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2
3 **The Bank Holding Company Act is amended by adding the following new sections:**
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5 “SEC. 13. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE
6 EQUITY FUNDS.

7
8 “(a) PROHIBITION ON PROPRIETARY TRADING.—Notwithstanding any other provision of law, the
9 appropriate Federal banking agencies shall jointly prohibit proprietary trading by an insured
10 depository institution or by a company that controls an insured depository institution or is
11 treated as a bank holding company for purposes of this Act.

12
13 “(1) EXCEPTION FOR UNITED STATES AND OTHER GOVERNMENT AND RELATED OBLIGATIONS.—
14 Any prohibition imposed pursuant to this subsection shall not apply to trading in
15 obligations of the United States or any agency thereof, obligations, participations, or
16 other instruments of or issued by the Government National Mortgage Association, the
17 Federal National Mortgage Association, and the Federal Home Loan Mortgage
18 Corporation, and obligations of any State or of any political subdivision thereof.

19
20 “(2) APPLICATION.—Proprietary trading in the obligations and other instruments
21 described in subsection (a) may only be conducted pursuant to a separate statutory
22 authorization and subject to any conditions otherwise prescribed by the appropriate
23 Federal banking agency. Subsection (a) is not and may not be considered to be an
24 independent authorization to conduct the activities described therein. Proprietary
25 trading conducted by a company pursuant to section 4 (c)(9) or (13) solely outside of the
26 United States shall not be subject to the prohibition in subsection (a) provided that the
27 company is not directly or indirectly controlled by a company that is organized in the
28 United States.

29
30 “(b) PROHIBITION ON SPONSORING AND INVESTING IN HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—The
31 appropriate Federal banking agencies shall jointly prohibit sponsoring and investing in hedge
32 funds and private equity funds by an insured depository institution or by a company that
33 controls an insured depository institution or is treated as a bank holding company for purposes
34 of the Bank Holding Company Act.

35
36 “(1) EXCEPTION FOR INVESTMENTS IN SMALL BUSINESS INVESTMENT COMPANIES AND
37 INVESTMENTS DESIGNED PRIMARILY TO PROMOTE THE PUBLIC WELFARE.

38
39 “(A) IN GENERAL.—Any prohibition imposed pursuant to this subsection
40 shall not apply to investments in small business investment companies and

1 investments designed primarily to promote the public welfare as provided in
2 paragraph Eleventh of section 5136 of the Revised Statutes (12 U.S.C. 24
3 (Eleventh)).
4

5 “(B) APPLICATION.—Investments in small business investment companies
6 and investments designed primarily to promote the public welfare described in
7 subparagraph (A) may only be conducted pursuant to a separate statutory
8 authorization and subject to any conditions otherwise prescribed by the
9 appropriate Federal banking agency. Subparagraph (A) is not and may not be
10 considered to be an independent authorization to conduct the activities
11 described therein.
12

13 “(2) LIMITATIONS ON RELATIONSHIP WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.
14

15 “(A) No insured depository institution and no company that controls an
16 insured depository institution or that is treated as a bank holding company for
17 purposes of this Act that serves, directly or indirectly, as the investment manager
18 or investment adviser to a company described in subsection (f)(2) may enter into
19 a covered transaction as defined in section 23A of the Federal Reserve Act (12
20 U.S.C. 371c) with, or provide custody, securities lending and other prime
21 brokerage services to, such company.
22

23 “(B) A company that controls an insured depository institution or that is
24 treated as a bank holding company for purposes of this Act and that serves,
25 directly or indirectly, as the investment manager or investment adviser to a
26 company described in subsection (f)(2) shall be subject to section 23B of the
27 Federal Reserve Act (12 U.S.C. 371c-1) as if such company were a member bank
28 and such company described in subsection (f)(2) were an affiliate.
29

30 “(c) RULEMAKING AUTHORITY.—The appropriate Federal banking agencies shall jointly issue
31 regulations and guidance to carry out this section including appropriate additional capital
32 requirements giving full effect to the prudential intent of the Congress regarding this section.
33

34 “(d) EFFECTIVE DATE AND TRANSITION.
35

36 “(1) Effective date.—The provisions of this section shall take effect after the end
37 of the 180-day period beginning on the date of enactment of this title.
38

1 “(2) TRANSITION.—Any insured depository institution, any company which owns or
2 controls an insured depository institution and any company which is treated as a bank
3 holding company for purposes of the Bank Holding Company Act, shall not, after two
4 years from the effective date of this Act, retain any investment prohibited by this
5 section. The appropriate Federal banking agency is authorized, upon application of any
6 such company, to extend the two-year period as to such company for not more than
7 one year at a time, if in its judgment, such an extension would not be detrimental to the
8 public interest, but no such extension shall in the aggregate exceed three years.
9

10 “(e) CAPITAL AND QUANTITATIVE LIMITATIONS FOR CERTAIN NONBANK FINANCIAL COMPANIES.
11

12 “(1) IN GENERAL.—The Board shall adopt rules imposing additional capital
13 requirements and specifying additional quantitative limits for nonbank financial
14 companies under its supervision that engage in proprietary trading and sponsoring and
15 investing in hedge funds and private equity funds.
16

17 “(2) EXCEPTION.—Rules adopted by the Board under this subsection shall not
18 apply to trading in obligations of the United States or any agency thereof, obligations,
19 participations, or other instruments of or issued by the Government National Mortgage
20 Association, the Federal National Mortgage Association, Federal Home Loan Mortgage
21 Corporation, and obligations of any State or of any political subdivision thereof,
22 investments in small business investment companies, and investments designed
23 primarily to promote the public welfare of the type described in paragraph Eleventh of
24 section 5136 of the Revised Statutes (12 U.S.C. 24 (Eleventh)).
25

26 “(f) DEFINITIONS.—For purposes of this section—
27

28 “(1) ‘Proprietary trading’ means purchasing or selling, or otherwise acquiring
29 and disposing of, stocks, bonds, options, commodities, derivatives, or other financial
30 instruments for the institution’s or company’s own trading book, and not on behalf of a
31 customer, as part of market making activities, or otherwise in connection with or in
32 facilitation of customer relationships, including hedging activities related to the
33 foregoing.
34

35 “(2) ‘Hedge fund’ and ‘private equity fund’ means a company or other entity
36 that is exempt from registration as an investment company pursuant to section 3(c)(1)
37 or 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(1) or 80a-3(c)(7))
38 or such similar funds as determined by the appropriate Federal banking agencies.

1
2 “(3) ‘Sponsoring’ a fund means—

3
4 “(A) serving as a general partner, managing member, or trustee of a fund;

5
6 “(B) in any manner selecting or controlling (or having employees, officers,
7 or directors, or agents who constitute) a majority of the directors, trustees or
8 management of a fund; or

9
10 “(C) sharing with a fund, for corporate, marketing, promotional, or other
11 purposes, the same name or a variation of the same name.”

12
13 “Sec.13a. CONCENTRATION LIMIT ON LARGE FINANCIAL FIRMS.

14
15 “(a) IN GENERAL.—A financial company may not merge or consolidate with, acquire all or
16 substantially all of the assets of, or otherwise acquire control of, another company if the
17 acquiring financial company’s total consolidated liabilities upon consummation of the
18 transaction would exceed 10 percent of the aggregate consolidated liabilities of all financial
19 companies at the end of the prior calendar year.

20
21 “(b) RULEMAKING AND GUIDANCE.—The Board shall issue regulations implementing this
22 section, including the definition of terms as necessary. The Board may issue interpretations or
23 guidance regarding the application of this section to an individual company or in general.

24
25 “(c) DEFINITIONS.—For purposes of this section—

26
27 “(1) ‘Financial company’ means any insured depository institution, any bank
28 holding company, any other company that controls an insured depository institution,
29 any nonbank financial company supervised by the Board, and any foreign bank or
30 company treated as a bank holding company for purposes of this Act.

31
32 “(2) ‘Liabilities’ equals a financial company’s total risk-weighted assets, as
33 determined pursuant to the risk-based capital rules applicable to bank holding
34 companies, as adjusted to reflect exposures that are deducted from regulatory capital,
35 less the company’s total regulatory capital under the risk-based capital rules applicable
36 to bank holding companies. For a foreign-based financial company, ‘liabilities’ equals
37 only the total risk-weighted assets of its U.S. operations as determined pursuant to the
38 applicable risk-based capital rules, as adjusted to reflect exposures that are deducted
39 from regulatory capital, less the total regulatory capital of the company’s U.S.
40 operations, as determined under the applicable risk-based capital rules. The Board shall
41 promulgate rules adapting the definition of liabilities with respect to insurance

1 companies and other non-bank financial firms in order to provide for consistent and
2 equitable treatment.

3
4 “(d) EXCEPTION TO CONCENTRATION LIMIT.— With the prior written consent of the Board, this
5 prohibition shall not apply to an acquisition—

6
7 “(1) Of one or more banks in default or in danger of default;

8 “(2) With respect to which assistance is provided under 12 USC 1823(c); or

9 “(3) That would result in only a de minimis increase in the liabilities of the
10 financial company.