Title II – Bank Holding Company Modernization Act of 2009

Section-by-Section Analysis

Section 201. Short Title

Section 202. Findings and Purposes

This section describes the purposes and findings of the Bank Holding Company Modernization Act of 2009. In order to mitigate systemic risk and promote the stability of the United States financial system, large, highly leveraged, and substantially interconnected financial companies that are designated by the Board of Governors of the Federal Reserve System ("Board") as Tier 1 financial holding companies will be subject to comprehensive and robust prudential supervision and regulation by the Board.

Section 203. Definitions

Section 204. Supervision and Regulation of Tier 1 Financial Holding Companies

This section amends the Bank Holding Company Act of 1956 to allow for the designation by the Board of United States financial companies as Tier 1 financial holding companies if the effect of material financial distress at the companies could pose a threat to global or United States financial stability or the global or United States economy and of foreign financial companies if that effect could pose a threat to United States financial stability or the United States economy. This designation is subject to reevaluation, rescission, notice, and an opportunity to be heard. This section also provides for the designation of Foreign financial companies as Tier 1 financial holding companies if the Board determines that material financial distress at the company could pose a threat to United States financial stability or the United States economy taking into consideration the principles of national treatment and equality of competitive opportunity and the amount of the company's United States assets, the leverage used to fund activities and operations in the United States, and other criteria related to the company's United States activities and operations. The Board may collect information from financial companies necessary to determine whether such companies should be designated as Tier 1 financial holding companies and shall coordinate with other Federal regulatory agencies in doing so.

This section also allows the Board to prescribe prudential standards for both United States and Foreign Tier 1 financial holding companies and require certain reports, examinations, and public disclosures, including a plan for the rapid and orderly resolution of each Tier 1 financial holding company. The Board shall use existing reports required by other Federal regulatory agencies whenever possible before requesting information directly from a functionally regulated subsidiary of a Tier 1 financial holding company.

This section also authorizes the Board to enforce its prescribed prudential standards and provides the Board with back-up authority to enforce such standards against functionally regulated subsidiaries of Tier 1 financial holding companies. The Board may also prescribe, examine, and enforce more stringent prudential standards against functionally regulated

subsidiaries of Tier 1 financial holding companies if the Board determines that such standards are necessary or appropriate to prevent or mitigate risks to financial stability.

Under this section, a company designated by the Board as a Tier 1 financial holding company has five years to conform its activities to the requirements of the Bank Holding Company Act. A Tier 1 financial holding company must be well capitalized and well managed. A Tier 1 financial holding company must also provide prior notice to the Board before engaging in a large acquisition. The Board will also examine risks to domestic and global financial stability when considering whether to approve bank acquisitions by Tier 1 financial holding companies. This section prohibits management interlocks between all Tier 1 financial holding companies.

This section also authorizes the Board to take prompt corrective action to resolve capital and other problems of United States Tier 1 financial holding companies. The Board must monitor any undercapitalized United States Tier 1 financial holding company, which must submit a capital restoration plan to the Board. The Board may require recapitalization and restrict other activities of a significantly undercapitalized United States Tier 1 financial holding company. A critically undercapitalized United States Tier 1 financial holding company must file for bankruptcy within 90 days.