covered financial company was the lessee, the conservator or receiver shall not be liable for any damages (other than damages determined pursuant to subparagraph (B)) for the disaffirmance or repudiation of such lease.

“(B) PAYMENTS OF RENT.—Notwithstanding subparagraph (A), the lessor under a lease to which such subparagraph applies shall—

“(i) be entitled to the contractual rent accruing before the later of the date—

“(I) the notice of disaffirmance or repudiation is mailed; or

“(II) the disaffirmance or repudiation becomes effective, unless the lessor is in default or breach of the terms of the lease;

“(ii) have no claim for damages under any acceleration clause or other penalty provision in the lease; and

“(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment which shall be paid in accordance with this subsection and subsection (k).

“(5) LEASES UNDER WHICH THE COVERED FINANCIAL COMPANY IS THE LESSOR.—

“(A) IN GENERAL.—If the conservator or receiver repudiates an unexpired written lease of real property of the covered financial company under which the covered financial company is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

“(i) treat the lease as terminated by such repudiation; or

“(ii) remain in possession of the leasehold interest for the balance of the term of the lease unless the lessee defaults under the terms of the lease after the date of such repudiation.

“(B) PROVISIONS APPLICABLE TO LESSEE REMAINING IN POSSESSION.—If any lessee under a lease described in subparagraph (A) remains in possession of a leasehold interest pursuant to clause (ii) of such subparagraph—

“(i) the lessee—

“(I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease;

“(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, any damages which accrue after such date due to the nonperformance of any obligation of the covered financial company under the lease after such date; and

“(ii) the conservator or receiver shall not be liable to the lessee for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II).

“(6) CONTRACTS FOR THE SALE OF REAL PROPERTY.—

“(A) IN GENERAL.—If the conservator or receiver repudiates any contract (which meets the requirements of subsection (h)(7) of this section) for the sale

of real property and the purchaser of such real property under such contract is in possession and is not, as of the date of such repudiation, in default, such purchaser may either—

- “(i) treat the contract as terminated by such repudiation; or
 - “(ii) remain in possession of such real property.
- “(B) PROVISIONS APPLICABLE TO PURCHASER REMAINING IN POSSESSION.--If any purchaser of real property under any contract described in subparagraph (A) remains in possession of such property pursuant to clause (ii) of such subparagraph—
- “(i) the purchaser—
 - “(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and
 - “(II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the covered financial company under the contract; and
 - “(ii) the conservator or receiver shall—
 - “(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II);
 - “(II) deliver title to the purchaser in accordance with the provisions of the contract; and
 - “(III) have no obligation under the contract other than the performance required under subclause (II).
- “(C) ASSIGNMENT AND SALE ALLOWED.—
- “(i) IN GENERAL.—No provision of this paragraph shall be construed as limiting the right of the conservator or receiver to assign the contract described in subparagraph (A) and sell the property subject to the contract and the provisions of this paragraph.
 - “(ii) NO LIABILITY AFTER ASSIGNMENT AND SALE.—If an assignment and sale described in clause (i) is consummated, the conservator or receiver shall have no further liability under the contract described in subparagraph (A) or with respect to the real property which was the subject of such contract.
- “(7) PROVISIONS APPLICABLE TO SERVICE CONTRACTS.—
- “(A) SERVICES PERFORMED BEFORE APPOINTMENT.—In the case of any contract for services between any person and any covered financial company for which the Corporation has been appointed conservator or receiver, any claim of such person for services performed before the appointment of the conservator or the receiver shall be—
 - “(i) a claim to be paid in accordance with subsections (h), (i) and (k); and
 - “(ii) deemed to have arisen as of the date the conservator or receiver was appointed.
 - “(B) SERVICES PERFORMED AFTER APPOINTMENT AND PRIOR TO REPUDIATION.—If, in the case of any contract for services described in subparagraph (A), the conservator or receiver accepts performance by the other person before the conservator or receiver makes any determination to exercise the right of repudiation of such contract under this section—
 - “(i) the other party shall be paid under the terms of the contract for the services performed; and
 - “(ii) the amount of such payment shall be treated as an administrative expense of the conservatorship or receivership.

“(C) ACCEPTANCE OF PERFORMANCE NO BAR TO SUBSEQUENT REPUDIATION.—The acceptance by any conservator or receiver of services referred to in subparagraph (B) in connection with a contract described in such subparagraph shall not affect the right of the conservator or receiver to repudiate such contract under this section at any time after such performance.

“(8) CERTAIN QUALIFIED FINANCIAL CONTRACTS.—

“(A) RIGHTS OF PARTIES TO CONTRACTS.—Subject to paragraphs (9) and (10) of this subsection and notwithstanding any other provision of this section (other than subsection (h)(8) of this section), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

“(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a covered financial company which arises upon the appointment of the Corporation as receiver for such covered financial company at any time after such appointment;

“(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i).

“(iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts and agreements described in clause (i), including any master agreement for such contracts or agreements.

“(B) APPLICABILITY OF OTHER PROVISIONS.—Subsection (h)(10) shall apply in the case of any judicial action or proceeding brought against any receiver referred to in subparagraph (A), or the covered financial company for which such receiver was appointed, by any party to a contract or agreement described in subparagraph (A)(i) with such company.

“(C) CERTAIN TRANSFERS NOT AVOIDABLE.—

“(i) IN GENERAL.—Notwithstanding paragraph (11), section 542 of the Revised Statutes of the United States or any other provision of Federal or State law relating to the avoidance of preferential or fraudulent transfers, the Corporation, whether acting as such or as conservator or receiver of a covered financial company, may not avoid any transfer of money or other property in connection with any qualified financial contract with a covered financial company.

“(ii) EXCEPTION FOR CERTAIN TRANSFERS. Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with a covered financial company if the Corporation determines that the transferee had actual intent to hinder, delay, or defraud such company, the creditors of such company, or any conservator or receiver appointed for such company.

“(D) CERTAIN CONTACTS AND AGREEMENTS DEFINED.—For purposes of this subsection, the following definitions shall apply:

“(i) QUALIFIED FINANCIAL CONTRACT.—The term “qualified financial contract” means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Corporation determines by regulation, resolution, or order to be a qualified financial contract for purposes of this paragraph.

“(ii) SECURITIES CONTRACT.—The term “securities contract”—
“(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, any interest in a mortgage loan, a group or index of securities, certificates of

deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such repurchase or reverse repurchase transaction is a “repurchase agreement,” as defined in clause (v));

“(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

“(III) means any option entered into on a national securities exchange relating to foreign currencies;

“(IV) means the guarantee (including by novation) by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such settlement is in connection with any agreement or transaction referred to in subclauses (I) through (XII) (other than subclause (II));

“(V) means any margin loan;

“(VI) means any extension of credit for the clearance or settlement of securities transactions;

“(VII) means any loan transaction coupled with a securities collar transaction, any prepaid securities forward transaction, or any total return swap transaction coupled with a securities sale transaction;

“(VIII) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

“(IX) means any combination of the agreements or transactions referred to in this clause;

“(X) means any option to enter into any agreement or transaction referred to in this clause;

“(XI) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), or (X), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), or (X); and

“(XII) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction

referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

“(iii) COMMODITY CONTRACT.—The term “commodity contract” means—

“(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

“(II) with respect to a foreign futures commission merchant, a foreign future;

“(III) with respect to a leverage transaction merchant, a leverage transaction;

“(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

“(V) with respect to a commodity options dealer, a commodity option;

“(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

“(VII) any combination of the agreements or transactions referred to in this clause;

“(VIII) any option to enter into any agreement or transaction referred to in this clause;

“(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

“(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

“(iv) FORWARD CONTRACT.—The term “forward contract” means—

“(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including a repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a “repurchase agreement”, as defined in clause (v)), consignment, lease, swap, hedge transaction, deposit, loan, option, allocated

transaction, unallocated transaction, or any other similar agreement;

“(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

“(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

“(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

“(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

“(v) REPURCHASE AGREEMENT.—The term “repurchase agreement” (which definition also applies to a reverse repurchase agreement)—

“(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers’ acceptances, qualified foreign government securities (which for these purpose shall mean a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development as determined by regulation or order adopted by the Federal Reserve Board) or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers’ acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers’ acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

“(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term;

“(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

“(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

“(V) means a master agreement that provides for an agreement

or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

“(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

“(vi) SWAP AGREEMENT.— The term “swap agreement” means—

“(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange, precious metals, or other commodity agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement;

“(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, option or spot transaction on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

“(III) any combination of agreements or transactions referred to in this clause;

“(IV) any option to enter into any agreement or transaction referred to in this clause;

“(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be

a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

“(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

“(vii) DEFINITIONS RELATING TO DEFAULT.— When used in this paragraph and paragraph (10)—

“(I) The term "default" shall mean, with respect to a covered financial company, any adjudication or other official determination by any court of competent jurisdiction, or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed; and

“(II) The term "in danger of default" shall mean a covered financial company with respect to which the Corporation or appropriate State authority has determined that—

“(aa) in the opinion of the Corporation or such authority—

“(i) the covered financial company is not likely to be able to pay its obligations in the normal course of business; and

“(ii) there is no reasonable prospect that the covered financial company will be able to pay such obligations without Federal assistance; or

“(bb) in the opinion of the Corporation or such authority—

“(i) the covered financial company has incurred or is likely to incur losses that will deplete all or substantially all of its capital; and

“(ii) there is no reasonable prospect that the capital will be replenished without Federal assistance.

“(viii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.— Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.

“(ix) TRANSFER.—The term “transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the covered financial company’s equity of redemption.

“(x) PERSON.—The term “person” includes any governmental entity in addition to any entity included in the definition of such term in section 1, title 1, United States Code.

“(E) CERTAIN PROTECTIONS IN EVENT OF APPOINTMENT OF CONSERVATOR.—Notwithstanding any other provision of this section (other than paragraph (10) of this subsection and subsection (h)(7)) of this section), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

“(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a covered financial company in a conservatorship based upon a default under such financial contract which is enforceable under applicable noninsolvency law;

“(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i); or

“(iii) any right to offset or net out any termination values, payment amounts, or other transfer obligations arising under or in connection with such qualified financial contracts.

“(F) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (j)(1) of this section.

“(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

“(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) and (E) and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of a covered financial company in default.

“(ii) LIMITED SUSPENSION OF CERTAIN OBLIGATIONS.—In the case of a qualified financial contract referred to in clause (i), any payment or delivery obligations otherwise due from a party pursuant to the qualified financial contract shall be suspended from the time the receiver is appointed until the earlier of—

“(I) the time such party receives notice that such contract has been transferred pursuant to paragraph (10)(A); or

“(II) 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver.

“(iii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term ‘walkaway clause’ means any provision in a qualified financial contract that suspends, conditions, or extinguishes a payment obligation of a party, in whole or in part, or does not create a payment obligation of a party that would otherwise exist, solely because of such party’s status as a nondefaulting party in connection with the insolvency of a covered financial company that is a party to the contract

or the appointment of or the exercise of rights or powers by a conservator or receiver of such covered financial company, and not as a result of a party's exercise of any right to offset, setoff, or net obligations that exist under the contract, any other contract between those parties, or applicable law.

“(H) RECORDKEEPING.—The Corporation, in consultation with the appropriate Federal supervisor for a covered financial company (if any), may prescribe regulations requiring that the covered financial company maintain such records with respect to qualified financial contracts (including market valuations) as the Corporation determines to be necessary or appropriate in order to assist the conservator or receiver of the covered financial company in being able to exercise its rights and fulfill its obligations under this paragraph or paragraphs (9) or (10).

“(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

“(A) IN GENERAL.—In making any transfer of assets or liabilities of a covered financial company in default which includes any qualified financial contract, the conservator or receiver for such covered financial company shall either—

“(i) transfer to one financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

“(I) all qualified financial contracts between any person or any affiliate of such person and the covered financial company in default ;

“(II) all claims of such person or any affiliate of such person against such covered financial company under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such company);

“(III) all claims of such covered financial company against such person or any affiliate of such person under any such contract; and

“(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

“(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

“(B) TRANSFER TO FOREIGN BANK, FINANCIAL INSTITUTION, OR BRANCH OR AGENCY THEREOF.—In transferring any qualified financial contracts and related claims and property under subparagraph (A)(i), the conservator or receiver for the covered financial company shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

“(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that a conservator or receiver

transfers any qualified financial contract and related claims, property, and credit enhancements pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

“(D) DEFINITIONS.—For purposes of this paragraph, the term ‘financial institution’ means a broker or dealer, a depository institution, a futures commission merchant, or any other institution determined by the Corporation by regulation to be a financial institution, and the term ‘clearing organization’ has the same meaning as in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

“(10) NOTIFICATION OF TRANSFER.—

“(A) IN GENERAL.—If—

“(i) the conservator or receiver for a covered financial company in default or in danger of default transfers any assets and liabilities of the covered financial company; and

“(ii) the transfer includes any qualified financial contract,

the conservator or receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver in the case of a receivership, or the business day following such transfer in the case of a conservatorship.

“(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

“(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with a covered financial company may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection solely by reason of or incidental to the appointment under this section of a receiver for the covered financial company (or the insolvency or financial condition of the covered financial company for which the receiver has been appointed)—

“(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver; or

“(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

“(ii) CONSERVATORSHIP.—A person who is a party to a qualified financial contract with a covered financial company may not exercise any right such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or section 403 of Federal Deposit Insurance Corporation Improvement Act of 1991 solely by reason of or incidental to the appointment under this section of a conservator for the covered financial company (or the insolvency or financial condition of the covered financial company for which the conservator has been appointed).

“(iii) NOTICE.—For purposes of this paragraph, the receiver or conservator for a covered financial company shall be deemed to have notified a person who is a party to a qualified financial contract with such covered financial company if the receiver or conservator has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

“(C) TREATMENT OF BRIDGE FINANCIAL COMPANY.— For purposes of paragraph (9), a bridge financial company shall not be considered to be a covered financial company for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding.

“(D) BUSINESS DAY DEFINED.—For purposes of this paragraph, the term “business day” means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

“(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which a covered financial company is a party, the conservator or receiver for such covered financial company shall either—

- “(A) disaffirm or repudiate all qualified financial contracts between—
 - “(i) any person or any affiliate of such person; and
 - “(ii) the covered financial company in default; or
- “(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).

“(12) CERTAIN SECURITY AND CUSTOMER INTERESTS NOT AVOIDABLE.—No provision of this subsection shall be construed as permitting the avoidance of any—

- “(A) legally enforceable or perfected security interest in any of the assets of any covered financial company except where such an interest is taken in contemplation of the company’s insolvency or with the intent to hinder, delay, or defraud the company or the creditors of such company; or
 - “(B) legally enforceable interest in customer property.
- “(13) AUTHORITY TO ENFORCE CONTRACTS.—

“(A) IN GENERAL.—The conservator or receiver may enforce any contract, other than a director’s or officer’s liability insurance contract or a financial institution bond, entered into by the covered financial company notwithstanding any provision of the contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment of or the exercise of rights or powers by a conservator or receiver.

“(B) CERTAIN RIGHTS NOT AFFECTED.—No provision of this paragraph may be construed as impairing or affecting any right of the conservator or receiver to enforce or recover under a director’s or officer’s liability insurance contract or financial institution bond under other applicable law.

“(C) CONSENT REQUIREMENT.—

“(i) IN GENERAL.—Except as otherwise provided by this section, no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which the covered financial company is a party, or to obtain possession of or exercise control over any property of the covered financial company or affect any contractual rights of the covered financial company, without the consent of the conservator or receiver, as appropriate, of the covered financial company during the 45-day period beginning on the date of the appointment of the conservator, or during the 90-day period beginning on the date of the appointment of the receiver, as applicable.

“(ii) CERTAIN EXCEPTIONS.—No provision of this subparagraph shall apply to a director or officer liability insurance contract or a financial institution bond, to the rights of parties to certain qualified financial contracts pursuant to paragraph (8), or to the rights of parties to netting contracts pursuant to subtitle A of title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.), or shall be construed as permitting the conservator

or receiver to fail to comply with otherwise enforceable provisions of such contract.

“(14) EXCEPTION FOR FEDERAL RESERVE BANKS, THE SECRETARY, AND THE CORPORATION SECURITY INTEREST.—No provision of this subsection shall apply with respect to—

“(A) any extension of credit from any Federal Reserve bank, the Secretary, or the Corporation to any covered financial company; or,

“(B) any security interest in the assets of the covered financial company securing any such extension of credit; or

“(15) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including, but not limited, to the GrammLeachBliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.

“(k) VALUATION OF CLAIMS IN DEFAULT.—

“(1) IN GENERAL.—Notwithstanding any other provision of Federal law or the law of any State, and regardless of the method which the Corporation determines to utilize with respect to a covered financial company, including transactions authorized under subsection (o), this subsection shall govern the rights of the creditors of such covered financial company.

“(2) MAXIMUM LIABILITY.—The maximum liability of the Corporation, acting as receiver or in any other capacity, to any person having a claim against the receiver or the covered financial company for which such receiver is appointed shall equal the amount such claimant would have received if—

“(A) a determination had not been made under subsection (b)(2) of this section with respect to the covered financial company; and

“(B) the covered financial company had been liquidated under Title 11, United States Code, or any case related to Title 11, United States Code (including but not limited to a case initiated by SIPC with respect to a financial company subject to the Securities Investor Protection Act of 1970), or any State insolvency law.

“(3) ADDITIONAL PAYMENTS AUTHORIZED.—

“(A) IN GENERAL.—The Corporation may, as receiver and with the approval of the Secretary of the Treasury, make additional payments or credit additional amounts to or with respect to or for the account of any claimant or category of claimants of a covered financial company if the Corporation determines that such payments or credits are necessary or appropriate to—

“(i) minimize losses to the receiver from the resolution of the covered financial company under this section; or

“(ii) prevent or mitigate serious adverse effects to financial stability or the U.S. economy.

“(B) MANNER OF PAYMENT.—The Corporation may make payments or credit amounts under subparagraph (A) directly to the claimants or may make such payments or credit such amounts to a company other than a covered financial company or a bridge financial company established with respect thereto in order to induce such other company to accept liability for such claims.

“(l) LIMITATION ON COURT ACTION.—Except as provided in this section or at the request of the conservator or receiver appointed for a covered financial company under this section, no court may take any action to restrain or affect the exercise of powers or functions of the conservator or receiver hereunder.

“(m) LIABILITY OF DIRECTORS AND OFFICERS.—

“(1) IN GENERAL.--A director or officer of a covered financial company may be held personally liable for monetary damages in any civil action described in paragraph (2) by, on behalf of, or at the request or direction of the Corporation, which action is prosecuted wholly or partially for the benefit of the Corporation—

“(A) acting as conservator or receiver of such covered financial company;

“(B) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by such receiver or conservator; or

“(C) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed in whole or in part by a covered financial company or its affiliate in connection with assistance provided under subsection (c).

“(2) ACTIONS COVERED.—Paragraph (1) shall apply with respect to actions for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care (than gross negligence) including intentional tortious conduct, as such terms are defined and determined under applicable State law.

“(3) SAVINGS CLAUSE.--Nothing in this paragraph shall impair or affect any right of the Corporation under other applicable law.

“(n) DAMAGES.—In any proceeding related to any claim against a covered financial company’s director, officer, employee, agent, attorney, accountant, appraiser, or any other party employed by or providing services to a covered financial company, recoverable damages determined to result from the improvident or otherwise improper use or investment of any covered financial company’s assets shall include principal losses and appropriate interest.

“(o) BRIDGE FINANCIAL COMPANIES.—

“(1) ORGANIZATION.—

“(A) PURPOSE.—The Corporation, as receiver of one or more covered financial companies or in anticipation of being appointed receiver of one or more financial companies, may organize one or more bridge financial companies in accordance with this subsection.

“(B) AUTHORITIES.—Upon the creation of a bridge financial company under subparagraph (A) with respect to a covered financial company, such bridge financial company may—

“(i) assume such liabilities (including liabilities associated with any trust or custody business) of such covered financial company as the Corporation may, in its discretion, determine to be appropriate;

“(ii) purchase such assets (including assets associated with any trust or custody business) of such covered financial company as the Corporation may, in its discretion, determine to be appropriate; and

“(iii) perform any other temporary function which the Corporation may, in its discretion, prescribe in accordance with this section.

“(2) CHARTER AND ESTABLISHMENT.—

“(A) CHARTER.—If the Corporation is or expects to be appointed as receiver for a financial company, the Corporation may grant a Federal charter under this subsection to one or more bridge financial company or companies with respect to such financial company which shall, by operation of law and immediately upon issuance of its charter, be established and operate in accordance with, and subject to, such charter and this section.

“(B) MANAGEMENT.—Upon its establishment, a bridge financial company shall be under the management of a board of directors appointed by the Corporation.

“(C) ARTICLES OF ASSOCIATION.—The articles of association and organization certificate of a bridge financial company shall have such terms as the Corporation may provide, shall be approved by the Corporation, and shall be executed by such representatives as the Corporation may designate.

“(D) TERMS OF CHARTER; RIGHTS AND PRIVILEGES.— Subject to and in accordance with the provisions of this subsection, the Corporation shall

—
“(i) establish the terms of the charter of a bridge financial company and the rights, powers, authorities and privileges of a bridge financial company granted by the charter or as an incident thereto; and

“(ii) provide for, and establish the terms and conditions governing, the management (including, but not limited to, the bylaws and the number of directors of the board of directors) and operations of the bridge financial company.

“(E) TRANSFER OF RIGHTS AND PRIVILEGES OF COVERED FINANCIAL COMPANY.—

“(i) IN GENERAL.—Notwithstanding any other provision of Federal law or the law of any State, the Corporation may provide for a bridge financial company to succeed to and assume any rights, powers, authorities or privileges of the covered financial entity with respect to which the bridge financial company was established and, upon such determination by the Corporation, the bridge financial company shall immediately and by operation of law succeed to and assume such rights, powers, authorities and privileges.

“(ii) EFFECTIVE WITHOUT APPROVAL.— Any succession to or assumption by a bridge financial company of rights, powers, authorities or privileges of a covered financial company under clause (i) or otherwise shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

“(F) CORPORATE GOVERNANCE AND ELECTION AND DESIGNATION OF BODY OF LAW.— To the extent permitted by the Corporation and consistent with this section and any rules, regulations or directives issued by the Corporation under this section, a bridge financial company may elect to follow the corporate governance practices and procedures as are applicable to a corporation incorporated under the general corporation law of the State of Delaware, or the state of incorporation or organization of the covered financial company with respect to which the bridge financial company was established, as such law may be amended from time to time.

“(G) CAPITAL.—

“(i) CAPITAL NOT REQUIRED.—Notwithstanding any other provision of Federal or State law, a bridge financial company may, if permitted by the Corporation, operate without any capital or surplus, or with such capital or surplus as the Corporation may in its discretion determine to be appropriate.

“(ii) NO CONTRIBUTION BY CORPORATION REQUIRED.— The Corporation is not required to pay capital into a bridge financial company or to issue any capital stock on behalf of a bridge financial company established under this subsection.

“(iii) AUTHORITY.— If the Corporation determines that such action is advisable, the Corporation may cause capital stock or other securities of a bridge financial company established with respect to a covered financial company to be issued and offered for sale in such amounts and on such terms and conditions as the Corporation may, in its discretion, determine.

“(3) INTERESTS IN AND ASSETS AND OBLIGATIONS OF COVERED FINANCIAL COMPANY.— Notwithstanding paragraphs (1) or (2) or any other provision of law—

“(A) a bridge financial company shall assume, acquire, or succeed to the assets or liabilities of a covered financial company (including the assets or liabilities associated with any trust or custody business) only to the extent that such assets or liabilities are transferred by the Corporation to the bridge financial company in accordance with, and subject to the restrictions set forth in, paragraph (1)(B); and

“(B) a bridge financial company shall not assume, acquire, or succeed to any obligation that a covered financial company for which a receiver has been appointed may have to any shareholder of the covered financial company that arises as a result of the status of that person as a shareholder of the covered financial company.

“(4) BRIDGE FINANCIAL COMPANY TREATED AS BEING IN DEFAULT FOR CERTAIN PURPOSES.—A bridge financial company shall be treated as a covered financial company in default at such times and for such purposes as the Corporation may, in its discretion, determine.

“(5) TRANSFER OF ASSETS AND LIABILITIES.—

“(A) TRANSFER OF ASSETS AND LIABILITIES.—The Corporation, as receiver, may transfer any assets and liabilities of a covered financial company (including any assets or liabilities associated with any trust or custody business) to one or more bridge financial companies in accordance with and subject to the restrictions of paragraph (1).

“(B) SUBSEQUENT TRANSFERS.—At any time after the establishment of a bridge financial company with respect to a covered financial company, the Corporation, as receiver, may transfer any assets and liabilities of such covered financial company, as the Corporation may, in its discretion, determine to be appropriate in accordance with and subject to the restrictions of paragraph (1).

“(C) TREATMENT OF TRUST OR CUSTODY BUSINESS.—For purposes of this paragraph, the trust or custody business, including fiduciary appointments, held by any covered financial company is included among its assets and liabilities.

“(D) EFFECTIVE WITHOUT APPROVAL.—The transfer of any assets or liabilities, including those associated with any trust or custody business of a covered financial company to a bridge financial company shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

“(E) EQUITABLE TREATMENT OF SIMILARLY SITUATED CREDITORS.—The Corporation shall treat all creditors of a covered financial company that are similarly situated under subsection (i)(1) in a similar manner in exercising the authority of the Corporation under this subsection to transfer any assets or liabilities of the covered financial company to one or more bridge financial companies established with respect to such covered financial company, except that the Corporation may take actions (including making payments) that do not comply with this subparagraph, if—

“(i) The Corporation determines that such actions are necessary to maximize the value of the assets of the covered financial company, to maximize the present value return from the sale or other disposition of the assets of the covered financial company, to minimize the amount of any loss realized upon the sale or other disposition of the assets of the covered financial company, or to contain or address serious adverse effects to financial stability or the U.S. economy; and

“(ii) all creditors that are similarly situated under subsection (i)(1) receive not less than the amount provided in subsection (k)(2).

“(F) LIMITATION ON TRANSFER OF LIABILITIES.—Notwithstanding any other provision of law, the aggregate amount of liabilities of a covered financial company that are transferred to, or assumed by, a bridge financial company from a covered financial company may not exceed the aggregate amount of the assets of the covered financial company that are transferred to, or purchased by, the bridge financial company from the covered financial

company.

“(6) STAY OF JUDICIAL ACTION.—Any judicial action to which a bridge financial institution becomes a party by virtue of its acquisition of any assets or assumption of any liabilities of a covered financial company shall be stayed from further proceedings for a period of up to 45 days (or such longer period as may be agreed to upon the consent of all parties) at the request of the bridge financial company.

“(7) AGREEMENTS AGAINST INTEREST OF THE BRIDGE FINANCIAL COMPANY.—No agreement that tends to diminish or defeat the interest of the bridge financial company in any asset of a covered financial company acquired by the bridge financial company shall be valid against the bridge financial company unless such agreement is in writing and executed by an authorized officer or representative of the covered financial company.

“(8) NO FEDERAL STATUS.—

“(A) AGENCY STATUS.—A bridge financial company is not an agency, establishment, or instrumentality of the United States.

“(B) EMPLOYEE STATUS.—Representatives for purposes of paragraph (1)(B), directors, officers, employees, or agents of a bridge financial company are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Corporation or of any Federal instrumentality who serves at the request of the Corporation as a representative for purposes of paragraph (1)(B), director, officer, employee, or agent of a bridge financial company shall not—

“(i) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5, United States Code, or any other provision of law; or

“(ii) receive any salary or benefits for service in any such capacity with respect to a bridge financial company in addition to such salary or benefits as are obtained through employment with the Corporation or such Federal instrumentality.

“(9) EXEMPT TAX STATUS.—Notwithstanding any other provision of Federal or State law, a bridge financial company, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority.

“(10) FEDERAL AGENCY APPROVAL; ANTITRUST REVIEW.—

(A) IN GENERAL.—If a transaction involving the merger or sale of a bridge financial company requires approval by a Federal agency, the transaction may not be consummated before the 5th calendar day after the date of approval by the Federal agency responsible for such approval with respect thereto. If, in connection with any such approval a report on competitive factors from the Attorney General is required, the Federal agency responsible for such approval shall promptly notify the Attorney General of the proposed transaction and the Attorney General shall provide the required report within 10 days of the request. If a filing is required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 with the Department of Justice or the Federal Trade Commission, the waiting period shall expire not later than the 30th day following such filing notwithstanding any other provision of Federal law or any attempt by any Federal agency to extend such waiting period, and no further request for information by any Federal agency shall be permitted.

“(B) EMERGENCY.—If the Secretary in consultation with the Chairman of the Federal Reserve Board has found that the Corporation must act immediately to prevent the probable failure of 1 or more of the covered financial companies involved, the approvals and filings referred to in subparagraph (A) shall not be

required and the transaction may be consummated immediately by the Corporation.

“(11) DURATION OF BRIDGE FINANCIAL COMPANY.—Subject to paragraphs (13) and (14), the status of a bridge financial company as such shall terminate at the end of the 2-year period following the date it was granted a charter. The Corporation may, in its discretion, extend the status of the bridge financial company as such for 3 additional 1-year periods.

“(12) TERMINATION OF BRIDGE FINANCIAL COMPANY STATUS.—The status of any bridge financial company as such shall terminate upon the earliest of—

“(A) the merger or consolidation of the bridge financial company with a company that is not a bridge financial company;

“(B) at the election of the Corporation, the sale of a majority of the capital stock of the bridge financial company to a company other than the Corporation and other than another bridge financial company;

“(C) the sale of 80 percent, or more, of the capital stock of the bridge financial company to a person other than the Corporation and other than another bridge financial company;

“(D) at the election of the Corporation, either the assumption of all or substantially all of the liabilities of the bridge financial company by a company that is not a bridge financial company, or the acquisition of all or substantially all of the assets of the bridge financial company by a company that is not a bridge financial company, or other entity as permitted under applicable law; and

“(E) the expiration of the period provided in paragraph (11), or the earlier dissolution of the bridge financial company as provided in paragraph (14).

“(13) EFFECT OF TERMINATION EVENTS.—

“(A) MERGER OR CONSOLIDATION.—A merger or consolidation as provided in paragraph (12)(A) shall be conducted in accordance with, and shall have the effect provided in, the provisions of applicable law. For the purpose of effecting such a merger or consolidation, the bridge financial company shall be treated as a corporation organized under the laws of the State of Delaware (unless the law of another State has been selected by the bridge financial company in accordance with paragraph (2)(F)), and the Corporation shall be treated as the sole shareholder thereof, notwithstanding any other provision of State or Federal law.

“(B) CHARTER CONVERSION.—Following the sale of a majority of the capital stock of the bridge financial company as provided in paragraph (12)(B), the Corporation may amend the charter of the bridge financial company to reflect the termination of the status of the bridge financial company as such, whereupon the company shall have all of the rights, powers, and privileges under its constituent documents and applicable State or Federal law. In connection therewith, the Corporation may take such steps as may be necessary or convenient to reincorporate the bridge financial company under the laws of a State and, notwithstanding any provisions of State or Federal law, such state-chartered corporation shall be deemed to succeed by operation of law to such rights, titles, powers and interests of the bridge financial company as the Corporation may provide, with the same effect as if the bridge financial company had merged with the State-chartered corporation under provisions of the corporate laws of such State.

“(C) SALE OF STOCK.—Following the sale of 80 percent or more of the capital stock of a bridge financial company as provided in paragraph (12)(C), the company shall have all of the rights, powers, and privileges under its constituent documents and applicable State or Federal law. In connection therewith, the Corporation may take such steps as may be necessary or

convenient to reincorporate the bridge financial company under the laws of a State and, notwithstanding any provisions of State or Federal law, the state-chartered corporation shall be deemed to succeed by operation of law to such rights, titles, powers and interests of the bridge financial company as the Corporation may provide, with the same effect as if the bridge financial company had merged with the State-chartered corporation under provisions of the corporate laws of such State.

“(D) ASSUMPTION OF LIABILITIES AND SALE OF ASSETS.—

Following the assumption of all or substantially all of the liabilities of the bridge financial company, or the sale of all or substantially all of the assets of the bridge financial company, as provided in paragraph (12)(D), at the election of the Corporation the bridge financial company may retain its status as such for the period provided in paragraph (11) or may be dissolved at the election of the Corporation.

“(E) AMENDMENTS TO CHARTER.—Following the consummation of a transaction described in subparagraph (A), (B), (C), or (D) of paragraph (12), the charter of the resulting company shall be amended to reflect the termination of bridge financial company status, if appropriate.

“(14) DISSOLUTION OF BRIDGE FINANCIAL COMPANY.—

“(A) IN GENERAL.—Notwithstanding any other provision of State or Federal law, if a bridge financial company’s status as such has not previously been terminated by the occurrence of an event specified in subparagraph (A), (B), (C), or (D) of paragraph (12)—

“(i) the Corporation may, in its discretion, dissolve the bridge financial company in accordance with this paragraph at any time; and

“(ii) the Corporation shall promptly commence dissolution proceedings in accordance with this paragraph upon the expiration of the 2-year period following the date the bridge financial company was chartered, or any extension thereof, as provided in paragraph (11).

“(B) PROCEDURES.—The Corporation shall remain the receiver of a bridge financial company for the purpose of dissolving the bridge financial company. The Corporation as such receiver shall wind up the affairs of the bridge financial company in conformity with the provisions of law relating to the liquidation of covered financial companies. With respect to any such bridge financial company, the Corporation as receiver shall have all the rights, powers, and privileges and shall perform the duties related to the exercise of such rights, powers, or privileges granted by law to a receiver of a covered financial company and, notwithstanding any other provision of law, in the exercise of such rights, powers, and privileges the Corporation shall not be subject to the direction or supervision of any State agency or other Federal agency.

“(15) AUTHORITY TO OBTAIN CREDIT.—

“(A) IN GENERAL.—A bridge financial company may obtain unsecured credit and issue unsecured debt.

“(B) INABILITY TO OBTAIN CREDIT.—If a bridge financial company is unable to obtain unsecured credit or issue unsecured debt, the Corporation may authorize the obtaining of credit or the issuance of debt by the bridge financial company—

“(i) with priority over any or all of the obligations of the bridge financial company;

“(ii) secured by a lien on property of the bridge financial company that is not otherwise subject to a lien; or

“(iii) secured by a junior lien on property of the bridge financial company that is subject to a lien.

“(C) LIMITATIONS.—

“(i) IN GENERAL.—The Corporation, after notice and a hearing, may authorize the obtaining of credit or the issuance of debt by a bridge financial company that is secured by a senior or equal lien on property of the bridge financial company that is subject to a lien only if—

“(I) the bridge financial company is unable to otherwise obtain such credit or issue such debt; and

“(II) there is adequate protection of the interest of the holder of the lien on the property with respect to which such senior or equal lien is proposed to be granted.

“(D) BURDEN OF PROOF.—In any hearing under this subsection, the Corporation has the burden of proof on the issue of adequate protection.

“(16) EFFECT ON DEBTS AND LIENS.—The reversal or modification on appeal of an authorization under this subsection to obtain credit or issue debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so issued, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the issuance of such debt, or the granting of such priority or lien, were stayed pending appeal.

“(p) SUPERVISORY RECORDS.—Whenever the Corporation has been appointed as receiver for a covered financial company, the Appropriate Federal Regulatory Agency for the company (if any) shall make available all supervisory records to the receiver which may be used by the receiver in any manner the receiver determines to be appropriate.

“(q) EXPEDITED PROCEDURES FOR CERTAIN CLAIMS.—

“(1) TIME FOR FILING NOTICE OF APPEAL.—The notice of appeal of any order, whether interlocutory or final, entered in any case brought by the Corporation against a covered financial company’s director, officer, employee, agent, attorney, accountant, or appraiser or any other person employed by or providing services to a covered financial company shall be filed not later than 30 days after the date of entry of the order. The hearing of the appeal shall be held not later than 120 days after the date of the notice of appeal. The appeal shall be decided not later than 180 days after the date of the notice of appeal.

“(2) SCHEDULING.—A court of the United States shall expedite the consideration of any case brought by the Corporation against a covered financial company’s director, officer, employee, agent, attorney, accountant, or appraiser or any other person employed by or providing services to a covered financial company. As far as practicable, the court shall give such case priority on its docket.

“(3) JUDICIAL DISCRETION.—The court may modify the schedule and limitations stated in paragraphs (1) and (2) in a particular case, based on a specific finding that the ends of justice that would be served by making such a modification would outweigh the best interest of the public in having the case resolved expeditiously.

“(r) FOREIGN INVESTIGATIONS.—The Corporation, as conservator or receiver of any covered financial company and for purposes of carrying out any power, authority, or duty with respect to a covered financial company—

“(1) may request the assistance of any foreign financial authority and provide assistance to any foreign financial authority in accordance with section 8(v) of the Federal Deposit Insurance Act as if the covered financial company were an insured depository institution, the Corporation were the appropriate Federal banking agency for the company and any foreign financial authority were the foreign banking authority; and

“(2) may maintain an office to coordinate foreign investigations or investigations on behalf of foreign financial authorities.

“(s) PROHIBITION ON ENTERING SECRECY AGREEMENTS AND PROTECTIVE

ORDERS.—The Corporation may not enter into any agreement or approve any protective order which prohibits the Corporation from disclosing the terms of any settlement of an administrative or other action for damages or restitution brought by the Corporation in its capacity as conservator or receiver for a covered financial company.

“(t) LIQUIDATION OF CERTAIN COVERED FINANCIAL COMPANIES OR BRIDGE FINANCIAL COMPANIES.—Notwithstanding any other provision of law (other than a conflicting provision of this section), the Corporation, in connection with the liquidation of any covered financial company or bridge financial company with respect to which the Corporation has been appointed as receiver, shall—

“(1) in the case of any covered financial company or bridge financial company that is a stockbroker (as that term is defined in section 101 of title 11 of the United States Code) but is not a member of the Securities Investor Protection Agency, apply the provisions of subchapter III of chapter 7 of title 11 of the United States Code in respect of the distribution to any ‘customer’ of all ‘customer name securities’ and ‘customer property’ (as such terms are defined in section 741 of such title 11) as if such covered financial company or bridge financial company were a debtor for purposes of such subchapter; or

“(2) in the case of any covered financial company or bridge financial company that is a commodity broker (as that term is defined in section 101 of title 11 of the United States Code), apply the provisions of subchapter IV of chapter 7 of title 11 of the United States Code in respect of the distribution to any ‘customer’ of all ‘customer property’ (as such terms are defined in section 761 of such title 11) as if such covered financial company or bridge financial company were a debtor for purposes of such subchapter.

“(u) FUNDING.—

“(1) APPROPRIATION AND APPORTIONMENT.— For the purposes of carrying out the authorities granted in this section, there are hereby appropriated to the Corporation, subject to subsection (c), such sums as are necessary, without fiscal year limitation. Notwithstanding any other provision of law, including section 7(d) of the Federal Deposit Insurance Act, such amounts shall be subject to apportionment under section 1517 of title 31, United States Code, and restrictions that generally apply to the use of appropriated funds in title 31, United States Code, and other laws.

“(2) PROCEEDS TREATED AS MISCELLANEOUS RECEIPTS.— Amounts received by the Corporation in carrying out this section (including proceeds from payments of principal and interest from loans made pursuant to subsection (c) and special assessments received under subsection (v), but excluding amounts received by any covered financial company when the Corporation is acting in its capacity as conservator or receiver for such company) shall be deposited into the Treasury as miscellaneous receipts.

“(v) RECOVERY OF EXPENDED FUNDS; SPECIAL ASSESSMENTS ON FINANCIAL COMPANIES. —

“(1) Recovery of expended funds.—The Corporation shall take steps to recover the amount of funds expended by the Corporation under this section that the Corporation has not otherwise recouped. Such steps shall include 1 or more emergency special assessments on financial companies taking into consideration the following—

“(A) The net present value of the appropriated funds expended;

“(B) The amount and frequency of assessments to recover the full amount of appropriated funds expended within 60 months from the date of the determination in subsection (b); and

“(C) Such other considerations that the Corporation and the Secretary deem appropriate.

“(2) Rulemaking.—The Corporation and the Secretary shall issue joint regulations to carry out this subsection.

“(w) NO FEDERAL STATUS.—

“(1) Agency Status.—A covered financial company (or any subsidiary thereof) that receives assistance, is placed into conservatorship or receivership, or both, under subsection (c) is not a department, agency, or instrumentality of the United States for purposes of statutes that confer powers on or impose obligations on government entities.

“(2) Employee status.—Interim directors, directors, officers, employees, or agents of a covered financial company that is placed into conservatorship or receivership are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Corporation or of any Federal agency who serves at the request of the Corporation as an interim director, director, officer, employee, or agent of a covered financial company that is placed into conservatorship or receivership shall not

—

“(A) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of Title 5, United States Code, or any other provision of law, or;

“(B) receive any salary or benefits for service in any such capacity with respect to a covered financial company that is placed into conservatorship or receivership in addition to such salary or benefits as are obtained through employment with the Corporation or other Federal agency.

SEC. 3. CLARIFICATION OF PROHIBITION REGARDING CONCEALMENT OF ASSETS FROM CONSERVATOR, RECEIVER, OR LIQUIDATING AGENT.

(a) IN GENERAL.—Section 1032 of title 18, United States Code, is amended in paragraph (1) by deleting “or” before “the National Credit Union Administration Board,” and by inserting immediately thereafter “or the Appropriate Federal Regulatory Agency, as defined in section 2 of the Resolution Authority for Systematically Significant Financial Institution Holding Companies Act of 2009 (___U.S.C. § ___(a)(2)(A)),”.

(b) CONFORMING CHANGE.—The title of section 1032 of title 18, United States Code, is amended by deleting “of financial institution”.

SEC. 4. MISCELLANEOUS PROVISIONS

(a) BANKRUPTCY CODE AMENDMENTS.—Section 109(b)(2) of title 11 of the United States Code is amended by adding “covered financial company as that term is defined in section 2 of the Resolution Authority for Systemically Significant Financial Companies Act of 2009,” after a “domestic insurance company”.

(b) FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT.—Section 403(a) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4403(a)) is amended by inserting “section 2(j) of the Resolution Authority for Systemically Significant Financial Companies Act of 2009 , section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(d)), “after “section 1821(e) of this title”.