

1 **SEC. 619. PROHIBITIONS ON PROPRIETARY TRADING AND**
2 **CERTAIN RELATIONSHIPS WITH HEDGE**
3 **FUNDS AND PRIVATE EQUITY FUNDS.**

4 The Bank Holding Company Act of 1956 (12 U.S.C.
5 1841 et seq.) is amended by adding at the end the fol-
6 lowing:

7 **“SEC. 13. PROHIBITIONS ON PROPRIETARY TRADING AND**
8 **CERTAIN RELATIONSHIPS WITH HEDGE**
9 **FUNDS AND PRIVATE EQUITY FUNDS.**

10 **“(a) IN GENERAL.—**

11 **“(1) PROHIBITION.—**Unless otherwise provided
12 in this section, a banking entity shall not—

13 **“(A) engage in proprietary trading; or**

14 **“(B) acquire or retain any equity, partner-**
15 **ship, or other ownership interest in or sponsor**
16 **a hedge fund or a private equity fund.**

17 **“(2) NONBANK FINANCIAL COMPANIES SUPER-**
18 **VED BY THE BOARD.—**Any nonbank financial com-
19 pany supervised by the Board that engages in pro-
20 prietary trading or takes or retains any equity, part-
21 nership, or other ownership interest in or sponsors
22 a hedge fund or a private equity fund shall be sub-
23 ject, by rule, as provided in subsection (b)(2), to ad-
24 ditional capital requirements for and additional
25 quantitative limits with regards to such proprietary
26 trading and taking or retaining any equity, partner-

1 ship, or other ownership interest in or sponsorship
2 of a hedge fund or a private equity fund, except that
3 permitted activities as described in subsection (d)
4 shall not be subject to the additional capital and ad-
5 ditional quantitative limits except as provided in
6 subsection (d)(3), as if the nonbank financial com-
7 pany supervised by the Board were a banking entity.

8 “(b) STUDY AND RULEMAKING.—

9 “(1) STUDY.—Not later than 6 months after
10 the date of enactment of this section, the Financial
11 Stability Oversight Council shall study and make
12 recommendations on implementing the provisions of
13 this section so as to—

14 “(A) promote and enhance the safety and
15 soundness of banking entities;

16 “(B) protect taxpayers and consumers and
17 enhance financial stability by minimizing the
18 risk that insured depository institutions and the
19 affiliates of insured depository institutions will
20 engage in unsafe and unsound activities;

21 “(C) limit the inappropriate transfer of
22 Federal subsidies from institutions that benefit
23 from deposit insurance and liquidity facilities of
24 the Federal Government to unregulated entities;

1 “(D) reduce conflicts of interest between
2 the self-interest of banking entities and
3 nonbank financial companies supervised by the
4 Board, and the interests of the customers of
5 such entities and companies;

6 “(E) limit activities that have caused
7 undue risk or loss in banking entities and
8 nonbank financial companies supervised by the
9 Board, or that might reasonably be expected to
10 create undue risk or loss in such banking enti-
11 ties and nonbank financial companies super-
12 vised by the Board;

13 “(F) appropriately accommodate the busi-
14 ness of insurance within an insurance company,
15 subject to regulation in accordance with the rel-
16 evant insurance company investment laws, while
17 protecting the safety and soundness of any
18 banking entity with which such insurance com-
19 pany is affiliated and of the United States fi-
20 nancial system; and

21 “(G) appropriately time the divestiture of
22 illiquid assets that are affected by the imple-
23 mentation of the prohibitions under subsection
24 (a).

25 “(2) RULEMAKING.—

1 “(A) IN GENERAL.—Unless otherwise pro-
2 vided in this section, not later than 9 months
3 after the completion of the study under para-
4 graph (1), the appropriate Federal banking
5 agencies, the Securities and Exchange Commis-
6 sion, and the Commodity Futures Trading
7 Commission, shall consider the findings of the
8 study under paragraph (1) and adopt rules to
9 carry out this section, as provided in subpara-
10 graph (B).

11 “(B) COORDINATED RULEMAKING.—

12 “(i) REGULATORY AUTHORITY.—The
13 regulations issued under this paragraph
14 shall be issued by—

15 “(I) the appropriate Federal
16 banking agencies, jointly, with respect
17 to insured depository institutions;

18 “(II) the Board, with respect to
19 any company that controls an insured
20 depository institution, or that is treat-
21 ed as a bank holding company for
22 purposes of section 8 of the Inter-
23 national Banking Act, any nonbank fi-
24 nancial company supervised by the
25 Board, and any subsidiary of any of

1 the foregoing (other than a subsidiary
2 for which an agency described in sub-
3 clause (I), (III), or (IV) is the pri-
4 mary financial regulatory agency);

5 “(III) the Commodity Futures
6 Trading Commission, with respect to
7 any entity for which the Commodity
8 Futures Trading Commission is the
9 primary financial regulatory agency,
10 as defined in section 2 of the Dodd-
11 Frank Wall Street Reform and Con-
12 sumer Protection Act; and

13 “(IV) the Securities and Ex-
14 change Commission, with respect to
15 any entity for which the Securities
16 and Exchange Commission is the pri-
17 mary financial regulatory agency, as
18 defined in section 2 of the Dodd-
19 Frank Wall Street Reform and Con-
20 sumer Protection Act.

21 “(ii) COORDINATION, CONSISTENCY,
22 AND COMPARABILITY.—In developing and
23 issuing regulations pursuant to this sec-
24 tion, the appropriate Federal banking
25 agencies, the Securities and Exchange

1 Commission, and the Commodity Futures
2 Trading Commission shall consult and co-
3 ordinate with each other, as appropriate,
4 for the purposes of assuring, to the extent
5 possible, that such regulations are com-
6 parable and provide for consistent applica-
7 tion and implementation of the applicable
8 provisions of this section to avoid providing
9 advantages or imposing disadvantages to
10 the companies affected by this subsection
11 and to protect the safety and soundness of
12 banking entities and nonbank financial
13 companies supervised by the Board.

14 “(iii) COUNCIL ROLE.—The Chair-
15 person of the Financial Stability Oversight
16 Council shall be responsible for coordina-
17 tion of the regulations issued under this
18 section.

19 “(c) EFFECTIVE DATE.—

20 “(1) IN GENERAL.—Except as provided in para-
21 graphs (2) and (3), this section shall take effect on
22 the earlier of—

23 “(A) 12 months after the date of the
24 issuance of final rules under subsection (b); or

1 “(B) 2 years after the date of enactment
2 of this section.

3 “(2) CONFORMANCE PERIOD FOR DIVESTI-
4 TURE.—A banking entity or nonbank financial com-
5 pany supervised by the Board shall bring its activi-
6 ties and investments into compliance with the re-
7 quirements of this section not later than 2 years
8 after the date on which the requirements become ef-
9 fective pursuant to this section or 2 years after the
10 date on which the entity or company becomes a
11 nonbank financial company supervised by the Board.
12 The Board may, by rule or order, extend this two-
13 year period for not more than one year at a time,
14 if, in the judgment of the Board, such an extension
15 is consistent with the purposes of this section and
16 would not be detrimental to the public interest. The
17 extensions made by the Board under the preceding
18 sentence may not exceed an aggregate of 3 years.

19 “(3) EXTENDED TRANSITION FOR ILLIQUID
20 FUNDS.—

21 “(A) APPLICATION.—The Board may,
22 upon the application of a banking entity, extend
23 the period during which the banking entity, to
24 the extent necessary to fulfill a contractual obli-
25 gation that was in effect on May 1, 2010, may

1 take or retain its equity, partnership, or other
2 ownership interest in, or otherwise provide addi-
3 tional capital to, an illiquid fund.

4 “(B) TIME LIMIT ON APPROVAL.—The
5 Board may grant 1 extension under subpara-
6 graph (A), which may not exceed 5 years.

7 “(4) DIVESTITURE REQUIRED.—Except as oth-
8 erwise provided in subsection (d)(1)(G), a banking
9 entity may not engage in any activity prohibited
10 under subsection (a)(1)(B) after the earlier of—

11 “(A) the date on which the contractual ob-
12 ligation to invest in the illiquid fund terminates;
13 and

14 “(B) the date on which any extensions
15 granted by the Board under paragraph (3) ex-
16 pire.

17 “(5) ADDITIONAL CAPITAL DURING TRANSITION
18 PERIOD.—Notwithstanding paragraph (2), on the
19 date on which the rules are issued under subsection
20 (b)(2), the appropriate Federal banking agencies,
21 the Securities and Exchange Commission, and the
22 Commodity Futures Trading Commission shall issue
23 rules, as provided in subsection (b)(2), to impose ad-
24 ditional capital requirements, and any other restric-
25 tions, as appropriate, on any equity, partnership, or

1 ownership interest in or sponsorship of a hedge fund
2 or private equity fund by a banking entity.

3 “(6) SPECIAL RULEMAKING.—Not later than 6
4 months after the date of enactment of this section,
5 the Board shall issues rules to implement para-
6 graphs (2) and (3).

7 “(d) PERMITTED ACTIVITIES.—

8 “(1) IN GENERAL.—Notwithstanding the re-
9 strictions under subsection (a), to the extent per-
10 mitted by any other provision of Federal or State
11 law, and subject to the limitations under paragraph
12 (2) and any restrictions or limitations that the ap-
13 propriate Federal banking agencies, the Securities
14 and Exchange Commission, and the Commodity Fu-
15 tures Trading Commission, may determine, the fol-
16 lowing activities (in this section referred to as ‘per-
17 mitted activities’) are permitted:

18 “(A) The purchase, sale, acquisition, or
19 disposition of obligations of the United States
20 or any agency thereof, obligations, participa-
21 tions, or other instruments of or issued by the
22 Government National Mortgage Association, the
23 Federal National Mortgage Association, the
24 Federal Home Loan Mortgage Corporation, a
25 Federal Home Loan Bank, the Federal Agricul-

1 tural Mortgage Corporation, or a Farm Credit
2 System institution chartered under and subject
3 to the provisions of the Farm Credit Act of
4 1971 (12 U.S.C. 2001 et seq.), and obligations
5 of any State or of any political subdivision
6 thereof.

7 “(B) The purchase, sale, acquisition, or
8 disposition of securities and other instruments
9 described in subsection (h)(4) in connection
10 with underwriting or market-making-related ac-
11 tivities, to the extent that any such activities
12 permitted by this subparagraph are designed
13 not to exceed the reasonably expected near term
14 demands of clients, customers, or counterpar-
15 ties.

16 “(C) Risk-mitigating hedging activities in
17 connection with and related to individual or ag-
18 gregated positions, contracts, or other holdings
19 of a banking entity that are designed to reduce
20 the specific risks to the banking entity in con-
21 nection with and related to such positions, con-
22 tracts, or other holdings.

23 “(D) The purchase, sale, acquisition, or
24 disposition of securities and other instruments

1 described in subsection (h)(4) on behalf of cus-
2 tomers.

3 “(E) Investments in one or more small
4 business investment companies, as defined in
5 section 102 of the Small Business Investment
6 Act of 1958 (15 U.S.C. 662), investments de-
7 signed primarily to promote the public welfare,
8 of the type permitted under paragraph (11) of
9 section 5136 of the Revised Statutes of the
10 United States (12 U.S.C. 24), or investments
11 that are qualified rehabilitation expenditures
12 with respect to a qualified rehabilitated building
13 or certified historic structure, as such terms are
14 defined in section 47 of the Internal Revenue
15 Code of 1986 or a similar State historic tax
16 credit program.

17 “(F) The purchase, sale, acquisition, or
18 disposition of securities and other instruments
19 described in subsection (h)(4) by a regulated in-
20 surance company directly engaged in the busi-
21 ness of insurance for the general account of the
22 company and by any affiliate of such regulated
23 insurance company, provided that such activi-
24 ties by any affiliate are solely for the general

1 account of the regulated insurance company,
2 if—

3 “(i) the purchase, sale, acquisition, or
4 disposition is conducted in compliance
5 with, and subject to, the insurance com-
6 pany investment laws, regulations, and
7 written guidance of the State or jurisdic-
8 tion in which each such insurance company
9 is domiciled; and

10 “(ii) the appropriate Federal banking
11 agencies, after consultation with the Fi-
12 nancial Stability Oversight Council and the
13 relevant insurance commissioners of the
14 States and territories of the United States,
15 have not jointly determined, after notice
16 and comment, that a particular law, regu-
17 lation, or written guidance described in
18 clause (i) is insufficient to protect the safe-
19 ty and soundness of the banking entity, or
20 of the financial stability of the United
21 States.

22 “(G) Organizing and offering a private eq-
23 uity or hedge fund, including serving as a gen-
24 eral partner, managing member, or trustee of
25 the fund and in any manner selecting or con-

1 trolling (or having employees, officers, directors,
2 or agents who constitute) a majority of the di-
3 rectors, trustees, or management of the fund,
4 including any necessary expenses for the fore-
5 going, only if—

6 “(i) the banking entity provides bona
7 fide trust, fiduciary, or investment advisory
8 services;

9 “(ii) the fund is organized and offered
10 only in connection with the provision of
11 bona fide trust, fiduciary, or investment
12 advisory services and only to persons that
13 are customers of such services of the bank-
14 ing entity;

15 “(iii) the banking entity does not ac-
16 quire or retain an equity interest, partner-
17 ship interest, or other ownership interest
18 in the funds except for a de minimis in-
19 vestment subject to and in compliance with
20 paragraph (4);

21 “(iv) the banking entity complies with
22 the restrictions under paragraphs (1) and
23 (2) of subparagraph (f);

24 “(v) the banking entity does not, di-
25 rectly or indirectly, guarantee, assume, or

1 otherwise insure the obligations or per-
2 formance of the hedge fund or private eq-
3 uity fund or of any hedge fund or private
4 equity fund in which such hedge fund or
5 private equity fund invests;

6 “(vi) the banking entity does not
7 share with the hedge fund or private equity
8 fund, for corporate, marketing, pro-
9 motional, or other purposes, the same
10 name or a variation of the same name;

11 “(vii) no director or employee of the
12 banking entity takes or retains an equity
13 interest, partnership interest, or other
14 ownership interest in the hedge fund or
15 private equity fund, except for any director
16 or employee of the banking entity who is
17 directly engaged in providing investment
18 advisory or other services to the hedge
19 fund or private equity fund; and

20 “(viii) the banking entity discloses to
21 prospective and actual investors in the
22 fund, in writing, that any losses in such
23 hedge fund or private equity fund are
24 borne solely by investors in the fund and
25 not by the banking entity, and otherwise

1 complies with any additional rules of the
2 appropriate Federal banking agencies, the
3 Securities and Exchange Commission, or
4 the Commodity Futures Trading Commis-
5 sion, as provided in subsection (b)(2), de-
6 signed to ensure that losses in such hedge
7 fund or private equity fund are borne sole-
8 ly by investors in the fund and not by the
9 banking entity.

10 “(H) Proprietary trading conducted by a
11 banking entity pursuant to paragraph (9) or
12 (13) of section 4(c), provided that the trading
13 occurs solely outside of the United States and
14 that the banking entity is not directly or indi-
15 rectly controlled by a banking entity that is or-
16 ganized under the laws of the United States or
17 of one or more States.

18 “(I) The acquisition or retention of any eq-
19 uity, partnership, or other ownership interest
20 in, or the sponsorship of, a hedge fund or a pri-
21 vate equity fund by a banking entity pursuant
22 to paragraph (9) or (13) of section 4(c) solely
23 outside of the United States, provided that no
24 ownership interest in such hedge fund or pri-
25 vate equity fund is offered for sale or sold to a

1 resident of the United States and that the
2 banking entity is not directly or indirectly con-
3 trolled by a banking entity that is organized
4 under the laws of the United States or of one
5 or more States.

6 “(J) Such other activity as the appropriate
7 Federal banking agencies, the Securities and
8 Exchange Commission, and the Commodity Fu-
9 tures Trading Commission determine, by rule,
10 as provided in subsection (b)(2), would promote
11 and protect the safety and soundness of the
12 banking entity and the financial stability of the
13 United States.

14 “(2) LIMITATION ON PERMITTED ACTIVITIES.—

15 “(A) IN GENERAL.—No transaction, class
16 of transactions, or activity may be deemed a
17 permitted activity under paragraph (1) if the
18 transaction, class of transactions, or activity—

19 “(i) would involve or result in a mate-
20 rial conflict of interest (as such term shall
21 be defined by rule as provided in sub-
22 section (b)(2)) between the banking entity
23 and its clients, customers, or counterpar-
24 ties;

1 “(ii) would result, directly or indi-
2 rectly, in a material exposure by the bank-
3 ing entity to high-risk assets or high-risk
4 trading strategies (as such terms shall be
5 defined by rule as provided in subsection
6 (b)(2));

7 “(iii) would pose a threat to the safety
8 and soundness of such banking entity; or

9 “(iv) would pose a threat to the finan-
10 cial stability of the United States.

11 “(B) RULEMAKING.—The appropriate
12 Federal banking agencies, the Securities and
13 Exchange Commission, and the Commodity Fu-
14 tures Trading Commission shall issue regula-
15 tions to implement subparagraph (A), as part
16 of the regulations issued under subsection
17 (b)(2).

18 “(3) CAPITAL AND QUANTITATIVE LIMITA-
19 TIONS.—The appropriate Federal banking agencies,
20 the Securities and Exchange Commission, and the
21 Commodity Futures Trading Commission shall, as
22 provided in subsection (b)(2), adopt rules imposing
23 additional capital requirements and quantitative lim-
24 itations, including diversification requirements, re-
25 garding the activities permitted under this section if

1 the appropriate Federal banking agencies, the Secu-
2 rities and Exchange Commission, and the Com-
3 modity Futures Trading Commission determine that
4 additional capital and quantitative limitations are
5 appropriate to protect the safety and soundness of
6 banking entities engaged in such activities.

7 “(4) DE MINIMIS INVESTMENT.—

8 “(A) IN GENERAL.—A banking entity may
9 make and retain an investment in a hedge fund
10 or private equity fund that the banking entity
11 organizes and offers, subject to the limitations
12 and restrictions in subparagraph (B) for the
13 purposes of—

14 “(i) establishing the fund and pro-
15 viding the fund with sufficient initial eq-
16 uity for investment to permit the fund to
17 attract unaffiliated investors; or

18 “(ii) making a de minimis investment.

19 “(B) LIMITATIONS AND RESTRICTIONS ON
20 INVESTMENTS.—

21 “(i) REQUIREMENT TO SEEK OTHER
22 INVESTORS.—A banking entity shall ac-
23 tively seek unaffiliated investors to reduce
24 or dilute the investment of the banking en-

1 tity to the amount permitted under clause
2 (ii).

3 “(ii) LIMITATIONS ON SIZE OF IN-
4 VESTMENTS.—Notwithstanding any other
5 provision of law, investments by a banking
6 entity in a hedge fund or private equity
7 fund shall—

8 “(I) not later than 1 year after
9 the date of establishment of the fund,
10 be reduced through redemption, sale,
11 or dilution to an amount that is not
12 more than 3 percent of the total own-
13 ership interests of the fund;

14 “(II) be immaterial to the bank-
15 ing entity, as defined, by rule, pursu-
16 ant to subsection (b)(2), but in no
17 case may the aggregate of all of the
18 interests of the banking entity in all
19 such funds exceed 3 percent of the
20 Tier 1 capital of the banking entity.

21 “(iii) CAPITAL.—For purposes of de-
22 termining compliance with applicable cap-
23 ital standards under paragraph (3), the ag-
24 gregate amount of the outstanding invest-
25 ments by a banking entity under this para-

1 graph, including retained earnings, shall be
2 deducted from the assets and tangible eq-
3 uity of the banking entity, and the amount
4 of the deduction shall increase commensu-
5 rate with the leverage of the hedge fund or
6 private equity fund.

7 “(C) EXTENSION.—Upon an application by
8 a banking entity, the Board may extend the pe-
9 riod of time to meet the requirements under
10 subparagraph (B)(ii)(I) for 2 additional years,
11 if the Board finds that an extension would be
12 consistent with safety and soundness and in the
13 public interest.

14 “(e) ANTI-EVASION.—

15 “(1) RULEMAKING.—The appropriate Federal
16 banking agencies, the Securities and Exchange Com-
17 mission, and the Commodity Futures Trading Com-
18 mission shall issue regulations, as part of the rule-
19 making provided for in subsection (b)(2), regarding
20 internal controls and recordkeeping, in order to in-
21 sure compliance with this section.

22 “(2) TERMINATION OF ACTIVITIES OR INVEST-
23 MENT.—Notwithstanding any other provision of law,
24 whenever an appropriate Federal banking agency,
25 the Securities and Exchange Commission, or the

1 Commodity Futures Trading Commission, as appro-
2 priate, has reasonable cause to believe that a bank-
3 ing entity or nonbank financial company supervised
4 by the Board under the respective agency's jurisdic-
5 tion has made an investment or engaged in an activ-
6 ity in a manner that functions as an evasion of the
7 requirements of this section (including through an
8 abuse of any permitted activity) or otherwise violates
9 the restrictions under this section, the appropriate
10 Federal banking agency, the Securities and Ex-
11 change Commission, or the Commodity Futures
12 Trading Commission, as appropriate, shall order,
13 after due notice and opportunity for hearing, the
14 banking entity or nonbank financial company super-
15 vised by the Board to terminate the activity and, as
16 relevant, dispose of the investment. Nothing in this
17 paragraph shall be construed to limit the inherent
18 authority of any Federal agency or State regulatory
19 authority to further restrict any investments or ac-
20 tivities under otherwise applicable provisions of law.

21 “(f) LIMITATIONS ON RELATIONSHIPS WITH HEDGE
22 FUNDS AND PRIVATE EQUITY FUNDS.—

23 “(1) IN GENERAL.—No banking entity that
24 serves, directly or indirectly, as the investment man-
25 ager, investment adviser, or sponsor to a hedge fund

1 or private equity fund, or that organizes and offers
2 a hedge fund or private equity fund pursuant to
3 paragraph (d)(1)(G), and no affiliate of such entity,
4 may enter into a transaction with the fund, or with
5 any other hedge fund or private equity fund that is
6 controlled by such fund, that would be a covered
7 transaction, as defined in section 23A of the Federal
8 Reserve Act (12 U.S.C. 371c), with the hedge fund
9 or private equity fund, as if such banking entity and
10 the affiliate thereof were a member bank and the
11 hedge fund or private equity fund were an affiliate
12 thereof.

13 “(2) TREATMENT AS MEMBER BANK.—A bank-
14 ing entity that serves, directly or indirectly, as the
15 investment manager, investment adviser, or sponsor
16 to a hedge fund or private equity fund, or that orga-
17 nizes and offers a hedge fund or private equity fund
18 pursuant to paragraph (d)(1)(G), shall be subject to
19 section 23B of the Federal Reserve Act (12 U.S.C.
20 371c–1), as if such banking entity were a member
21 bank and such hedge fund or private equity fund
22 were an affiliate thereof.

23 “(3) PERMITTED SERVICES.—

24 “(A) IN GENERAL.—Notwithstanding para-
25 graph (1), the Board may permit a banking en-

1 tity to enter into any prime brokerage trans-
2 action with any hedge fund or private equity
3 fund in which a hedge fund or private equity
4 fund managed, sponsored, or advised by such
5 banking entity has taken an equity, partner-
6 ship, or other ownership interest, if—

7 “(i) the banking entity is in compli-
8 ance with each of the limitations set forth
9 in subsection (d)(1)(G) with regard to a
10 hedge fund or private equity fund orga-
11 nized and offered by such banking entity;

12 “(ii) the chief executive officer (or
13 equivalent officer) of the banking entity
14 certifies in writing annually (with a duty to
15 update the certification if the information
16 in the certification materially changes) that
17 the conditions specified in subsection
18 (d)(1)(g)(v) are satisfied; and

19 “(iii) the Board has determined that
20 such transaction is consistent with the safe
21 and sound operation and condition of the
22 banking entity.

23 “(B) TREATMENT OF PRIME BROKERAGE
24 TRANSACTIONS.—For purposes of subparagraph
25 (A), a prime brokerage transaction described in

1 subparagraph (A) shall be subject to section
2 23B of the Federal Reserve Act (12 U.S.C.
3 371c-1) as if the counterparty were an affiliate
4 of the banking entity.

5 “(4) APPLICATION TO NONBANK FINANCIAL
6 COMPANIES SUPERVISED BY THE BOARD.—The ap-
7 propriate Federal banking agencies, the Securities
8 and Exchange Commission, and the Commodity Fu-
9 tures Trading Commission shall adopt rules, as pro-
10 vided in subsection (b)(2), imposing additional cap-
11 ital charges or other restrictions for nonbank finan-
12 cial companies supervised by the Board to address
13 the risks to and conflicts of interest of banking enti-
14 ties described in paragraphs (1), (2), and (3) of this
15 subsection.

16 “(g) RULES OF CONSTRUCTION.—

17 “(1) LIMITATION ON CONTRARY AUTHORITY.—
18 Except as provided in this section, notwithstanding
19 any other provision of law, the prohibitions and re-
20 strictions under this section shall apply to activities
21 of a banking entity or nonbank financial company
22 supervised by the Board, even if such activities are
23 authorized for a banking entity or nonbank financial
24 company supervised by the Board.

1 “(2) SALE OR SECURITIZATION OF LOANS.—

2 Nothing in this section shall be construed to limit or
3 restrict the ability of a banking entity or nonbank fi-
4 nancial company supervised by the Board to sell or
5 securitize loans in a manner otherwise permitted by
6 law.

7 “(3) AUTHORITY OF FEDERAL AGENCIES AND
8 STATE REGULATORY AUTHORITIES.—Nothing in this
9 section shall be construed to limit the inherent au-
10 thority of any Federal agency or State regulatory
11 authority under otherwise applicable provisions of
12 law.

13 “(h) DEFINITIONS.—In this section, the following
14 definitions shall apply:

15 “(1) BANKING ENTITY.—The term ‘banking en-
16 tity’ means any insured depository institution (as de-
17 fined in section 3 of the Federal Deposit Insurance
18 Act (12 U.S.C. 1813)), any company that controls
19 an insured depository institution, or that is treated
20 as a bank holding company for purposes of section
21 8 of the International Banking Act of 1978, and any
22 affiliate or subsidiary of any such entity. For pur-
23 poses of this paragraph, the term ‘insured depository
24 institution’ does not include an institution that func-
25 tions solely in a trust or fiduciary capacity, if—

1 “(A) all or substantially all of the deposits
2 of such institution are in trust funds and are
3 received in a bona fide fiduciary capacity;

4 “(B) no deposits of such institution which
5 are insured by the Federal Deposit Insurance
6 Corporation are offered or marketed by or
7 through an affiliate of such institution;

8 “(C) such institution does not accept de-
9 mand deposits or deposits that the depositor
10 may withdraw by check or similar means for
11 payment to third parties or others or make
12 commercial loans; and

13 “(D) such institution does not—

14 “(i) obtain payment or payment re-
15 lated services from any Federal Reserve
16 bank, including any service referred to in
17 section 11A of the Federal Reserve Act
18 (12 U.S.C. 248a); or

19 “(ii) exercise discount or borrowing
20 privileges pursuant to section 19(b)(7) of
21 the Federal Reserve Act (12 U.S.C.
22 461(b)(7)).

23 “(2) HEDGE FUND; PRIVATE EQUITY FUND.—

24 The terms ‘hedge fund’ and ‘private equity fund’
25 mean an issuer that would be an investment com-

pany, as defined in the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), but for section 3(c)(1) or 3(c)(7) of that Act, or such similar funds as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may, by rule, as provided in subsection (b)(2), determine.

“(3) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD.—The term ‘nonbank financial company supervised by the Board’ means a nonbank financial company supervised by the Board of Governors, as defined in section 102 of the Financial Stability Act of 2010.

“(4) PROPRIETARY TRADING.—The term ‘proprietary trading’, when used with respect to a banking entity or nonbank financial company supervised by the Board, means engaging as a principal for the trading account of the banking entity or nonbank financial company supervised by the Board in any transaction to purchase or sell, or otherwise acquire or dispose of, any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument that the appropriate Federal banking agencies, the Secu-

1 rities and Exchange Commission, and the Com-
2 modity Futures Trading Commission may, by rule
3 as provided in subsection (b)(2), determine.

4 “(5) SPONSOR.—The term to ‘sponsor’ a fund
5 means—

6 “(A) to serve as a general partner, man-
7 aging member, or trustee of a fund;

8 “(B) in any manner to select or to control
9 (or to have employees, officers, or directors, or
10 agents who constitute) a majority of the direc-
11 tors, trustees, or management of a fund; or

12 “(C) to share with a fund, for corporate,
13 marketing, promotional, or other purposes, the
14 same name or a variation of the same name.

15 “(6) TRADING ACCOUNT.—The term ‘trading
16 account’ means any account used for acquiring or
17 taking positions in the securities and instruments
18 described in paragraph (4) principally for the pur-
19 pose of selling in the near term (or otherwise with
20 the intent to resell in order to profit from short-term
21 price movements), and any such other accounts as
22 the appropriate Federal banking agencies, the Secu-
23 rities and Exchange Commission, and the Com-
24 modity Futures Trading Commission may, by rule
25 as provided in subsection (b)(2), determine.

1 “(7) ILLIQUID FUND.—

2 “(A) IN GENERAL.—The term ‘illiquid
3 fund’ means a hedge fund or private equity
4 fund that—

5 “(i) as of May 1, 2010, was prin-
6 cipally invested in, or was invested and
7 contractually committed to principally in-
8 vest in, illiquid assets, such as portfolio
9 companies, real estate investments, and
10 venture capital investments; and

11 “(ii) makes all investments pursuant
12 to, and consistent with, an investment
13 strategy to principally invest in illiquid as-
14 sets. In issuing rules regarding this sub-
15 paragraph, the Board shall take into con-
16 sideration the terms of investment for the
17 hedge fund or private equity fund, includ-
18 ing contractual obligations, the ability of
19 the fund to divest of assets held by the
20 fund, and any other factors that the Board
21 determines are appropriate.

22 “(B) HEDGE FUND.—For the purposes of
23 this paragraph, the term ‘hedge fund’ means
24 any fund identified under subsection (h)(2), and
25 does not include a private equity fund, as such

1 term is used in section 203(m) of the Invest-
2 ment Advisers Act of 1940 (15 U.S.C. 80b-
3 3(m)).”.

4 **SEC. 620. STUDY OF BANK INVESTMENT ACTIVITIES.**

5 (a) STUDY.—

6 (1) IN GENERAL.—Not later than 18 months
7 after the date of enactment of this Act, the appro-
8 priate Federal banking agencies shall jointly review
9 and prepare a report on the activities that a banking
10 entity, as such term is defined in the Bank Holding
11 Company Act of 1956 (12 U.S.C. 1841 et. seq.),
12 may engage in under Federal and State law, includ-
13 ing activities authorized by statute and by order, in-
14 terpretation and guidance.

15 (2) CONTENT.—In carrying out the study
16 under paragraph (1), the appropriate Federal bank-
17 ing agencies shall review and consider—

18 (A) the type of activities or investments;

19 (B) any financial, operational, managerial,
20 or reputation risks associated with or presented
21 as a result of the banking entity engaged in the
22 activity or making the investment; and

23 (C) risk mitigation activities undertaken by
24 the banking entity with regard to the risks.