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EXECUTIVE COMPENSATION, CORPORATE GOVERNANCE AND OTHER SECURITIES DISCLOSURE PROVISIONS IN THE DODD-FRANK U.S. FINANCIAL REGULATORY REFORM ACT

To Our Clients and Friends:

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act," available here), the most far-reaching financial regulatory reform legislation in decades. The Act affects not only the financial services industry but also all public companies. This Memorandum focuses on the Act's executive compensation, corporate governance and other securities disclosure provisions applicable to public companies. This Memorandum also discusses the steps that public companies should consider taking now in light of the Act's provisions. We have included as Exhibit A a chart listing the provisions described in this Memorandum and as Exhibit B the statutory text of these provisions. [1]

Many of the Act's provisions require rulemaking by the Securities and Exchange Commission ("SEC"). Other provisions, while not mandating SEC rulemaking, nevertheless may result in SEC rules, in part due to numerous ambiguities in the Act's language. Thus, the exact requirements necessary for public companies to implement the Act's provisions in many cases are dependent on the terms of any rules that the SEC may ultimately adopt. We will continue to provide updates and analysis of the Act throughout the implementation process. In addition, a comprehensive memorandum describing all significant provisions of the Act is forthcoming shortly.

1. Executive Compensation Provisions

Subtitle E of Title IX contains executive compensation provisions, most of which apply to all public companies. The Act both imposes substantive requirements related to executive compensation and enhances compensation disclosure obligations.

A. Non-Binding Shareholder Vote on Executive Compensation (or "Say-on-Pay")

Section 951 of the Act adds a new Section 14A to the Securities Exchange Act of 1934 (the "Exchange Act") that requires every public company to hold an annual, biennial or triennial non-binding shareholder advisory vote ("say-on-pay") to approve the compensation of named executive officers as disclosed pursuant to the executive compensation requirements of Item 402 of Regulation S-K. The Act makes clear that the say-on-pay votes are non-binding and will not overrule any decision of the company or its board of directors or otherwise affect the board's fiduciary duties. Companies also are required to provide for a shareholder vote no less frequently than every six years on a separate resolution to determine whether the say-on-pay vote will take place every one, two or three years.

Unlike the Emergency Economic Stabilization Act of 2008 (as amended, "EESA"), which required all TARP recipients to hold say-on-pay votes, the Act does not mandate that the SEC

adopt rules or regulations to implement this provision, although the SEC has general rulemaking authority under the Exchange Act.[2] In addition, the Act grants the SEC the authority to exempt companies from the provision taking into account, among other factors, whether the requirement disproportionately burdens small issuers.

Effective Date: The first shareholder say-on-pay vote and first shareholder vote on the frequency of say-on-pay votes must take place at the first annual or other shareholder meeting occurring on or after January 21, 2011 (six months after enactment).

Observations: Under current SEC rules, say-on-pay votes conducted by companies other than TARP recipients require the issuer to file a preliminary proxy statement, although we expect that the SEC will amend its rules to eliminate this requirement. The SEC also might provide guidance on how the say-on-pay vote resolution and the resolution on the frequency of say-on-pay votes can be phrased. Notably, under current SEC rules, it would be unlawful for a company to offer three alternatives with respect to the shareholder vote on the frequency of say-on-pay votes,[3] and such a vote raises a number of significant practical issues, including what standard is necessary for a particular alternative to be approved.[4]

B. Non-Binding Shareholder Vote on and Disclosure of Golden Parachute Compensation

New Section 14A of the Exchange Act also provides that, in connection with a shareholder vote to approve an acquisition, merger, consolidation, or proposed sale or other disposition of all or substantially all the assets of a company, each person soliciting votes on the transaction must: (1) disclose any agreements or understandings with named executive officers concerning any compensation that is based on or otherwise relates to the transaction and the total of all such compensation ("golden parachute compensation"); and (2) hold a separate non-binding shareholder advisory vote on such agreements, understandings and compensation, unless such agreements or understandings already have been subject to a say-on-pay vote by shareholders. The Act requires that the disclosure be prescribed by SEC regulations and cover all types of compensation (*i.e.*, present, deferred or contingent), the aggregate total of the compensation and any conditions to which the compensation is subject. As with say-on-pay votes, the golden parachute advisory votes will not overrule any decision of the company or its board of directors or otherwise affect the board's fiduciary duties.

The provision applies to all public companies, although the SEC has the authority to exempt companies taking into account, among other factors, whether the provision disproportionately burdens small issuers.

Effective Date: New Section 14A's golden parachute provision applies to shareholder meetings occurring on or after January 21, 2011 (six months after enactment).

Observations: In light of the golden parachute compensation provision, companies and executives may be inclined to more definitively establish change-in-control compensation arrangements in advance, so that such arrangements can be subject to approval under a say-on-pay vote instead of being separately voted on in the context of a merger, although the parameters of what it means for an agreement or understanding to have been the subject of previous say-on-pay votes by shareholders are somewhat ambiguous. Note that, depending on a transaction's

circumstances, two shareholder votes on golden parachute compensation may be required, one each for the acquiring company and target company.

C. Disclosure of Institutional Investment Manager Say-on-Pay and Golden Parachute Votes

New Section 14A also requires that institutional investment managers subject to Section 13(f) of the Exchange Act disclose no less than annually how they voted on any say-on-pay and golden parachute matters. Institutional investment managers who already are required by the SEC to report how they have voted are exempt from this requirement.

Effective Date: The requirement applies to say-on-pay and golden parachute votes that take place on or after January 21, 2011 (six months after enactment).

Observations: This provision will result in increased publicity surrounding, and likely activist investor pressure on, Schedule 13F institutional money managers with respect to their proxy voting. Schedule 13Fs are filed by entities or persons who manage more than $100 million in specified exchange traded securities. While the rules will apply to entities beyond those investment companies and investment managers reporting their voting results under existing SEC rules,[5] firms that deal primarily in options and derivatives, rather than underlying securities, may escape this provision since those securities do not count toward the Schedule 13F reporting threshold.

D. Compensation Committee Independence and the Role of Compensation Consultants and Other Advisers

Similar to the heightened independence requirements imposed on audit committees and their advisers under the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), Section 952 of the Act mandates that stock exchanges adopt listing standards requiring listed companies to have independent compensation committee members. Section 952 also mandates that compensation committees assess the independence of compensation consultants and other advisers to the compensation committee (including legal counsel). The requirements of Section 952 are included in a new Section 10C of the Exchange Act. The provisions of Section 10C are to be implemented through exchange listing standards. Section 10C does not apply to controlled companies. The exchanges have authority to exempt companies from Section 10C's listing requirements as they determine appropriate, taking into account the potential impact on smaller companies.

The following is a brief description of each subsection of Section 10C:

Committee Member Independence. Section 10C(a) requires that each member of a board's compensation committee be independent under a definition of independence to be established by the exchanges. In adopting this definition, the exchanges must consider the sources of compensation paid to any compensation committee member (including any consulting, advisory or other compensatory fees paid) and whether the member is affiliated with the issuer. Companies will be provided with a reasonable opportunity to cure any defects prior to delisting. While the other provisions of Section 10C apply to all listed companies other than controlled companies, the exclusions in Section 10C(a) are broader, as the subsection applies to all listed

companies other than controlled companies, limited partnerships, companies in bankruptcy, registered open-ended investment management companies and foreign private issuers that provide annual disclosures to shareholders of the reasons why they do not have an independent compensation committee.

Compensation Consultant and Other Adviser Independence. Section 10C(b) requires that any compensation consultant and other adviser to the compensation committee may only be selected after the compensation committee has taken into account independence factors to be established by the SEC, which factors must be competitively neutral and preserve the ability of compensation committees to retain any category of adviser. These factors must include: (1) provision of other services by the employer of the compensation consultant or adviser; (2) the amount of fees received by the employer of the compensation consultant or adviser as a percentage of its total revenue; (3) policies of the employer of the compensation consultant or adviser that are designed to prevent conflicts of interest; (4) any business or personal relationship between the compensation consultant or adviser and a member of the compensation committee; and (5) any stock of the issuer owned by the compensation consultant or adviser.

Authority to Retain, and Disclosure Regarding Use of, Compensation Consultants. Section 10C(c) provides that a compensation committee in its sole discretion may retain or obtain the advice of a compensation consultant and shall be directly responsible for the appointment, compensation and oversight of a compensation consultant. However, the committee is not required to follow the recommendations of such consultant and must continue to exercise its own judgment in fulfilling its duties. In each proxy statement filed by an issuer for an annual meeting occurring on or after July 21, 2011 (the first anniversary of the Act's enactment), the company must disclose whether the compensation committee has retained or obtained the advice of a compensation consultant, whether the consultant's work raised any conflicts of interest and how any such conflicts are being addressed.

Authority to Retain Other Advisers. Section 10C(d) provides that a compensation committee also in its sole discretion may retain or obtain the advice of independent legal counsel and other advisers. Again, the committee must be directly responsible for the appointment, compensation and oversight of these advisers, but is not required to follow the recommendation of such counsel or advisers to the compensation committee.

Funding. Under Section 10C(e), issuers are required to provide appropriate funding for compensation consultants, independent legal counsel and other advisers to the compensation committee.

Effective Date: Section 10C requires the SEC to adopt rules no later than July 16, 2011 (360 days after enactment), directing the exchanges to prohibit the listing of any company not in compliance with the new section's requirements.

Observations: The compensation committee member independence provision largely parallels Exchange Act Section 10A applicable to audit committee members, and thus Rule 10A-3 under the Exchange Act provides a guide to what the listing standards for compensation committee member independence might entail, although the Act's provision is not as prescriptive. In contrast to Section 10A, Section 10C does not require compensation committees to retain any

consultant or adviser used by the company. Further, the compensation committee is not required to use only independent advisers (although the statute refers to "independent legal counsel," it also allows the committee to retain "other advisers"). The disclosure requirements regarding the compensation committee's use of and independence analysis regarding compensation consultants are broader than recently adopted SEC rules regarding fees paid to compensation consultants, and thus will require disclosures of other factors (including, for example, family relationships with the consultant or the consultant's reliance on an engagement for a significant portion of his or her business) that could affect compensation consultant independence.[6]

E. Executive Compensation Disclosures

Pay Versus Performance. Section 953 of the Act adds a new Section 14(i) to the Exchange Act that directs the SEC to adopt rules requiring each public company to disclose in its annual meeting proxy statement the relationship between executive compensation "actually paid" and the company's financial performance. The presentation is required to "take into account" changes in the value of the shares of stock and dividends of the company and any distributions. The disclosure may, but is not required to, include a graphic representation of this required information.

Effective Date: The Act does not prescribe a time period in which the SEC must adopt rules implementing the "pay versus performance" disclosure requirement.

Observations: A stock price performance graph is required to be included in a company's annual report to shareholders pursuant to existing SEC rules,[7] but the Act's provision is more prescriptive than the current rules and requires that companies present an explicit comparison between pay and financial performance, although it is not required to be in graphic form. This provision, along with the required say-on-pay vote, may cause companies to rethink some of the disclosure in their Compensation Discussion and Analysis ("CD&A") and focus more on graphical presentations of the links between pay and performance in various elements of compensation.

Internal Pay Ratio. Section 953 of the Act also directs the SEC to amend Item 402 of Regulation S-K to require each public company to disclose in its SEC filings described in Item 10(a) of Regulation S-K (such as its annual proxy statement): (1) the median of annual total compensation of all employees, other than the CEO (or any equivalent position); (2) the annual total compensation of the CEO (or any equivalent position); and (3) the ratio of those two amounts. For the purposes of complying with this requirement, "total compensation" must be determined in accordance with Item 402(c) of Regulation S-K, as in effect the day before the Act's enactment.

Effective Date: The Act does not prescribe a time period in which the SEC must adopt rules implementing the internal pay ratio disclosure requirement.[8]

Observations: This provision likely will be the most difficult, expensive and time-consuming of the Act's executive compensation provisions applicable to public companies and could impose an enormous burden on companies of all sizes. Given the complexity of calculating total compensation under Item 402(c) for named executive officers,[9] the difficulty of calculating total compensation for all employees should not be underestimated. In addition to issues such as

what point in time the calculation must be done and which employees must be included (full time employees only, employees on medical or military leave, etc.), the provision will raise a host of interpretive questions that do not normally arise with respect to executive officers, such as whether statutorily prescribed benefits provided to employees in some countries are treated as perquisites.

Hedging Policy. Section 955 of the Act adds a new Section 14(j) to the Exchange Act that directs the SEC to adopt rules requiring each public company to disclose in its annual proxy statement whether its employees or directors (or any of their designees) may purchase financial instruments that are designed to hedge or offset decreases in the value of securities granted to employees or directors as a part of employee compensation or other securities held directly or indirectly by the employees or directors.

Effective Date: The Act does not prescribe a time period in which the SEC must adopt rules implementing the hedging policy disclosure requirement.

Observations: While this provision requires disclosure of policies applicable to all employees, it does not prevent an issuer from having (and disclosing) one policy that is applicable to its directors and executives and another policy applicable to rank-and-file employees. In this regard, many companies already have such policies in place for their directors and executive officers and disclose them in their CD&A.

F. Recovery of Erroneously Awarded Compensation (Clawbacks)

Section 954 of the Act adds a new Section 10D to the Exchange Act that requires the SEC to direct the exchanges to prohibit the listing of any company that does not adopt "clawback" policies to recover compensation in certain circumstances. Specifically, each listed company must adopt and implement a policy: (1) for disclosure of the company's policy for incentive-based compensation that is based on the financial information required to be reported under the securities laws; and (2) to recoup from any current or former executive officers incentive compensation paid during a three-year look-back period based on erroneous data if the company is required to prepare an accounting restatement due to material noncompliance with any financial reporting requirement under the securities laws, regardless of whether the individual was involved in misconduct that led to the restatement. The amount to be recovered is the excess of what would have been paid under the restated financial statements.

Effective Date: The Act does not specify a time period in which the SEC is required to direct the exchanges to adopt these rules relating to clawback policies.

Observations: The Act's clawback provision represents a middle ground between the provision applicable to TARP recipients under EESA and the current provision applicable to all public companies under the Sarbanes-Oxley Act, but is more stringent than the clawback provisions voluntarily adopted by many companies. Under the Sarbanes-Oxley Act, the clawback is limited in scope (*i.e.*, applicable only to the Chief Executive Officer and Chief Financial Officer), duration (*i.e.*, a twelve month look-back period) and grounds (*i.e.*, misconduct is required). The clawback provision under EESA is not triggered by an accounting restatement, but only requires a material inaccuracy in the company's financial statements and/or performance metrics and does not contain a misconduct requirement.

There also are some ambiguities in the provision that will need to be addressed by SEC rulemaking. For example, while the provision refers to equity compensation, it is not clear that clawback policies are required to apply to all forms of equity awards, or only equity awards that are granted or vest on the basis of financial performance. In particular, institutional investors typically do not view time-vested options and stock awards as "incentive compensation" and the value of such awards is not directly tied to information reported in a company's financial statements.

Note also that because the clawback policies mandated by the Act will be adopted pursuant to listing standards, it does not appear that they will be enforceable in private actions.

G. Enhanced Compensation Disclosures and Certain Compensation Prohibitions for Regulated Financial Institutions

Section 956 of the Act imposes new requirements on incentive compensation paid by covered financial institutions with more than $1 billion in assets. For the purposes of this provision, a "covered financial institution" means a depository institution, registered broker-dealer, credit union, investment adviser, Fannie Mae, Freddie Mac and any other financial institution that federal regulators determine should be covered. Section 956 requires covered financial institutions to disclose to their respective federal regulators the structure of all incentive-based compensation arrangements sufficient to determine whether: (1) excessive compensation, fees or benefits are provided to executive officers, other employees, directors or principal shareholders; and (2) the incentive-based compensation arrangements could lead to material financial losses to the institution. In addition, the Act requires applicable financial regulators to prohibit incentive-based payment arrangements that in their determination encourage "inappropriate risks" by covered financial institutions, either by providing excessive compensation or by creating the possibility of material financial losses to the institution.

Although the Act does not define "excessive compensation," it does direct federal regulators to consider the compensation standards included in Section 39(c) of the Federal Deposit Insurance Act, which take into account the combined value of all benefits provided to the individual, the financial condition of the institution and the levels of compensation at comparable institutions, among other factors.

Effective Date: The applicable federal regulators, including the Federal Reserve, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration Board, Federal Housing Finance Agency and the SEC, are required to prescribe jointly regulations or guidelines for this provision no later than April 21, 2011 (nine months after enactment).

H. Voting by Brokers

Section 957 of the Act amends Section 6(b) of the Exchange Act to require exchanges to prohibit a broker that is not the beneficial owner of a company's shares (*e.g.*, shares held in street name on behalf of retail investors) from granting a proxy to vote the shares in connection with a shareholder vote in director elections, with respect to executive compensation or on "any other significant matter" (as determined by the SEC by rule) unless the beneficial owner has provided the broker with voting instructions.

Effective Date: The Act does not prescribe a time by which exchanges are required to implement policies relating to the broker voting prohibition, but could be read as requiring immediate action.

Observations: In effect, this provision codifies and expands the effect of the SEC's July 2009 approval of amendments to NYSE Rule 452 to eliminate uninstructed broker voting in uncontested director elections so that it also applies to say-on-pay votes and other significant matters.[10] The provision is likely to be most significant with respect to say-on-pay votes mandated by the Act.

2. Corporate Governance Provisions

Title IX, Subtitle G of the Act contains corporate governance provisions relating to proxy access and disclosures of board leadership structures. In addition, Title I, Subtitle C requires the establishment of risk committees at certain publicly traded financial institutions. Note that the majority voting provision contained in the earlier Senate bill was dropped during the conference committee process.

A. Proxy Access

Section 971 of the Act amends Section 14(a) of the Exchange Act to authorize, but not require, the SEC to issue rules permitting shareholders to use company proxy solicitation materials for the purpose of nominating directors.

Effective Date: The Act does not mandate implementation of proxy access nor provide a timeline for the adoption of SEC's rules relating to proxy access.

Observations: The Act's proposal follows extensive debate on the issue of proxy access at both the state and federal levels. Delaware amended its corporation law in 2009 to allow companies to adopt bylaw provisions requiring the inclusion of shareholder nominees in the company's proxy solicitation materials. Also in 2009, the ABA's Committee on Corporate Laws amended the Model Business Corporation Act to include a proxy access provision similar to that enacted in Delaware.

In June 2009, the SEC issued proposed rules that would: (1) establish a federal proxy access right pursuant to proposed Rule 14a-11 and related amendments; and (2) permit proxy access shareholder proposals pursuant to an amendment to Rule 14a-8.[11] The proposed Rule 14a-11 would allow a shareholder or group of shareholders to nominate directors and have those nominees included in a company's proxy materials if the shareholder or group beneficially owned a certain minimum percentage (ranging from 1-5%) of the company's voting shares for at least one year prior to submitting the nomination. The proposed amendment to Rule 14a-8 would require companies to include shareholder proposals relating to proxy access in their proxy materials, except in limited circumstances. The SEC received hundreds of comments in response to the proposed proxy access rules, some of which questioned the SEC's authority to implement the rules. The SEC currently is considering final adoption of proxy access rules.

B. Disclosures Regarding Board Leadership Structures

Section 972 of the Act adds a new Section 14B to the Exchange Act that directs the SEC to issue rules requiring companies to include in their annual proxy statements the reasons why they have chosen the same person, or different people, to serve as chairman and chief executive officer.

Effective Date: The Act requires the SEC to issue rules on disclosures of board leadership structures by January 17, 2011 (180 days after enactment).

Observations: The Act's disclosure-based approach is similar to the proxy disclosure rules adopted by the SEC in December 2009.[12] These rules require enhanced disclosure about a company's board leadership structure, including a discussion of: (1) whether the company has combined or separated the CEO and chairman positions; (2) if combined, whether the company has a lead independent director and the specific role of such director in the company's leadership; and (3) why the company believes its structure is the most appropriate for the company.[13] Given the similarities between what the Act requires and the rules adopted in December 2009 by the SEC, it appears that the Act does not require the SEC to significantly alter its current rules.

C. Risk Committees

Section 165 of the Act directs the Federal Reserve to require publicly traded nonbank financial institutions supervised by the Federal Reserve and publicly traded bank holding companies with at least $10 billion in assets to establish a separate risk committee of the board of directors. The Act also authorizes the Federal Reserve to issue regulations requiring publicly traded bank holding companies with less than $10 billion in assets to form risk committees. The risk committee is required to: (1) oversee the financial institution's risk management practices; (2) include a number of independent directors determined by the Federal Reserve, based on the nature of operations, size of assets and other criteria; and (3) include at least one risk management expert with experience in identifying, assessing and managing risk at large, complex financial institutions.

Effective Date: The Act requires the Federal Reserve to adopt the risk committee rules no later than July 21, 2012 (two years after enactment), to take effect no later than October 21, 2012 (two years and three months after enactment).

Observations: This provision differs from one proposed in an earlier Senate bill, which would have required that the boards of all listed public companies, with limited exceptions, form a separate risk committee composed solely of independent directors. The Act's risk committee provision will not affect the vast majority of public companies, many of which currently address risk through the full board or another board committee.

Although the SEC adopted rules in December 2009 requiring companies to disclose the extent of the board's role in the company's risk oversight,[14] most companies did not form risk oversight committees but instead delegate responsibility for risk oversight among the board committees and the full board.

3. Other Federal Securities Disclosure Provisions

The Act contains a number of additional federal securities disclosure provisions relevant to public companies, on matters ranging from the timing of Form 3 filings to disclosures regarding mine safety.

A. Beneficial Ownership and Short-Swing Profit Reporting

Section 929R amends Section 13(d) of the Exchange Act to authorize, but not require, the SEC to issue rules shortening the period of time within which a Schedule 13D must be filed in connection with acquiring beneficial ownership of more than 5% of a registered class of equity securities. Currently, a Schedule 13D must be filed within ten days of a shareholder acquiring beneficial ownership of such amount.

Section 929R similarly amends Section 16(a) of the Exchange Act to authorize, but not require, the SEC to issue rules shortening the period of time within which a Form 3 must be filed in connection with becoming a director, officer or greater than 10% shareholder of a public company. The current rule requires a Form 3 to be filed within ten days of such occurrence.

Effective Date: The Act does not provide a timeline for the adoption of the SEC's rules, if any, under Section 929R.

B. Disclosures of Ratings and Disclosures to Rating Agencies

The Act contains a number of provisions addressing the regulation of credit rating agencies, two of which are particularly relevant to public companies.

Elimination of Regulation FD Exemption. Section 939B of the Act requires the SEC to amend Regulation FD to remove the express exemption for communications with rating agencies that is set forth in Section 100(b)(2)(iii) of Regulation FD.

Effective Date: The Act requires the SEC to revise Regulation FD on or before October 19, 2010 (90 days after enactment).

Observations: If the SEC amends Regulation FD in the exact manner specified in the Act, we do not expect this provision to have significant consequences. Regulation FD was designed to prevent selective disclosure of material nonpublic information to market participants. Rule 100(b)(1) sets forth a list of persons (broker-dealers, investment advisers, institutional money managers, investment companies and shareholders if it is reasonably foreseeable that they will trade on the basis of the information) with whom communications by an issuer or issuer representative trigger a duty of public disclosure under Regulation FD. At the time that Regulation FD was adopted, most rating agencies were registered with the SEC as investment advisers. Accordingly, to permit communications with rating agencies without triggering Regulation FD, Rule 100(b)(2)(iii) contains an exemption under which communications to rating agencies generally would not trigger Regulation FD. Since Regulation FD was adopted, however, rating agencies are now regulated under Exchange Act Section 15E, and the rating agencies that have qualified as nationally recognized statistical rating organizations ("NRSROs")

generally have terminated their registration as investment advisers. Accordingly, even without the exclusion set forth in Rule 100(b)(2)(iii), rating agencies are not covered persons that trigger Regulation FD. Instead, communicating with a rating agency can be viewed as equivalent to communicating with a news reporter or with a company's commercial bank. Even if the SEC were to amend Regulation FD to include rating agencies as covered persons that trigger Regulation FD, it would not be necessary to publicly disclose information provided to a rating agency if the rating agency agreed to maintain the information in confidence, consistent with Rule 100(b)(2)(ii) of Regulation FD.

Rescission of Securities Act Rule 436(g). Section 939G of the Act provides that Securities Act of 1933 (the "Securities Act") Rule 436(g) "shall have no force or effect." Securities Act Rule 436(g) provided that credit ratings issued by NRSROs on debt securities, a class of convertible debt securities or a class of preferred stock were not considered part of a registration statement prepared or certified by a person within the meaning of Sections 7 and 11 of the Securities Act. This provision reflected the view of the SEC that, without Rule 436(g), a credit rating is a statement by a person whose profession gives authority to the statement made by it, and thus is "expertized" for purposes of the Securities Act. Under the Securities Act, if a statements made by an expert is included or referred to in a Securities Act registration statement, the expert is subject to potential liability under Section 11 of the Securities Act (subject to a due diligence defense) and the issuer is required to file the expert's consent to being named in the registration statement. In connection with passage of the Act, the three major rating agencies operating in the U.S. have stated that they are not in a position to consent to being named as experts in Securities Act registration statements.

Effective Date: The repeal of Rule 436(g) takes effect July 22, 2010 (one day after enactment).

Observations: The repeal of Rule 436(g) has a number of significant implications for public companies and the public offering process.

- **Incorporation by Reference of Exchange Act Disclosure.** Many issuers include statements in their Forms 10-K, 10-Q and 8-K regarding their credit ratings or changes to their credit ratings. These statements are automatically incorporated by reference into such issuers' registration statements on Forms S-3, S-4 or S-8. For example, a company's Form 10-K Management's Discussion and Analysis might have a discussion of the liquidity effect of a past credit ratings downgrade or discuss loan covenants that are dependent on credit ratings. We understand from discussions with the SEC Staff that, consistent with an October 2009 SEC rule proposal relating to the use of credit ratings in registered offerings, disclosure of credit ratings in this context should not be considered to be a use in connection with an offering of securities, and thus would not trigger the consent requirements of the Securities Act. Accordingly, discussion of credit ratings for the limited purpose of disclosing changes to a credit rating, the liquidity of the registrant, the cost of funds for a registrant or the terms of agreements that refer to credit ratings, may be acceptable if the credit rating is not otherwise used in connection with a registered offering. Moreover, Section 19(a) of the Securities Act provides that no liability may attach under the Securities Act for actions taken in good faith in conformity with an SEC rule notwithstanding that the rule is subsequently rescinded. Thus, with respect to credit ratings that were incorporated by reference into or that were included in

a Securities Act registration statement that became effective before July 22, 2010, there would appear to be little purpose to requiring a rating agency's consent for such credit ratings disclosure since Section 19(a) would prevent expertized liability from arising with respect to credit ratings in this circumstance. However, with respect to registration statements that become effective, or are amended, on or after July 22, 2010, companies will have to take care not to include or refer to credit ratings, including through incorporation by reference, unless they have obtained the rating agency's consent. Companies also must use caution with respect to references to credit ratings in Form 10-Ks filed on or after July 22, 2010, unless such references are made in a context consistent with the interpretive position discussed above, since the filing of a Form 10-K is deemed to effect a post-effective amendment to a registration statement.

- **Prospectus Supplements, Free Writing Prospectuses and Other Offering Material.** Disclosures of credit ratings in free-writing prospectuses under Rule 433 of the Securities Act, including pricing term sheets, and in press releases that comply with Securities Act Rule 134 do not trigger the consent requirements because these communications are not subject to Section 11. Similarly, offerings that are exempt from Securities Act registration, such as Rule 144A and Regulation S offerings, should not be affected by the rescission of Rule 436(g). In contrast, offerings of asset backed securities that are registered under the Securities Act, which have traditionally been marketed conditioned upon assignment of a specified credit rating and that, as a result, are subject to a special Securities Act rule that requires inclusion of credit ratings in the registration statement, will be suspended (or conducted as Rule 144A offerings) until the markets find a means to accommodate the rescission of Rule 436(g).

C. Additional Disclosure Provisions

Conflict Minerals. Section 1502 of the Act adds a new Section 13(p) to the Exchange Act that requires new disclosures relating to certain common minerals that are mined in the Democratic Republic of the Congo ("DRC"). "Conflict minerals" are defined as gold, columbite-tantalite (coltan) (also known as iron manganese, used in the manufacture of condensers, micro-electronic technology (chips and processors), cell phones, nuclear reactors and highly heat tolerant steel varieties), cassiterite (the major ore used in making tin), wolframite (the principal ore in tungsten which is used in many electrical items) or their derivatives. The disclosure requirement applies to *any person* who manufactures a product for which conflict minerals are necessary, either to produce the product or for the product to be functional. The SEC must adopt rules requiring such persons to disclose annually to the SEC whether any conflict minerals used by the person originated in the DRC or an adjoining country. If any conflict minerals used did originate in these areas, then the person must submit a report to the SEC detailing: (1) the measures taken to exercise due diligence on the source and chain of custody of the minerals (which measures must include an independent audit); (2) the products that will or have been manufactured containing minerals that directly or indirectly finance or benefit armed groups in the DRC or an adjoining country; and (3) additional information, including the facilities used to process the conflict minerals and the efforts used by the person to determine the conflict minerals' specific location of origin. The foregoing information also must be made publicly available on the person's website. The Act provides that this disclosure requirement will remain effective until the later of

five years or the date on which the President determines that no armed groups directly or indirectly benefit from or are involved in commercial activity involving conflict minerals.

Effective Date: The SEC must adopt rules implementing the conflict mineral disclosure requirement no later than April 17, 2011 (270 days after enactment).

Coal or Other Mine Safety. Section 1503 of the Act requires each public company that operates, or has a subsidiary that operates, a coal or other mine to disclose mine safety information in each periodic report filed with the SEC on or after the date of enactment. This disclosure must include: (1) the total number of citations and orders received by the operator issued under certain provisions of the Federal Mine Safety and Health Act of 1977 ("FMSHA"); (2) a list of mines for which the operator has received notice from the Mine Safety and Health Administration of a pattern or potential pattern of health or safety standard violations; and (3) any pending legal action before the Federal Mine Safety and Health Review Commission involving a mine. In addition, beginning on the date of enactment, such companies must disclose on a Form 8-K the receipt of: (1) an imminent danger order issued under the FMSHA; and (2) written notice from the Mine Safety and Health Administration of a pattern or potential pattern of health or safety standard violations.

Effective Date: Section 1503(f) states that Section 1503 takes effect on August 20, 2010 (30 days after enactment), but the subsections dealing with disclosures in periodic reports and Forms 8-K provide that these disclosure requirements are effective on the date of enactment. Given this conflicting language and the absence of SEC guidance, public companies should consider making any disclosures required by Section 1503 beginning with the date of enactment.

Payments by Resource Extraction Issuers. Section 1504 adds a new Section 13(q) to the Exchange Act to require disclosure of certain payments made by resource extraction issuers. Any issuer who files an annual report with the SEC and engages in commercial development of oil, natural gas or minerals must disclose in their annual report information relating to any payment made by the issuer to a foreign government or the U.S. federal government for the purpose of commercial resource development. The required information includes the type and amount of such payments made (1) for each resource development project and (2) to each government.

Effective Date: The SEC is required to adopt rules implementing this provision no later than April 17, 2011 (270 days after enactment), which rules will apply to annual reports for fiscal years ending after the first anniversary of the rules' adoption.

4. What Companies Should Do Now

The following sets out steps that companies should consider taking now to be prepared for the many changes contained in the Act.

- **Say-on-Pay and Golden Parachutes**
    - Revisit how compensation programs are presented in the company's Compensation Discussion and Analysis. Keep in mind that although the say-on-pay vote is not binding, negative votes could put pressure on compensation

practices and directors, and the loss of broker votes on say-on-pay proposals will amplify the issue. In particular, consider ISS's guidelines as to pay practices that will cause it to issue a negative vote recommendation (refer here to our previous client alert describing ISS's current policy updates). The Council of Institutional Investors has also developed a list of "red flags" for shareholders to consider when analyzing compensation programs (available here).

- Monitor SEC rulemaking that will determine whether any specific language or form of resolutions is required to be used when drafting a say-on-pay or golden parachute proposal and whether the inclusion of a say-on-pay vote will trigger a preliminary proxy filing.

- Begin to enhance communication with the proxy voting department at institutional investors, if not already established, to encourage affirmative voting on say-on-pay and any other anticipated significant matters.

- **Enhanced Compensation Committee Independence**

  - Analyze compensation committee members' director and officer questionnaires in order to determine if any independence issues may arise. For example, the prohibition on affiliates serving on the committee will be an issue if a significant investor or a provider of professional services serves on the compensation committee.

  - Clearly document whether outside compensation consultants, legal counsel or other advisers are retained by the compensation committee or by management.

  - Analyze engagements with outside compensation consultants, legal counsel and other advisers in order to be in a position to identify issues raised by the SEC rules on heightened independence requirements. This should be done on a worldwide basis for the company and its subsidiaries and also take into account affiliates of the consultants and advisers. One particular item to monitor is how the SEC rules will impact the independence of outside legal counsel who typically provides services to both the compensation committee and the company.

- **Clawbacks**

  - Evaluate all compensation arrangements that might be subject to the new clawback requirements, but keep in mind that the parameters of the required clawback policy will be defined by the SEC rules and listing standards that are adopted.

- **Pay for Performance**

  - Analyze how compensation will compare with financial performance, as determined under various measures such as stock performance and net earnings. ISS currently includes in its voting recommendation reports a chart comparing CEO compensation and stock performance, and ISS has advised that it may issue

a negative vote recommendation if changes to the CEO's total pay is not aligned with Total Shareholder Return over certain time horizons.

- Consider developing alternative presentations that the company believes may more effectively present the relationship between pay and performance based on its specific compensation programs.

- **Internal Pay Ratio.** Assess mechanisms to determine whether it is possible to compute total compensation for all employees in accordance with Item 402(c) of Regulation S-K in order to determine the median amount of compensation to be compared to that of the CEO's. Companies should also begin to assess the factors that may contribute to a large disparity in the ratio, including number of employees and complexity of work performed by employees, in order to explain the disparity. ISS currently includes information in its reports on the pay disparity between the CEO and the next most highly compensated employee.

- **Hedging disclosure.** Consider whether to adopt an anti-hedging policy applicable to executives and directors and whether to make any such policy applicable to employees generally. If the company already has a policy in place, review the current policy to determine if any changes are advisable in anticipation of the public disclosure of the policy. While there is currently no SEC disclosure requirement for hedging policies, many companies already discuss them in their proxy statements and other address them in their insider/securities trading policies.

- **Proxy Access**. With the comment period for the SEC's proxy access proposal closed, final adoption of the proposed rules currently is under consideration at the SEC. In the months leading up to the next shareholder proposal and proxy seasons, companies should assess whether any of their director nominees are vulnerable (for example, if in connection with the last shareholders' meeting any directors received a negative recommendation from ISS and/or significant "against" or "withhold" votes) and anticipate potential implications associated with possible proxy access candidates.

- **Risk Oversight**. Although the Act's risk committee provision applies only to certain publicly traded financial institutions, all companies should consider carefully their risk oversight process and structure, including whether the oversight function should rest with the whole board, the audit committee and/or other committees.

- **Credit Ratings**. Review references to credit ratings in Securities Act registration statements and Exchange Act filings and assess whether such references should be deleted in future filings and if other actions should be taken to address the possibility of their being incorporated by reference into Securities Act registration statements.

Final Recommendation: Be prepared and be involved. Above all, companies should be prepared to actively engage with the SEC and participate in commenting on SEC rulemaking, as company input into the practical challenges and issues presented by the new legislation will be important.

[1] The sections from the Act that are included in Exhibit B appear in the order in which they are discussed in this Memorandum.

[2] The SEC adopted Release No. 34-61335 (available here) on say-on-pay applicable to TARP recipients, effective February 18, 2010. Under this rulemaking, the SEC provided that the inclusion of a shareholder advisory vote would not trigger an obligation to file a preliminary proxy and also that it would not require TARP recipients to use any specific language or form of resolution in order to provide flexibility in how recipients presented the required vote.

[3] See Rule 14a-4(b) under the Exchange Act, which states that a form of proxy must allow a shareholder to specify by boxes "a choice between approval or disapproval of, or abstention with respect to each separate matter" other than director elections.

[4] Section 216 of the Delaware General Corporation Law provides, for example, that the default voting standard for matters other than director elections is a majority of shares present (either in person or represented by proxy) that are entitled to vote.

[5] Since 2004, investment companies (including mutual funds) have been required to file an annual statement on Form N-PX disclosing their votes during the 12 months ending on June 30 of the most recent year. See the SEC's Release No. 33-8188, available here.

[6] See Rule 407(e) of Regulation S-K, amended pursuant to the SEC's Release No. 33-9089, effective February 28, 2010, and available here.

[7] See Item 201(e) of Regulation S-K.

[8] In July 20, 2010 testimony before the U.S. House of Representatives Committee on Financial Services, Subcommittee on Capital Markets, Insurance and Government-Sponsored Enterprises, SEC Chairman Mary L. Schapiro suggested that rules implementing the internal pay ratio disclosure requirement may not be in place in time for the 2011 proxy season.

[9] Under Item 402(c) of Regulation S-K, total compensation includes the dollar value of annual salary, bonus, stock awards, option awards, non-equity incentive plan compensation, non-qualified deferred compensation earnings and all other compensation.

[10] See the SEC's order approving the rule change, available here.

[11] See the SEC's Release No. 33-9046, issued June 10, 2009, available here. For more information regarding the SEC's proxy access proposals, see our client alert issued on July 10, 2009.

[12] See the SEC's Release No. 33-9089, issued on December 16, 2009, available here (adopting Item 407(h) of Regulation S-K).

[13] See Item 407(h) of Regulation S-K. See also our client alert issued on December 16, 2009 for more information regarding the SEC's amended proxy disclosure rules.

[14] See the SEC's Release No. 33-9089, issued December 16, 2009, available here.

Gibson, Dunn & Crutcher's lawyers are available to assist in addressing any questions you may have regarding these issues. Please contact the Gibson Dunn lawyer with whom you work, or any of the following:

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Executive Compensation, Corporate Governance and Other Securities Disclosure Provisions in the Dodd-Frank U.S. Financial Regulatory Reform Act

Exhibit A

Provision	Summary	SEC Rulemaking Required	Effective Date	Applicability
Non-Binding Shareholder Vote on Executive Compensation ("Say-on-Pay") (Section 951)	Companies must hold an annual, biennial or triennial non-binding shareholder advisory vote ("say-on-pay") to approve the compensation of named executive officers. Shareholders must vote no less frequently than every six years to determine the frequency of such say-on-pay vote.	No	Shareholder meetings beginning January 21, 2011 (six months after enactment)	All public companies[(1)]
Disclosure of Golden Parachute Compensation (Section 951)	In the proxy materials relating to a shareholder vote to approve an acquisition, merger, consolidation, or proposed sale or other disposition of all or substantially all the assets of a company, companies must disclose any compensation of a named executive officer that is based on or otherwise relates to the transaction.	Yes[(2)]	Shareholder meetings beginning January 21, 2011 (six months after enactment)	All public companies[(1)]
Non-Binding Shareholder Vote on Golden Parachute Compensation (Section 951)	In connection with a shareholder vote to approve an acquisition, merger, consolidation, or proposed sale or other disposition of all or substantially all the assets of a company, companies must hold a non-binding shareholder advisory vote on any named executive officer compensation based on or otherwise relating to the transaction, unless such compensation already has been subject to a say-on-pay vote by shareholders. Depending on the transaction's circumstances, two such shareholder votes may be required, one each for the acquiring company and target company.	No	Shareholder meetings beginning January 21, 2011 (six months after enactment)	All public companies[(1)]

Provision	Summary	SEC Rulemaking Required	Effective Date	Applicability
Disclosure of Institutional Investment Manager Say-on-Pay and Golden Parachute Votes (Section 951)	Institutional investment managers subject to Section 13(f) of the Securities Exchange Act of 1934 (the "Exchange Act") must disclose no less than annually how they voted on any say-on-pay and golden parachute matters.	No	January 21, 2011 (six months after enactment)	Institutional investment managers subject to Section 13(f) of the Exchange Act[3]
Compensation Committee Independence (Section 952)	Each member of a company's compensation committee must be independent under a definition of independence to be established by the exchanges that includes consideration of the sources of compensation paid to compensation committee members (including any consulting, advisory or other compensatory fees) and whether the members are affiliated with the company.	Yes[4]	SEC rulemaking no later than July 16, 2011 (360 days after enactment)[5]	Listed companies, other than controlled companies, limited partnerships, companies in bankruptcy, registered open-ended investment management companies and foreign private issuers that provide annual disclosures to shareholders of reasons why they do not have an independent compensation committee[6]
Compensation Consultant and Other Adviser Independence (Section 952)	Compensation committees may only select a compensation consultant, legal counsel and other advisers to the compensation committee after taking into account independence factors to be established by the SEC, which factors must be competitively neutral and treat large and small consultants equally.	Yes[4]	SEC rulemaking no later than July 16, 2011 (360 days after enactment)[5]	Listed companies, other than controlled companies[7]
Compensation Committees' Authority to Retain Independent Compensation Consultants, Legal Counsel and Other Advisers Section 952)	Compensation committees will be directly responsible for the appointment, compensation and oversight of compensation consultants, legal counsel and other advisers to the compensation committee. The legislation should not be construed to require compensation committees to follow the recommendations of such consultants and advisers or to affect compensation committees' ability or obligation to exercise their own judgment in fulfilling their duties.	Yes[4]	SEC rulemaking no later than July 16, 2011 (360 days after enactment)[5]	Listed companies, other than controlled companies[7]

Provision	Summary	SEC Rulemaking Required	Effective Date	Applicability
Disclosure Regarding Use of Compensation Consultants (Section 952)	Companies must disclose in their annual proxy statements whether the compensation committee has used a compensation consultant, whether the consultant's work has raised any conflicts of interest and how any such conflicts are being addressed.	Yes[4]	Shareholder meetings beginning July 21, 2011 (one year after enactment)	Listed companies, other than controlled companies[7]
Funding for Compensation Committee Consultants and Advisers (Section 952)	Companies must provide funding for the reasonable compensation of compensation consultants and other advisers retained by the compensation committee.	Yes[4]	SEC rulemaking no later than July 16, 2011 (360 days after enactment)[5]	Listed companies, other than controlled companies[7]
Disclosure of the Relationship Between Pay and Performance (Section 953)	The SEC must adopt rules requiring a company to disclose in its annual proxy statement the relationship between executive compensation actually paid and the company's financial performance, which disclosure may include a graphical representation of the required information.	Yes	Not specified	All public companies
Disclosure of Internal Pay Ratios (Section 953)	The SEC must adopt rules that require each company to disclose in its SEC filings described in Item 10(a) of Regulation S-K (such as its annual proxy statement): (1) the median of annual total compensation of all employees other than the CEO (or any equivalent position); (2) the annual total compensation of the CEO (or any equivalent position); and (3) the ratio of those two amounts. For the purposes of this requirement, "total compensation" must be calculated in accordance with Item 402 of Regulation S-K, as in effect the day before the Act's enactment.	Yes	Not specified	All public companies

Provision	Summary	SEC Rulemaking Required	Effective Date	Applicability
Recovery of Erroneously Awarded Compensation (Clawback) (Section 954)	Companies must adopt and implement policies: (1) for disclosure of the company's policy for incentive-based compensation that is based on the financial information required to be reported under the securities laws; and (2) to recoup from any current or former executive officers incentive compensation paid during a three-year look-back period based on erroneous data if the company is required to prepare an accounting restatement due to material noncompliance with any financial reporting requirement under the securities laws, regardless of whether the individual was involved in misconduct that led to the restatement.	Yes[4]	Not specified[8]	Listed companies
Disclosure Regarding Employee and Director Hedging (Section 955)	The SEC must adopt rules requiring each company to disclose in its annual proxy statement whether its employees or directors or their designees may purchase financial instruments that are designed to hedge or offset any market value decrease of equity securities granted as compensation or held directly or indirectly by the employees or directors.	Yes	Not specified	All public companies
Broker Voting (Section 957)	A broker that is not the beneficial owner of a company's shares (*e.g.*, shares held in street name on behalf of retail investors) is prohibited from voting on the election of directors, executive compensation matters (including say-on-pay) or other significant matters (as determined by the SEC by rule) unless the beneficial owner has provided the broker with voting instructions.	Yes	Not specified	All public companies
Proxy Access (Section 971)	The SEC may, but is not required to, issue rules permitting shareholders to use company proxy solicitation materials for the purpose of	No	Determined by SEC rule, if any	Determined by SEC rule, if any[9]

Provision	Summary	SEC Rulemaking Required	Effective Date	Applicability
	nominating directors.			
Disclosures of Board Leadership Structures (Section 972)	The SEC must issue rules requiring companies to include in their annual proxy statements the reasons they have chosen the same person, or different people, to serve as chairman and chief executive officer.	Yes	SEC rulemaking no later than January 17, 2011 (180 days after enactment)	All public companies
Risk Committees for Certain Financial Institutions (Section 165)	Publicly traded nonbank financial institutions supervised by the Federal Reserve and publicly traded bank holding companies with at least $10 billion in assets must establish a separate risk committee of the board of directors, which is required to: (1) oversee the financial institution's risk management practices; (2) include a number of independent directors determined by the Federal Reserve, based on the nature of operations, size of assets and other criteria; and (3) include at least one risk management expert.	No, although Federal Reserve rulemaking is required	Federal Reserve rulemaking no later than July 21, 2012 (two years after enactment), to take effect no later than October 21, 2012 (two years and three months after enactment)	Publicly traded nonbank financial institutions supervised by the Federal Reserve and publicly traded bank holding companies with at least $10 billion in assets[10]
Beneficial Ownership and Short-Swing Profit Reporting (Section 929R)	The SEC may, but is not required to, issue rules shortening the period of time within which the following must be filed with the SEC: (1) a Schedule 13D in connection with acquiring beneficial ownership of more than 5% of a registered class of equity securities; and (2) a Form 3 in connection with becoming a director, officer or greater than 10% shareholder of a public company.	No	Determined by SEC rule, if any	Determined by SEC rule, if any
Elimination of Regulation FD Exemption for Communications with Rating Agencies (Section 939B)	The SEC must amend Regulation FD to remove the express exemption for communications with rating agencies that is set forth in Section 100(b)(2)(iii) of Regulation FD.	Yes	SEC rulemaking no later than October 19, 2010 (90 days after enactment)	All public companies (including any closed-ended investment companies, but not including any other investment companies or any foreign government or foreign private issuer)

Provision	Summary	SEC Rulemaking Required	Effective Date	Applicability
Rescission of Securities Act Rule 436(g) (Section 939G)	Securities Act of 1933 (the "Securities Act") Rule 436(g) "shall have no force or effect." Securities Act Rule 436(g) provided that credit ratings issued by nationally recognized statistical rating organizations on debt securities, a class of convertible debt securities or a class of preferred stock were not considered part of a registration statement prepared or certified by a person within the meaning of Sections 7 and 11 of the Securities Act.	No	July 22, 2010 (one day after enactment)	All offerings registered under the Securities Act
Conflict Minerals Disclosures (Section 1502)	Any person who manufactures a product for which conflict minerals[(11)] are necessary, either to produce the product or for the product to be functional, must disclose annually to the SEC whether any conflict minerals used by the person originated in the Democratic Republic of the Congo ("DRC") or an adjoining country. If any conflict minerals used did originate in these areas, the person must submit a report to the SEC detailing: (1) the measures taken to exercise due diligence on the source and chain of custody of the minerals (which measures must include an independent audit); (2) the products that will or have been manufactured containing minerals that directly or indirectly finance or benefit armed groups in the DRC or an adjoining country; and (3) additional information, including the facilities used to process the conflict minerals and the efforts used by the person to determine the conflict minerals' specific location of origin.	Yes	SEC rulemaking no later than April 17, 2011 (270 days after enactment)	Any person who manufactures a product for which conflict minerals are necessary, either to produce the product or for the product to be functional
Coal and Other Mine Safety Disclosures (Section 1503)	Each public company that operates, or has a subsidiary that operates, a coal or other mine must disclose mine safety information in each periodic report filed with the	No	Section 1503(f) states that Section 1503 takes effect on August 20, 2010 (30 days after enactment), but the	Each public company that operates, or has a subsidiary that operates, a coal or other mine

Provision	Summary	SEC Rulemaking Required	Effective Date	Applicability
	SEC on or after the date of enactment, which disclosure must include: (1) the total number of citations and orders received by the operator issued under certain provisions of the Federal Mine Safety and Health Act of 1977 ("FMSHA"); (2) a list of mines for which the operator has received notice from the Mine Safety and Health Administration of a pattern or potential pattern of health or safety standard violations; and (3) any pending legal action before the Federal Mine Safety and Health Review Commission involving a mine. In addition, beginning on the date of enactment, such companies must disclose on a Form 8-K the receipt of: (1) an imminent danger order issued under the FMSHA; and (2) written notice from the Mine Safety and Health Administration of a pattern or potential pattern of health or safety standard violations.		subsections dealing with disclosures in periodic reports and Forms 8-K provide that these disclosure requirements are effective on the date of enactment. Given this conflicting language and the absence of SEC guidance, public companies should consider making any disclosures required by Section 1503 beginning with the date of enactment.	
Disclosures of Payments by Resource Extraction Issuers (Section 1504)	Any issuer who files an annual report with the SEC and engages in commercial development of oil, natural gas or minerals must disclose in their annual report information relating to any payment made by the issuer to a foreign government or the U.S. federal government for the purpose of commercial resource development. The required information includes the type and amount of such payments made (1) for each resource development project and (2) to each government.	Yes	SEC rulemaking no later than April 17, 2011 (270 days after enactment), which rules will apply to annual reports for fiscal years ending after the first anniversary of the rules' adoption	Any issuer who files an annual report with the SEC and engages in commercial development of oil, natural gas or minerals

(1) The SEC has the authority to exempt companies from this requirement, taking into account, among other factors, whether the requirement disproportionately burdens small issuers.

(2) The SEC is required to adopt rules describing the type of disclosure required in proxy statements in connection with a shareholder vote on golden parachute compensation.

(3) Institutional investment managers who already are required by the SEC to report how they have voted are exempt from this requirement.

(4) The SEC is required to direct the exchanges to prohibit the listing of companies not in compliance this requirement. Companies will be provided with a reasonable opportunity to cure any defects prior to delisting.

(5) The exchanges must adopt rules with respect to compensation committee independence, including: (a) implementing policies to prohibit the listing of companies not in compliance with this requirement; and (b) determining a definition of "independence" that is based on the factors identified in "Compensation Committee Independence (Section 952) – Summary."

(6) The exchanges have the authority to exempt companies from this requirement as they determine is appropriate, taking into consideration the size of the company and any other relevant factors.

(7) The exchanges have the authority to exempt companies from this requirement as they determine is appropriate, taking into account the potential impact on smaller companies.

(8) The exchanges must implement policies to prohibit the listing of companies not in compliance with this requirement.

(9) The SEC has the authority to exempt companies from any proxy access rules, taking into account, among other factors, whether the rules disproportionately burden small issuers.

(10) The Federal Reserve also has the authority to require that publicly traded bank holding companies with less than $10 billion in assets establish a separate risk committee of the board of directors.

(11) "Conflict minerals" are defined as gold, columbite-tantalite (coltan) (also known as iron manganese, used in the manufacture of condensers, micro-electronic technology (chips and processors), cell phones, nuclear reactors and highly heat tolerant steel varieties), cassiterite (the major ore used in making tin), wolframite (the principal ore in tungsten which is used in many electrical items) or their derivatives.

Exhibit B

Subtitle E—Accountability and Executive Compensation

SEC. 951. SHAREHOLDER VOTE ON EXECUTIVE COMPENSATION DISCLOSURES.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 14 (15 U.S.C. 78n) the following:

"SEC. 14A. SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION.

"(a) SEPARATE RESOLUTION REQUIRED.—

"(1) IN GENERAL.—Not less frequently than once every 3 years, a proxy or consent or authorization for an annual or other meeting of the shareholders for which the proxy solicitation rules of the Commission require compensation disclosure shall include a separate resolution subject to shareholder vote to approve the compensation of executives, as disclosed pursuant to section 229.402 of title 17, Code of Federal Regulations, or any successor thereto.

"(2) FREQUENCY OF VOTE.—Not less frequently than once every 6 years, a proxy or consent or authorization for an annual or other meeting of the shareholders for which the proxy solicitation rules of the Commission require compensation disclosure shall include a separate resolution subject to shareholder vote to determine whether votes on the resolutions required under paragraph (1) will occur every 1, 2, or 3 years.

"(3) EFFECTIVE DATE.—The proxy or consent or authorization for the first annual or other meeting of the shareholders occurring after the end of the 6-month period beginning on the date of enactment of this section shall include—

"(A) the resolution described in paragraph (1); and

"(B) a separate resolution subject to shareholder vote to determine whether votes on the resolutions required under paragraph (1) will occur every 1, 2, or 3 years.

"(b) SHAREHOLDER APPROVAL OF GOLDEN PARACHUTE COMPENSATION.—

"(1) DISCLOSURE.—In any proxy or consent solicitation material (the solicitation of which is subject to the rules of the Commission pursuant to subsection (a)) for a meeting of the shareholders occurring after the end of the 6-month period beginning on the date of enactment of this section, at which shareholders are asked to approve an acquisition, merger, consolidation, or proposed sale or other disposition of all or substantially all the assets of an issuer, the person making such solicitation shall disclose in the proxy or consent solicitation material, in a clear and simple form in accordance with regulations to be promulgated by the Commission, any agreements or understandings that such person has with any named executive officers of such issuer (or of the acquiring issuer, if such issuer is not the acquiring issuer) concerning any type of compensation (whether present, deferred, or contingent) that is based on or otherwise relates to the acquisition, merger, consolidation, sale, or other disposition of all or substantially all of the assets of the issuer and the aggregate total of all such compensation that may (and the conditions upon which

it may) be paid or become payable to or on behalf of such executive officer.

"(2) SHAREHOLDER APPROVAL.—Any proxy or consent or authorization relating to the proxy or consent solicitation material containing the disclosure required by paragraph (1) shall include a separate resolution subject to shareholder vote to approve such agreements or understandings and compensation as disclosed, unless such agreements or understandings have been subject to a shareholder vote under subsection (a).

"(c) RULE OF CONSTRUCTION.—The shareholder vote referred to in subsections (a) and (b) shall not be binding on the issuer or the board of directors of an issuer, and may not be construed—

"(1) as overruling a decision by such issuer or board of directors;

"(2) to create or imply any change to the fiduciary duties of such issuer or board of directors;

"(3) to create or imply any additional fiduciary duties for such issuer or board of directors; or

"(4) to restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation.

"(d) DISCLOSURE OF VOTES.—Every institutional investment manager subject to section 13(f) shall report at least annually how it voted on any shareholder vote pursuant to subsections (a) and (b), unless such vote is otherwise required to be reported publicly by rule or regulation of the Commission.

"(e) EXEMPTION.—The Commission may, by rule or order, exempt an issuer or class of issuers from the requirement under subsection (a) or (b). In determining whether to make an exemption under this subsection, the Commission shall take into account, among other considerations, whether the requirements under subsections (a) and (b) disproportionately burdens small issuers.".

SEC. 952. COMPENSATION COMMITTEE INDEPENDENCE.

(a) IN GENERAL.—The Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is amended by inserting after section 10B, as added by section 753, the following:

"SEC. 10C. COMPENSATION COMMITTEES.

"(a) INDEPENDENCE OF COMPENSATION COMMITTEES.—

"(1) LISTING STANDARDS.—The Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any equity security of an issuer, other than an issuer that is a controlled company, limited partnership, company in bankruptcy proceedings, open-ended management investment company that is registered under the Investment Company Act of 1940, or a foreign private issuer that provides annual disclosures to shareholders of the reasons that the foreign private issuer does not have an independent compensation committee, that does not comply with the requirements of this subsection.

"(2) INDEPENDENCE OF COMPENSATION COMMITTEES.—The rules of the Commission under paragraph (1) shall require that each member of the compensation committee of the board of directors of an issuer be—

"(A) a member of the board of directors of the issuer; and

"(B) independent.

"(3) INDEPENDENCE.—The rules of the Commission under paragraph (1) shall require that, in determining the definition of the term 'independence' for purposes of paragraph (2), the national securities exchanges and the national securities associations shall consider relevant factors, including—

"(A) the source of compensation of a member of the board of directors of an issuer, including any consulting, advisory, or other compensatory fee paid by the issuer to such member of the board of directors; and

"(B) whether a member of the board of directors of an issuer is affiliated with the issuer, a subsidiary of the issuer, or an affiliate of a subsidiary of the issuer.

"(4) EXEMPTION AUTHORITY.—The rules of the Commission under paragraph (1) shall permit a national securities exchange or a national securities association to exempt a particular relationship from the requirements of paragraph (2), with respect to the members of a compensation committee, as the national securities exchange or national securities association determines is appropriate, taking into consideration the size of an issuer and any other relevant factors.

"(b) INDEPENDENCE OF COMPENSATION CONSULTANTS AND OTHER COMPENSATION COMMITTEE ADVISERS.—

"(1) IN GENERAL.—The compensation committee of an issuer may only select a compensation consultant, legal counsel, or other adviser to the compensation committee after taking into consideration the factors identified by the Commission under paragraph (2).

"(2) RULES.—The Commission shall identify factors that affect the independence of a compensation consultant, legal counsel, or other adviser to a compensation committee of an issuer. Such factors shall be competitively neutral among categories of consultants, legal counsel, or other advisers and preserve the ability of compensation committees to retain the services of members of any such category, and shall include—

"(A) the provision of other services to the issuer by the person that employs the compensation consultant, legal counsel, or other adviser;

"(B) the amount of fees received from the issuer by the person that employs the compensation consultant, legal counsel, or other adviser, as a percentage of the total revenue of the person that employs the compensation consultant, legal counsel, or other adviser;

"(C) the policies and procedures of the person that employs the compensation consultant, legal counsel, or other adviser that are designed to prevent conflicts of interest;

"(D) any business or personal relationship of the compensation consultant, legal counsel, or other adviser with a member of the compensation committee; and

"(E) any stock of the issuer owned by the compensation consultant, legal counsel, or other adviser.

"(c) COMPENSATION COMMITTEE AUTHORITY RELATING TO COMPENSATION CONSULTANTS.—

"(1) AUTHORITY TO RETAIN COMPENSATION CONSULTANT.—

"(A) IN GENERAL.—The compensation committee of an issuer, in its capacity as a committee of the board of directors, may, in its sole discretion, retain or obtain the advice of a compensation consultant.

"(B) DIRECT RESPONSIBILITY OF COMPENSATION COMMITTEE.—The compensation committee of an issuer shall be directly responsible for the appointment, compensation, and oversight of the work of a compensation consultant.

"(C) RULE OF CONSTRUCTION.—This paragraph may not be construed—

"(i) to require the compensation committee to implement or act consistently with the advice or recommendations of the compensation consultant; or

"(ii) to affect the ability or obligation of a compensation committee to exercise its own judgment in fulfillment of the duties of the compensation committee.

"(2) DISCLOSURE.—In any proxy or consent solicitation material for an annual meeting of the shareholders (or a special meeting in lieu of the annual meeting) occurring on or after the date that is 1 year after the date of enactment of this section, each issuer shall disclose in the proxy or consent material, in accordance with regulations of the Commission, whether—

"(A) the compensation committee of the issuer retained or obtained the advice of a compensation consultant; and

"(B) the work of the compensation consultant has raised any conflict of interest and, if so, the nature of the conflict and how the conflict is being addressed.

"(d) AUTHORITY TO ENGAGE INDEPENDENT LEGAL COUNSEL AND OTHER ADVISERS.—

"(1) IN GENERAL.—The compensation committee of an issuer, in its capacity as a committee of the board of directors, may, in its sole discretion, retain and obtain the advice of independent legal counsel and other advisers.

"(2) DIRECT RESPONSIBILITY OF COMPENSATION COMMITTEE.—The compensation committee of an issuer shall be directly responsible for the appointment, compensation, and oversight of the work of independent legal counsel and other advisers.

"(3) RULE OF CONSTRUCTION.—This subsection may not be construed—

"(A) to require a compensation committee to implement or act consistently with the advice or recommendations of independent legal counsel or other advisers under this subsection; or

"(B) to affect the ability or obligation of a compensation committee to exercise its own judgment in fulfillment of the duties of the compensation committee.

"(e) COMPENSATION OF COMPENSATION CONSULTANTS, INDEPENDENT LEGAL COUNSEL, AND OTHER ADVISERS.—Each issuer shall provide for appropriate funding, as determined by the compensation committee in its capacity as a committee of the board of directors, for payment of reasonable compensation—

"(1) to a compensation consultant; and

"(2) to independent legal counsel or any other adviser to the compensation committee.

"(f) COMMISSION RULES.—

"(1) IN GENERAL.—Not later than 360 days after the date of enactment of this section, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the requirements of this section.

"(2) OPPORTUNITY TO CURE DEFECTS.—The rules of the Commission under paragraph (1) shall provide for appropriate procedures for an issuer to have a reasonable opportunity to cure any defects that would be the basis for the prohibition under paragraph (1), before the imposition of such prohibition.

"(3) EXEMPTION AUTHORITY.—

"(A) IN GENERAL.—The rules of the Commission under paragraph (1) shall permit a national securities exchange or a national securities association to exempt a category of issuers from the requirements under this section, as the national securities exchange or the national securities association determines is appropriate.

"(B) CONSIDERATIONS.—In determining appropriate exemptions under subparagraph (A), the national securities exchange or the national securities association shall take into account the potential impact of the requirements of this section on smaller reporting issuers.

"(g) CONTROLLED COMPANY EXEMPTION.—

"(1) IN GENERAL.—This section shall not apply to any controlled company.

"(2) DEFINITION.—For purposes of this section, the term 'controlled company' means an issuer—

"(A) that is listed on a national securities exchange or by a national securities association; and

"(B) that holds an election for the board of directors of the issuer in which more than 50 percent of the voting power is held by an individual, a group, or another issuer.".

(b) STUDY AND REPORT.—

(1) STUDY.—The Securities and Exchange Commission shall conduct a study and review of the use of compensation consultants and the effects of such use.

(2) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Commission shall submit a report to Congress on the results of the study and review required by this subsection.

SEC. 953. EXECUTIVE COMPENSATION DISCLOSURES.

(a) DISCLOSURE OF PAY VERSUS PERFORMANCE.—Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n), as amended by this title, is amended by adding at the end the following:

"(i) DISCLOSURE OF PAY VERSUS PERFORMANCE.—The Commission shall, by rule, require each issuer to disclose in any proxy or consent solicitation material for an annual meeting of the shareholders of the issuer a clear description of any compensation required to be disclosed by the issuer under section 229.402 of title 17, Code of Federal Regulations (or any successor thereto), including information that shows the relationship between executive compensation actually paid and the financial performance of the issuer, taking into account any change in the value of the shares of stock and dividends of the issuer and any distributions. The

disclosure under this subsection may include a graphic representation of the information required to be disclosed.".

(b) ADDITIONAL DISCLOSURE REQUIREMENTS.—

(1) IN GENERAL.—The Commission shall amend section 229.402 of title 17, Code of Federal Regulations, to require each issuer to disclose in any filing of the issuer described in section 229.10(a) of title 17, Code of Federal Regulations (or any successor thereto)—

(A) the median of the annual total compensation of all employees of the issuer, except the chief executive officer (or any equivalent position) of the issuer;

(B) the annual total compensation of the chief executive officer (or any equivalent position) of the issuer; and

(C) the ratio of the amount described in subparagraph (A) to the amount described in subparagraph (B).

(2) TOTAL COMPENSATION.—For purposes of this subsection, the total compensation of an employee of an issuer shall be determined in accordance with section 229.402(c)(2)(x) of title 17, Code of Federal Regulations, as in effect on the day before the date of enactment of this Act.

SEC. 954. RECOVERY OF ERRONEOUSLY AWARDED COMPENSATION.

The Securities Exchange Act of 1934 is amended by inserting after section 10C, as added by section 952, the following:

"SEC. 10D. RECOVERY OF ERRONEOUSLY AWARDED COMPENSATION POLICY.

"(a) LISTING STANDARDS.—The Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that does not comply with the requirements of this section.

"(b) RECOVERY OF FUNDS.—The rules of the Commission under subsection (a) shall require each issuer to develop and implement a policy providing—

"(1) for disclosure of the policy of the issuer on incentive-based compensation that is based on financial information required to be reported under the securities laws; and

"(2) that, in the event that the issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer with any financial reporting requirement under the securities laws, the issuer will recover from any current or former executive officer of the issuer who received incentive-based compensation (including stock options awarded as compensation) during the 3-year period preceding the date on which the issuer is required to prepare an accounting restatement, based on the erroneous data, in excess of what would have been paid to the executive officer under the accounting restatement.".

SEC. 955. DISCLOSURE REGARDING EMPLOYEE AND DIRECTOR HEDGING.

Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n), as amended by this title, is amended by adding at the end the following:

"(j) DISCLOSURE OF HEDGING BY EMPLOYEES AND DIRECTORS.—The Commission shall, by rule, require each issuer to disclose in any proxy or consent solicitation material for an annual meeting of the shareholders of the issuer whether any employee or member

of the board of directors of the issuer, or any designee of such employee or member, is permitted to purchase financial instruments (including prepaid variable forward contracts, equity swaps, collars, and exchange funds) that are designed to hedge or offset any decrease in the market value of equity securities—

"(1) granted to the employee or member of the board of directors by the issuer as part of the compensation of the employee or member of the board of directors; or

"(2) held, directly or indirectly, by the employee or member of the board of directors.".

SEC. 956. ENHANCED COMPENSATION STRUCTURE REPORTING.

(a) ENHANCED DISCLOSURE AND REPORTING OF COMPENSATION ARRANGEMENTS.—

(1) IN GENERAL.—Not later than 9 months after the date of enactment of this title, the appropriate Federal regulators jointly shall prescribe regulations or guidelines to require each covered financial institution to disclose to the appropriate Federal regulator the structures of all incentive-based compensation arrangements offered by such covered financial institutions sufficient to determine whether the compensation structure—

(A) provides an executive officer, employee, director, or principal shareholder of the covered financial institution with excessive compensation, fees, or benefits; or

(B) could lead to material financial loss to the covered financial institution.

(2) RULES OF CONSTRUCTION.—Nothing in this section shall be construed as requiring the reporting of the actual compensation of particular individuals. Nothing in this section shall be construed to require a covered financial institution that does not have an incentive-based payment arrangement to make the disclosures required under this subsection.

(b) PROHIBITION ON CERTAIN COMPENSATION ARRANGEMENTS.—Not later than 9 months after the date of enactment of this title, the appropriate Federal regulators shall jointly prescribe regulations or guidelines that prohibit any types of incentive-based payment arrangement, or any feature of any such arrangement, that the regulators determine encourages inappropriate risks by covered financial institutions—

(1) by providing an executive officer, employee, director, or principal shareholder of the covered financial institution with excessive compensation, fees, or benefits; or

(2) that could lead to material financial loss to the covered financial institution.

(c) STANDARDS.—The appropriate Federal regulators shall—

(1) ensure that any standards for compensation established under subsections (a) or (b) are comparable to the standards established under section of the Federal Deposit Insurance Act (12 U.S.C. 2 1831p–1) for insured depository institutions; and

(2) in establishing such standards under such subsections, take into consideration the compensation standards described in section 39(c) of the Federal Deposit Insurance Act (12 U.S.C. 1831p– 9 1(c)).

(d) ENFORCEMENT.—The provisions of this section and the regulations issued under this section shall be enforced under section

505 of the Gramm-Leach-Bliley Act and, for purposes of such section, a violation of this section or such regulations shall be treated as a violation of subtitle A of title V of such Act.

(e) DEFINITIONS.—As used in this section—

(1) the term "appropriate Federal regulator" means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, the National Credit Union Administration Board, the Securities and Exchange Commission, the Federal Housing Finance Agency; and

(2) the term "covered financial institution" means—

(A) a depository institution or depository institution holding company, as such terms are defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(B) a broker-dealer registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o);

(C) a credit union, as described in section 19(b)(1)(A)(iv) of the Federal Reserve Act;

(D) an investment advisor, as such term is defined in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11));

(E) the Federal National Mortgage Association;

(F) the Federal Home Loan Mortgage Corporation; and

(G) any other financial institution that the appropriate Federal regulators, jointly, by rule, determine should be treated as a covered financial institution for purposes of this section.

(f) EXEMPTION FOR CERTAIN FINANCIAL INSTITUTIONS.—The requirements of this section shall not apply to covered financial institutions with assets of less than $1,000,000,000.

SEC. 957. VOTING BY BROKERS.

Section 6(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(b)) is amended—

(1) in paragraph (9)—

(A) in subparagraph (A), by redesignating clauses (i) through (v) as subclauses (I) through (V), respectively, and adjusting the margins accordingly;

(B) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively, and adjusting the margins accordingly;

(C) by inserting "(A)" after "(9)"; and

(D) in the matter immediately following clause (iv), as so redesignated, by striking "As used" and inserting the following:

"(B) As used".

(2) by adding at the end the following:

"(10)(A) The rules of the exchange prohibit any member that is not the beneficial owner of a security registered under section 12 from granting a proxy to vote the security in connection with a shareholder vote described in subparagraph (B), unless the beneficial owner of the security has instructed the member to vote the proxy in accordance with the voting instructions of the beneficial owner.

"(B) A shareholder vote described in this subparagraph is a shareholder vote with respect to the election of a member

of the board of directors of an issuer, executive compensation, or any other significant matter, as determined by the Commission, by rule, and does not include a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80b–1 et seq.).

"(C) Nothing in this paragraph shall be construed to prohibit a national securities exchange from prohibiting a member that is not the beneficial owner of a security registered under section 12 from granting a proxy to vote the security in connection with a shareholder vote not described in subparagraph (A).".

Subtitle F—Improvements to the Management of the Securities and Exchange Commission

SEC. 961. REPORT AND CERTIFICATION OF INTERNAL SUPERVISORY CONTROLS.

(a) ANNUAL REPORTS AND CERTIFICATION.—Not later than 90 days after the end of each fiscal year, the Commission shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the conduct by the Commission of examinations of registered entities, enforcement investigations, and review of corporate financial securities filings.

(b) CONTENTS OF REPORTS.—Each report under subsection (a) shall contain—

(1) an assessment, as of the end of the most recent fiscal year, of the effectiveness of—

(A) the internal supervisory controls of the Commission; and

(B) the procedures of the Commission applicable to the staff of the Commission who perform examinations of registered entities, enforcement investigations, and reviews of corporate financial securities filings;

(2) a certification that the Commission has adequate internal supervisory controls to carry out the duties of the Commission described in paragraph (1)(B); and

(3) a summary by the Comptroller General of the United States of the review carried out under subsection (d).

(c) CERTIFICATION.—

(1) SIGNATURE.—The certification under subsection (b)(2) shall be signed by the Director of the Division of Enforcement, the Director of the Division of Corporation Finance, and the Director of the Office of Compliance Inspections and Examinations (or the head of any successor division or office).

(2) CONTENT OF CERTIFICATION.—Each individual described in paragraph (1) shall certify that the individual—

(A) is directly responsible for establishing and maintaining the internal supervisory controls of the Division or Office of which the individual is the head;

(B) is knowledgeable about the internal supervisory controls of the Division or Office of which the individual is the head;

Subtitle G—Strengthening Corporate Governance

SEC. 971. PROXY ACCESS.

(a) PROXY ACCESS.—Section 14(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(a)) is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by adding at the end the following:

"(2) The rules and regulations prescribed by the Commission under paragraph (1) may include—

"(A) a requirement that a solicitation of proxy, consent, or authorization by (or on behalf of) an issuer include a nominee submitted by a shareholder to serve on the board of directors of the issuer; and

"(B) a requirement that an issuer follow a certain procedure in relation to a solicitation described in subparagraph (A).".

(b) REGULATIONS.—The Commission may issue rules permitting the use by a shareholder of proxy solicitation materials supplied by an issuer of securities for the purpose of nominating individuals to membership on the board of directors of the issuer, under such terms and conditions as the Commission determines are in the interests of shareholders and for the protection of investors.

(c) EXEMPTIONS.—The Commission may, by rule or order, exempt an issuer or class of issuers from the requirement made by this section or an amendment made by this section. In determining whether to make an exemption under this subsection, the Commission shall take into account, among other considerations, whether the requirement in the amendment made by subsection (a) disproportionately burdens small issuers.

SEC. 972. DISCLOSURES REGARDING CHAIRMAN AND CEO STRUCTURES.

The Securities Exchange Act of 1934 (15 U.S. C. 78a et seq.) is amended by inserting after section 14A, as added by this title, the following:

"SEC. 14B. CORPORATE GOVERNANCE.

"Not later than 180 days after the date of enactment of this subsection, the Commission shall issue rules that require an issuer to disclose in the annual proxy sent to investors the reasons why the issuer has chosen—

"(1) the same person to serve as chairman of the board of directors and chief executive officer (or in equivalent positions); or

"(2) different individuals to serve as chairman of the board of directors and chief executive officer (or in equivalent positions of the issuer).".

Subtitle H—Municipal Securities

SEC. 975. REGULATION OF MUNICIPAL SECURITIES AND CHANGES TO THE BOARD OF THE MSRB.

(a) REGISTRATION OF MUNICIPAL SECURITIES DEALERS AND MUNICIPAL ADVISORS.—Section 15B(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(a)) is amended—

(g) SHORT-TERM DEBT LIMITS.—

(1) IN GENERAL.—In order to mitigate the risks that an over-accumulation of short-term debt could pose to financial companies and to the stability of the United States financial system, the Board of Governors may, by regulation, prescribe a limit on the amount of short-term debt, including off-balance sheet exposures, that may be accumulated by any bank holding company described in subsection (a) and any nonbank financial company supervised by the Board of Governors.

(2) BASIS OF LIMIT.—Any limit prescribed under paragraph (1) shall be based on the short-term debt of the company described in paragraph (1) as a percentage of capital stock and surplus of the company or on such other measure as the Board of Governors considers appropriate.

(3) SHORT-TERM DEBT DEFINED.—For purposes of this subsection, the term "short-term debt" means such liabilities with short-dated maturity that the Board of Governors identifies, by regulation, except that such term does not include insured deposits.

(4) RULEMAKING AUTHORITY.—In addition to prescribing regulations under paragraphs (1) and (3), the Board of Governors may prescribe such regulations, including definitions consistent with this subsection, and issue such orders, as may be necessary to carry out this subsection.

(5) AUTHORITY TO ISSUE EXEMPTIONS AND ADJUSTMENTS.—Notwithstanding the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), the Board of Governors may, if it determines such action is necessary to ensure appropriate heightened prudential supervision, with respect to a company described in paragraph (1) that does not control an insured depository institution, issue to such company an exemption from or adjustment to the limit prescribed under paragraph (1).

(h) RISK COMMITTEE.—

(1) NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—The Board of Governors shall require each nonbank financial company supervised by the Board of Governors that is a publicly traded company to establish a risk committee, as set forth in paragraph (3), not later than 1 year after the date of receipt of a notice of final determination under section 113(e)(3) with respect to such nonbank financial company supervised by the Board of Governors.

(2) CERTAIN BANK HOLDING COMPANIES.—

(A) MANDATORY REGULATIONS.—The Board of Governors shall issue regulations requiring each bank holding company that is a publicly traded company and that has total consolidated assets of not less than $10,000,000,000 to establish a risk committee, as set forth in paragraph (3).

(B) PERMISSIVE REGULATIONS.—The Board of Governors may require each bank holding company that is a publicly traded company and that has total consolidated assets of less than $10,000,000,000 to establish a risk committee, as set forth in paragraph (3), as determined necessary or appropriate by the Board of Governors to promote sound risk management practices.

(3) RISK COMMITTEE.—A risk committee required by this subsection shall—

(A) be responsible for the oversight of the enterprise-wide risk management practices of the nonbank financial company supervised by the Board of Governors or bank holding company described in subsection (a), as applicable;

(B) include such number of independent directors as the Board of Governors may determine appropriate, based on the nature of operations, size of assets, and other appropriate criteria related to the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), as applicable; and

(C) include at least 1 risk management expert having experience in identifying, assessing, and managing risk exposures of large, complex firms.

(4) RULEMAKING.—The Board of Governors shall issue final rules to carry out this subsection, not later than 1 year after the transfer date, to take effect not later than 15 months after the transfer date.

(i) STRESS TESTS.—

(1) BY THE BOARD OF GOVERNORS.—

(A) ANNUAL TESTS REQUIRED.—The Board of Governors, in coordination with the appropriate primary financial regulatory agencies and the Federal Insurance Office, shall conduct annual analyses in which nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a) are subject to evaluation of whether such companies have the capital, on a total consolidated basis, necessary to absorb losses as a result of adverse economic conditions.

(B) TEST PARAMETERS AND CONSEQUENCES.—The Board of Governors—

(i) shall provide for at least 3 different sets of conditions under which the evaluation required by this subsection shall be conducted, including baseline, adverse, and severely adverse;

(ii) may require the tests described in subparagraph (A) at bank holding companies and nonbank financial companies, in addition to those for which annual tests are required under subparagraph (A);

(iii) may develop and apply such other analytic techniques as are necessary to identify, measure, and monitor risks to the financial stability of the United States;

(iv) shall require the companies described in subparagraph (A) to update their resolution plans required under subsection (d)(1), as the Board of Governors determines appropriate, based on the results of the analyses; and

(v) shall publish a summary of the results of the tests required under subparagraph (A) or clause (ii) of this subparagraph.

(2) BY THE COMPANY.—

(A) REQUIREMENT.—A nonbank financial company supervised by the Board of Governors and a bank holding company described in subsection (a) shall conduct semi-annual stress tests. All other financial companies that have total consolidated assets of more than $10,000,000,000 and are regulated by a primary Federal financial regulatory

"(A) IN GENERAL.—Records of persons having custody or use of the securities, deposits, or credits of a registered investment company that relate to such custody or use, are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations and other information and document requests by representatives of the Commission, as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

"(B) CERTAIN PERSONS SUBJECT TO OTHER REGULATION.—Any person that is subject to regulation and examination by a Federal financial institution regulatory agency (as such term is defined under section 212(c)(2) of title 18, United States Code) may satisfy any examination request, information request, or document request described under subparagraph (A), by providing to the Commission a detailed listing, in writing, of the securities, deposits, or credits of the registered investment company within the custody or use of such person.".

(b) INVESTMENT ADVISERS ACT OF 1940 AMENDMENT.—Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4) is amended by adding at the end the following new subsection:

"(d) RECORDS OF PERSONS WITH CUSTODY OR USE.—

"(1) IN GENERAL.—Records of persons having custody or use of the securities, deposits, or credits of a client, that relate to such custody or use, are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations and other information and document requests by representatives of the Commission, as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

"(2) CERTAIN PERSONS SUBJECT TO OTHER REGULATION.—Any person that is subject to regulation and examination by a Federal financial institution regulatory agency (as such term is defined under section 212(c)(2) of title 18, United States Code) may satisfy any examination request, information request, or document request described under paragraph (1), by providing the Commission with a detailed listing, in writing, of the securities, deposits, or credits of the client within the custody or use of such person.".

SEC. 929R. BENEFICIAL OWNERSHIP AND SHORT-SWING PROFIT REPORTING.

(a) BENEFICIAL OWNERSHIP REPORTING.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended—

(1) in subsection (d)(1)—

(A) by inserting after "within ten days after such acquisition" the following: "or within such shorter time as the Commission may establish by rule"; and

(B) by striking "send to the issuer of the security at its principal executive office, by registered or certified mail, send to each exchange where the security is traded, and";

(2) in subsection (d)(2)—

(A) by striking "in the statements to the issuer and the exchange, and"; and

(B) by striking "shall be transmitted to the issuer and the exchange and";

(3) in subsection (g)(1), by striking "shall send to the issuer of the security and"; and

(4) in subsection (g)(2)—

(A) by striking "sent to the issuer and"; and

(B) by striking "shall be transmitted to the issuer and".

(b) SHORT-SWING PROFIT REPORTING.—Section 16(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78p(a)) is amended—

(1) in paragraph (1), by striking "(and, if such security is registered on a national securities exchange, also with the exchange)"; and

(2) in paragraph (2)(B), by inserting after "officer" the following: ", or within such shorter time as the Commission may establish by rule".

SEC. 929S. FINGERPRINTING.

Section 17(f)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(f)(2)) is amended—

(1) in the first sentence, by striking "and registered clearing agency," and inserting "registered clearing agency, registered securities information processor, national securities exchange, and national securities association"; and

(2) in the second sentence, by striking "or clearing agency," and inserting "clearing agency, securities information processor, national securities exchange, or national securities association,".

SEC. 929T. EQUAL TREATMENT OF SELF-REGULATORY ORGANIZATION RULES.

Section 29(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78cc(a)) is amended by striking "an exchange required thereby" and inserting "a self-regulatory organization,".

SEC. 929U. DEADLINE FOR COMPLETING EXAMINATIONS, INSPECTIONS AND ENFORCEMENT ACTIONS.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 4D the following new section:

"SEC. 4E. DEADLINE FOR COMPLETING ENFORCEMENT INVESTIGATIONS AND COMPLIANCE EXAMINATIONS AND INSPECTIONS.

"(a) ENFORCEMENT INVESTIGATIONS.—

"(1) IN GENERAL.—Not later than 180 days after the date on which Commission staff provide a written Wells notification to any person, the Commission staff shall either file an action against such person or provide notice to the Director of the Division of Enforcement of its intent to not file an action.

"(2) EXCEPTIONS FOR CERTAIN COMPLEX ACTIONS.—Notwithstanding paragraph (1), if the Director of the Division of Enforcement of the Commission or the Director's designee determines that a particular enforcement investigation is sufficiently complex such that a determination regarding the filing of an action against a person cannot be completed within the deadline specified in paragraph (1), the Director of the Division of Enforcement of the Commission or the Director's designee may, after providing notice to the Chairman of the Commission,

Urban Affairs on September 22, 1988, as enacted into law by section 555 of Public Law 100–461, (22 U.S.C. 286hh(a)(6)), is amended by striking "credit rating" and inserting "credit-worthiness".

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect 2 years after the date of enactment of this Act.

(h) STUDY AND REPORT.—

(1) IN GENERAL.—Commission shall undertake a study on the feasability and desirability of—

(A) standardizing credit ratings terminology, so that all credit rating agencies issue credit ratings using identical terms;

(B) standardizing the market stress conditions under which ratings are evaluated;

(C) requiring a quantitative correspondence between credit ratings and a range of default probabilities and loss expectations under standardized conditions of economic stress; and

(D) standardizing credit rating terminology across asset classes, so that named ratings correspond to a standard range of default probabilities and expected losses independent of asset class and issuing entity.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit to Congress a report containing the findings of the study under paragraph (1) and the recommendations, if any, of the Commission with respect to the study.

SEC. 939A. REVIEW OF RELIANCE ON RATINGS.

(a) AGENCY REVIEW.—Not later than 1 year after the date of the enactment of this subtitle, each Federal agency shall, to the extent applicable, review—

(1) any regulation issued by such agency that requires the use of an assessment of the credit-worthiness of a security or money market instrument; and

(2) any references to or requirements in such regulations regarding credit ratings.

(b) MODIFICATIONS REQUIRED.—Each such agency shall modify any such regulations identified by the review conducted under subsection (a) to remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as each respective agency shall determine as appropriate for such regulations. In making such determination, such agencies shall seek to establish, to the extent feasible, uniform standards of credit-worthiness for use by each such agency, taking into account the entities regulated by each such agency and the purposes for which such entities would rely on such standards of credit-worthiness.

(c) REPORT.—Upon conclusion of the review required under subsection (a), each Federal agency shall transmit a report to Congress containing a description of any modification of any regulation such agency made pursuant to subsection (b).

SEC. 939B. ELIMINATION OF EXEMPTION FROM FAIR DISCLOSURE RULE.

Not later than 90 days after the date of enactment of this subtitle, the Securities Exchange Commission shall revise Regulation FD (17 C.F.R. 243.100) to remove from such regulation the

exemption for entities whose primary business is the issuance of credit ratings (17 C.F.R. 243.100(b)(2)(iii)).

SEC. 939C. SECURITIES AND EXCHANGE COMMISSION STUDY ON STRENGTHENING CREDIT RATING AGENCY INDEPENDENCE.

(a) STUDY.—The Commission shall conduct a study of—

(1) the independence of nationally recognized statistical rating organizations; and

(2) how the independence of nationally recognized statistical rating organizations affects the ratings issued by the nationally recognized statistical rating organizations.

(b) SUBJECTS FOR EVALUATION.—In conducting the study under subsection (a), the Commission shall evaluate—

(1) the management of conflicts of interest raised by a nationally recognized statistical rating organization providing other services, including risk management advisory services, ancillary assistance, or consulting services;

(2) the potential impact of rules prohibiting a nationally recognized statistical rating organization that provides a rating to an issuer from providing other services to the issuer; and

(3) any other issue relating to nationally recognized statistical rating organizations, as the Chairman of the Commission determines is appropriate.

(c) REPORT.—Not later than 3 years after the date of enactment of this Act, the Chairman of the Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study conducted under subsection (a), including recommendations, if any, for improving the integrity of ratings issued by nationally recognized statistical rating organizations.

SEC. 939D. GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON ALTERNATIVE BUSINESS MODELS.

(a) STUDY.—The Comptroller General of the United States shall conduct a study on alternative means for compensating nationally recognized statistical rating organizations in order to create incentives for nationally recognized statistical rating organizations to provide more accurate credit ratings, including any statutory changes that would be required to facilitate the use of an alternative means of compensation.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study conducted under subsection (a), including recommendations, if any, for providing incentives to credit rating agencies to improve the credit rating process.

SEC. 939E. GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON THE CREATION OF AN INDEPENDENT PROFESSIONAL ANALYST ORGANIZATION.

(a) STUDY.—The Comptroller General of the United States shall conduct a study on the feasibility and merits of creating an independent professional organization for rating analysts employed by nationally recognized statistical rating organizations that would be responsible for—

for the assignment of nationally recognized statistical rating organizations to determine the initial credit ratings of structured finance products, in a manner that prevents the issuer, sponsor, or underwriter of the structured finance product from selecting the nationally recognized statistical rating organization that will determine the initial credit ratings and monitor such credit ratings. In issuing any rule under this paragraph, the Commission shall give thorough consideration to the provisions of section 15E(w) of the Securities Exchange Act of 1934, as that provision would have been added by section 939D of H.R. 4173 (111th Congress), as passed by the Senate on May 20, 2010, and shall implement the system described in such section 939D unless the Commission determines that an alternative system would better serve the public interest and the protection of investors.

(2) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed to limit or suspend any other rulemaking authority of the Commission.

SEC. 939G. EFFECT OF RULE 436(G).

Rule 436(g), promulgated by the Securities and Exchange Commission under the Securities Act of 1933, shall have no force or effect.

SEC. 939H. SENSE OF CONGRESS.

It is the sense of Congress that the Securities and Exchange Commission should exercise the rulemaking authority of the Commission under section 15E(h)(2)(B) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7(h)(2)(B)) to prevent improper conflicts of interest arising from employees of nationally recognized statistical rating organizations providing services to issuers of securities that are unrelated to the issuance of credit ratings, including consulting, advisory, and other services.

Subtitle D—Improvements to the Asset-Backed Securitization Process

SEC. 941. REGULATION OF CREDIT RISK RETENTION.

(a) DEFINITION OF ASSET-BACKED SECURITY.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end the following:

"(77) ASSET-BACKED SECURITY.—The term 'asset-backed security'—

"(A) means a fixed-income or other security collateralized by any type of self-liquidating financial asset (including a loan, a lease, a mortgage, or a secured or unsecured receivable) that allows the holder of the security to receive payments that depend primarily on cash flow from the asset, including—

"(i) a collateralized mortgage obligation;

"(ii) a collateralized debt obligation;

"(iii) a collateralized bond obligation;

"(iv) a collateralized debt obligation of asset-backed securities;

"(v) a collateralized debt obligation of collateralized debt obligations; and

duration of any program approved under such proposals, the Secretary of the Treasury shall report in writing to the Committee on Financial Services of the House of Representatives and the Committee on Foreign Relations and the Committee on Banking, Housing, and Urban Affairs of the Senate assessing the likelihood that loans made pursuant to such proposals will be repaid in full, including—

"(1) the borrowing country's current debt status, including, to the extent possible, its maturity structure, whether it has fixed or floating rates, whether it is indexed, and by whom it is held;

"(2) the borrowing country's external and internal vulnerabilities that could potentially affect its ability to repay; and

"(3) the borrowing country's debt management strategy.".

SEC. 1502. CONFLICT MINERALS.

(a) SENSE OF CONGRESS ON EXPLOITATION AND TRADE OF CONFLICT MINERALS ORIGINATING IN THE DEMOCRATIC REPUBLIC OF THE CONGO.—It is the sense of Congress that the exploitation and trade of conflict minerals originating in the Democratic Republic of the Congo is helping to finance conflict characterized by extreme levels of violence in the eastern Democratic Republic of the Congo, particularly sexual- and gender-based violence, and contributing to an emergency humanitarian situation therein, warranting the provisions of section 13(p) of the Securities Exchange Act of 1934, as added by subsection (b).

(b) DISCLOSURE RELATING TO CONFLICT MINERALS ORIGINATING IN THE DEMOCRATIC REPUBLIC OF THE CONGO.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by this Act, is amended by adding at the end the following new subsection:

"(p) DISCLOSURES RELATING TO CONFLICT MINERALS ORIGINATING IN THE DEMOCRATIC REPUBLIC OF THE CONGO.—

"(1) REGULATIONS.—

"(A) IN GENERAL.—Not later than 270 days after the date of the enactment of this subsection, the Commission shall promulgate regulations requiring any person described in paragraph (2) to disclose annually, beginning with the person's first full fiscal year that begins after the date of promulgation of such regulations, whether conflict minerals that are necessary as described in paragraph (2)(B), in the year for which such reporting is required, did originate in the Democratic Republic of the Congo or an adjoining country and, in cases in which such conflict minerals did originate in any such country, submit to the Commission a report that includes, with respect to the period covered by the report—

"(i) a description of the measures taken by the person to exercise due diligence on the source and chain of custody of such minerals, which measures shall include an independent private sector audit of such report submitted through the Commission that is conducted in accordance with standards established by the Comptroller General of the United States, in accordance with rules promulgated by the Commission, in consultation with the Secretary of State; and

"(ii) a description of the products manufactured or contracted to be manufactured that are not DRC conflict free ('DRC conflict free' is defined to mean the products that do not contain minerals that directly or indirectly finance or benefit armed groups in the Democratic Republic of the Congo or an adjoining country), the entity that conducted the independent private sector audit in accordance with clause (i), the facilities used to process the conflict minerals, the country of origin of the conflict minerals, and the efforts to determine the mine or location of origin with the greatest possible specificity.

"(B) CERTIFICATION.—The person submitting a report under subparagraph (A) shall certify the audit described in clause (i) of such subparagraph that is included in such report. Such a certified audit shall constitute a critical component of due diligence in establishing the source and chain of custody of such minerals.

"(C) UNRELIABLE DETERMINATION.—If a report required to be submitted by a person under subparagraph (A) relies on a determination of an independent private sector audit, as described under subparagraph (A)(i), or other due diligence processes previously determined by the Commission to be unreliable, the report shall not satisfy the requirements of the regulations promulgated under subparagraph (A)(i).

"(D) DRC CONFLICT FREE.—For purposes of this paragraph, a product may be labeled as 'DRC conflict free' if the product does not contain conflict minerals that directly or indirectly finance or benefit armed groups in the Democratic Republic of the Congo or an adjoining country.

"(E) INFORMATION AVAILABLE TO THE PUBLIC.—Each person described under paragraph (2) shall make available to the public on the Internet website of such person the information disclosed by such person under subparagraph (A).

"(2) PERSON DESCRIBED.—A person is described in this paragraph if—

"(A) the person is required to file reports with the Commission pursuant to paragraph (1)(A); and

"(B) conflict minerals are necessary to the functionality or production of a product manufactured by such person.

"(3) REVISIONS AND WAIVERS.—The Commission shall revise or temporarily waive the requirements described in paragraph (1) if the President transmits to the Commission a determination that—

"(A) such revision or waiver is in the national security interest of the United States and the President includes the reasons therefor; and

"(B) establishes a date, not later than 2 years after the initial publication of such exemption, on which such exemption shall expire.

"(4) TERMINATION OF DISCLOSURE REQUIREMENTS.—The requirements of paragraph (1) shall terminate on the date on which the President determines and certifies to the appropriate congressional committees, but in no case earlier than

the date that is one day after the end of the 5-year period beginning on the date of the enactment of this subsection, that no armed groups continue to be directly involved and benefitting from commercial activity involving conflict minerals.

"(5) DEFINITIONS.—For purposes of this subsection, the terms 'adjoining country', 'appropriate congressional committees', 'armed group', and 'conflict mineral' have the meaning given those terms under section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.".

(c) STRATEGY AND MAP TO ADDRESS LINKAGES BETWEEN CONFLICT MINERALS AND ARMED GROUPS.—

(1) STRATEGY.—

(A) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of State, in consultation with the Administrator of the United States Agency for International Development, shall submit to the appropriate congressional committees a strategy to address the linkages between human rights abuses, armed groups, mining of conflict minerals, and commercial products.

(B) CONTENTS.—The strategy required by subparagraph (A) shall include the following:

(i) A plan to promote peace and security in the Democratic Republic of the Congo by supporting efforts of the Government of the Democratic Republic of the Congo, including the Ministry of Mines and other relevant agencies, adjoining countries, and the international community, in particular the United Nations Group of Experts on the Democratic Republic of Congo, to—

(I) monitor and stop commercial activities involving the natural resources of the Democratic Republic of the Congo that contribute to the activities of armed groups and human rights violations in the Democratic Republic of the Congo; and

(II) develop stronger governance and economic institutions that can facilitate and improve transparency in the cross-border trade involving the natural resources of the Democratic Republic of the Congo to reduce exploitation by armed groups and promote local and regional development.

(ii) A plan to provide guidance to commercial entities seeking to exercise due diligence on and formalize the origin and chain of custody of conflict minerals used in their products and on their suppliers to ensure that conflict minerals used in the products of such suppliers do not directly or indirectly finance armed conflict or result in labor or human rights violations.

(iii) A description of punitive measures that could be taken against individuals or entities whose commercial activities are supporting armed groups and human rights violations in the Democratic Republic of the Congo.

(2) MAP.—

(A) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of State shall, in accordance with the recommendation of the United

Nations Group of Experts on the Democratic Republic of the Congo in their December 2008 report—

(i) produce a map of mineral-rich zones, trade routes, and areas under the control of armed groups in the Democratic Republic of the Congo and adjoining countries based on data from multiple sources, including—

(I) the United Nations Group of Experts on the Democratic Republic of the Congo;

(II) the Government of the Democratic Republic of the Congo, the governments of adjoining countries, and the governments of other Member States of the United Nations; and

(III) local and international nongovernmental organizations;

(ii) make such map available to the public; and

(iii) provide to the appropriate congressional committees an explanatory note describing the sources of information from which such map is based and the identification, where possible, of the armed groups or other forces in control of the mines depicted.

(B) DESIGNATION.—The map required under subparagraph (A) shall be known as the "Conflict Minerals Map", and mines located in areas under the control of armed groups in the Democratic Republic of the Congo and adjoining countries, as depicted on such Conflict Minerals Map, shall be known as "Conflict Zone Mines".

(C) UPDATES.—The Secretary of State shall update the map required under subparagraph (A) not less frequently than once every 180 days until the date on which the disclosure requirements under paragraph (1) of section 13(p) of the Securities Exchange Act of 1934, as added by subsection (b), terminate in accordance with the provisions of paragraph (4) of such section 13(p).

(D) PUBLICATION IN FEDERAL REGISTER.—The Secretary of State shall add minerals to the list of minerals in the definition of conflict minerals under section 1502, as appropriate. The Secretary shall publish in the Federal Register notice of intent to declare a mineral as a conflict mineral included in such definition not later than one year before such declaration.

(d) REPORTS.—

(1) BASELINE REPORT.—Not later than 1 year after the date of the enactment of this Act and annually thereafter until the termination of the disclosure requirements under section 13(p) of the Securities Exchange Act of 1934, the Comptroller General of the United States shall submit to appropriate congressional committees a report that includes an assessment of the rate of sexual- and gender-based violence in war-torn areas of the Democratic Republic of the Congo and adjoining countries.

(2) REGULAR REPORT ON EFFECTIVENESS.—Not later than 2 years after the date of the enactment of this Act and annually thereafter, the Comptroller General of the United States shall submit to the appropriate congressional committees a report that includes the following:

(A) An assessment of the effectiveness of section 13(p) of the Securities Exchange Act of 1934, as added by subsection (b), in promoting peace and security in the Democratic Republic of the Congo and adjoining countries.

(B) A description of issues encountered by the Securities and Exchange Commission in carrying out the provisions of such section 13(p).

(C)(i) A general review of persons described in clause (ii) and whether information is publicly available about—

(I) the use of conflict minerals by such persons; and

(II) whether such conflict minerals originate from the Democratic Republic of the Congo or an adjoining country.

(ii) A person is described in this clause if—

(I) the person is not required to file reports with the Securities and Exchange Commission pursuant to section 13(p)(1)(A) of the Securities Exchange Act of 1934, as added by subsection (b); and

(II) conflict minerals are necessary to the functionality or production of a product manufactured by such person.

(3) REPORT ON PRIVATE SECTOR AUDITING.—Not later than 30 months after the date of the enactment of this Act, and annually thereafter, the Secretary of Commerce shall submit to the appropriate congressional committees a report that includes the following:

(A) An assessment of the accuracy of the independent private sector audits and other due diligence processes described under section 13(p) of the Securities Exchange Act of 1934.

(B) Recommendations for the processes used to carry out such audits, including ways to—

(i) improve the accuracy of such audits; and

(ii) establish standards of best practices.

(C) A listing of all known conflict mineral processing facilities worldwide.

(e) DEFINITIONS.—For purposes of this section:

(1) ADJOINING COUNTRY.—The term "adjoining country", with respect to the Democratic Republic of the Congo, means a country that shares an internationally recognized border with the Democratic Republic of the Congo.

(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means—

(A) the Committee on Appropriations, the Committee on Foreign Affairs, the Committee on Ways and Means, and the Committee on Financial Services of the House of Representatives; and

(B) the Committee on Appropriations, the Committee on Foreign Relations, the Committee on Finance, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(3) ARMED GROUP.—The term "armed group" means an armed group that is identified as perpetrators of serious human rights abuses in the annual Country Reports on Human Rights Practices under sections 116(d) and 502B(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(d) and 2304(b)) relating

to the Democratic Republic of the Congo or an adjoining country.

(4) CONFLICT MINERAL.—The term "conflict mineral" means—

(A) columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives; or

(B) any other mineral or its derivatives determined by the Secretary of State to be financing conflict in the Democratic Republic of the Congo or an adjoining country.

(5) UNDER THE CONTROL OF ARMED GROUPS.—The term "under the control of armed groups" means areas within the Democratic Republic of the Congo or adjoining countries in which armed groups—

(A) physically control mines or force labor of civilians to mine, transport, or sell conflict minerals;

(B) tax, extort, or control any part of trade routes for conflict minerals, including the entire trade route from a Conflict Zone Mine to the point of export from the Democratic Republic of the Congo or an adjoining country; or

(C) tax, extort, or control trading facilities, in whole or in part, including the point of export from the Democratic Republic of the Congo or an adjoining country.

SEC. 1503. REPORTING REQUIREMENTS REGARDING COAL OR OTHER MINE SAFETY.

(a) REPORTING MINE SAFETY INFORMATION.—Each issuer that is required to file reports pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o) and that is an operator, or that has a subsidiary that is an operator, of a coal or other mine shall include, in each periodic report filed with the Commission under the securities laws on or after the date of enactment of this Act, the following information for the time period covered by such report:

(1) For each coal or other mine of which the issuer or a subsidiary of the issuer is an operator—

(A) the total number of violations of mandatory health or safety standards that could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard under section 104 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 814) for which the operator received a citation from the Mine Safety and Health Administration;

(B) the total number of orders issued under section 104(b) of such Act (30 U.S.C. 814(b));

(C) the total number of citations and orders for unwarrantable failure of the mine operator to comply with mandatory health or safety standards under section 104(d) of such Act (30 U.S.C. 814(d));

(D) the total number of flagrant violations under section 110(b)(2) of such Act (30 U.S.C. 820(b)(2));

(E) the total number of imminent danger orders issued under section 107(a) of such Act (30 U.S.C. 817(a));

(F) the total dollar value of proposed assessments from the Mine Safety and Health Administration under such Act (30 U.S.C. 801 et seq.); and

(G) the total number of mining-related fatalities.

(2) A list of such coal or other mines, of which the issuer or a subsidiary of the issuer is an operator, that receive written notice from the Mine Safety and Health Administration of—

(A) a pattern of violations of mandatory health or safety standards that are of such nature as could have significantly and substantially contributed to the cause and effect of coal or other mine health or safety hazards under section 104(e) of such Act (30 U.S.C. 814(e)); or

(B) the potential to have such a pattern.

(3) Any pending legal action before the Federal Mine Safety and Health Review Commission involving such coal or other mine.

(b) REPORTING SHUTDOWNS AND PATTERNS OF VIOLATIONS.—Beginning on and after the date of enactment of this Act, each issuer that is an operator, or that has a subsidiary that is an operator, of a coal or other mine shall file a current report with the Commission on Form 8–K (or any successor form) disclosing the following regarding each coal or other mine of which the issuer or subsidiary is an operator:

(1) The receipt of an imminent danger order issued under section 107(a) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 817(a)).

(2) The receipt of written notice from the Mine Safety and Health Administration that the coal or other mine has—

(A) a pattern of violations of mandatory health or safety standards that are of such nature as could have significantly and substantially contributed to the cause and effect of coal or other mine health or safety hazards under section 104(e) of such Act (30 U.S.C. 814(e)); or

(B) the potential to have such a pattern.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect any obligation of a person to make a disclosure under any other applicable law in effect before, on, or after the date of enactment of this Act.

(d) COMMISSION AUTHORITY.—

(1) ENFORCEMENT.—A violation by any person of this section, or any rule or regulation of the Commission issued under this section, shall be treated for all purposes in the same manner as a violation of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or the rules and regulations issued thereunder, consistent with the provisions of this section, and any such person shall be subject to the same penalties, and to the same extent, as for a violation of such Act or the rules or regulations issued thereunder.

(2) RULES AND REGULATIONS.—The Commission is authorized to issue such rules or regulations as are necessary or appropriate for the protection of investors and to carry out the purposes of this section.

(e) DEFINITIONS.—In this section—

(1) the terms "issuer" and "securities laws" have the meaning given the terms in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(2) the term "coal or other mine" means a coal or other mine, as defined in section 3 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 802), that is subject to the provisions of such Act (30 U.S.C. 801 et seq.); and

(3) the term "operator" has the meaning given the term in section 3 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 802).

(f) EFFECTIVE DATE.—This section shall take effect on the day that is 30 days after the date of enactment of this Act.

SEC. 1504. DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS.

Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by this Act, is amended by adding at the end the following:

"(q) DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS.—

"(1) DEFINITIONS.—In this subsection—

"(A) the term 'commercial development of oil, natural gas, or minerals' includes exploration, extraction, processing, export, and other significant actions relating to oil, natural gas, or minerals, or the acquisition of a license for any such activity, as determined by the Commission;

"(B) the term 'foreign government' means a foreign government, a department, agency, or instrumentality of a foreign government, or a company owned by a foreign government, as determined by the Commission;

"(C) the term 'payment'—

"(i) means a payment that is—

"(I) made to further the commercial development of oil, natural gas, or minerals; and

"(II) not de minimis; and

"(ii) includes taxes, royalties, fees (including license fees), production entitlements, bonuses, and other material benefits, that the Commission, consistent with the guidelines of the Extractive Industries Transparency Initiative (to the extent practicable), determines are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals;

"(D) the term 'resource extraction issuer' means an issuer that—

"(i) is required to file an annual report with the Commission; and

"(ii) engages in the commercial development of oil, natural gas, or minerals;

"(E) the term 'interactive data format' means an electronic data format in which pieces of information are identified using an interactive data standard; and

"(F) the term 'interactive data standard' means standardized list of electronic tags that mark information included in the annual report of a resource extraction issuer.

"(2) DISCLOSURE.—

"(A) INFORMATION REQUIRED.—Not later than 270 days after the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Commission shall issue final rules that require each resource extraction issuer to include in an annual report of the resource extraction issuer information relating to any payment made by the resource extraction issuer, a subsidiary of the resource

extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals, including—

"(i) the type and total amount of such payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals; and

"(ii) the type and total amount of such payments made to each government.

"(B) CONSULTATION IN RULEMAKING.—In issuing rules under subparagraph (A), the Commission may consult with any agency or entity that the Commission determines is relevant.

"(C) INTERACTIVE DATA FORMAT.—The rules issued under subparagraph (A) shall require that the information included in the annual report of a resource extraction issuer be submitted in an interactive data format.

"(D) INTERACTIVE DATA STANDARD.—

"(i) IN GENERAL.—The rules issued under subparagraph (A) shall establish an interactive data standard for the information included in the annual report of a resource extraction issuer.

"(ii) ELECTRONIC TAGS.—The interactive data standard shall include electronic tags that identify, for any payments made by a resource extraction issuer to a foreign government or the Federal Government—

"(I) the total amounts of the payments, by category;

"(II) the currency used to make the payments;

"(III) the financial period in which the payments were made;

"(IV) the business segment of the resource extraction issuer that made the payments;

"(V) the government that received the payments, and the country in which the government is located;

"(VI) the project of the resource extraction issuer to which the payments relate; and

"(VII) such other information as the Commission may determine is necessary or appropriate in the public interest or for the protection of investors.

"(E) INTERNATIONAL TRANSPARENCY EFFORTS.—To the extent practicable, the rules issued under subparagraph (A) shall support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals.

"(F) EFFECTIVE DATE.—With respect to each resource extraction issuer, the final rules issued under subparagraph (A) shall take effect on the date on which the resource extraction issuer is required to submit an annual report relating to the fiscal year of the resource extraction issuer that ends not earlier than 1 year after the date on which the Commission issues final rules under subparagraph (A).

"(3) PUBLIC AVAILABILITY OF INFORMATION.—

"(A) IN GENERAL.—To the extent practicable, the Commission shall make available online, to the public, a compilation of the information required to be submitted under the rules issued under paragraph (2)(A).

"(B) OTHER INFORMATION.—Nothing in this paragraph shall require the Commission to make available online information other than the information required to be submitted under the rules issued under paragraph (2)(A).

"(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission such sums as may be necessary to carry out this subsection.".

SEC. 1505. STUDY BY THE COMPTROLLER GENERAL.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall issue a report assessing the relative independence, effectiveness, and expertise of presidentially appointed inspectors general and inspectors general of designated Federal entities, as such term is defined under section 8G of the Inspector General Act of 1978, and the effects on independence of the amendments to the Inspector General Act of 1978 made by this Act.

(b) REPORT.—The report required by subsection (a) shall be issued to the Committees on Financial Services and Oversight and Government Reform of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Homeland Security and Governmental Affairs of the Senate.

SEC. 1506. STUDY ON CORE DEPOSITS AND BROKERED DEPOSITS.

(a) STUDY.—The Corporation shall conduct a study to evaluate—

(1) the definition of core deposits for the purpose of calculating the insurance premiums of banks;

(2) the potential impact on the Deposit Insurance Fund of revising the definitions of brokered deposits and core deposits to better distinguish between them;

(3) an assessment of the differences between core deposits and brokered deposits and their role in the economy and banking sector of the United States;

(4) the potential stimulative effect on local economies of redefining core deposits; and

(5) the competitive parity between large institutions and community banks that could result from redefining core deposits.

(b) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Corporation shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study under subsection (a) that includes legislative recommendations, if any, to address concerns arising in connection with the definitions of core deposits and brokered deposits.