

111TH CONGRESS
1ST SESSION

H. R. 3968

To amend the Bank Holding Company Act of 1956 to require the Board of Governors of the Federal Reserve System to take prompt corrective action to resolve problems of bank holding companies.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 29, 2009

Mr. ELLISON introduced the following bill; which was referred to the
Committee on Financial Services

A BILL

To amend the Bank Holding Company Act of 1956 to require the Board of Governors of the Federal Reserve System to take prompt corrective action to resolve problems of bank holding companies.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. PROMPT CORRECTIVE ACTION FOR BANK**
4 **HOLDING COMPANIES.**

5 Section 6 of the Bank Holding Company Act of 1956
6 is amended to read as follows:

1 **“SEC. 6. PROMPT CORRECTIVE ACTION FOR BANK HOLD-**
2 **ING COMPANIES.**

3 “(a) PROMPT CORRECTIVE ACTION REQUIRED.—The
4 Board shall take prompt corrective action to resolve the
5 problems of a bank holding company.

6 “(b) DEFINITIONS.—For purposes of this section:

7 “(1) CAPITAL CATEGORIES.—

8 “(A) WELL CAPITALIZED.—A bank hold-
9 ing company is ‘well capitalized’ if it exceeds
10 the required minimum level for each relevant
11 capital measure.

12 “(B) UNDERCAPITALIZED.—A bank hold-
13 ing company is ‘undercapitalized’ if it fails to
14 meet the required minimum level for any rel-
15 evant capital measure.

16 “(C) SIGNIFICANTLY UNDERCAPITAL-
17 IZED.—A bank holding company is ‘signifi-
18 cantly undercapitalized’ if it is significantly
19 below the required minimum level for any rel-
20 evant capital measure.

21 “(D) CRITICALLY UNDERCAPITALIZED.—A
22 bank holding company is ‘critically under-
23 capitalized’ if it fails to meet any level specified
24 in subsection (c)(3)(A).

25 “(2) OTHER DEFINITIONS.—

1 “(A) AVERAGE.—The ‘average’ of an ac-
2 counting item during a given period means the
3 sum of that item at the close of business on
4 each business day during that period divided by
5 the total number of business days in that pe-
6 riod.

7 “(B) CAPITAL DISTRIBUTION.—The term
8 ‘capital distribution’ means—

9 “(i) a distribution of cash or other
10 property by a bank holding company to its
11 owners made on account of that ownership,
12 but not including any dividend consisting
13 only of shares of the bank holding com-
14 pany or rights to purchase such shares;

15 “(ii) a payment by a bank holding
16 company to repurchase, redeem, retire, or
17 otherwise acquire any of its shares or other
18 ownership interests, including any exten-
19 sion of credit to finance any person’s ac-
20 quisition of those shares or interests; or

21 “(iii) a transaction that the Board de-
22 termines, by order or regulation, to be in
23 substance a distribution of capital to the
24 owners of the bank holding company.

1 “(C) CAPITAL RESTORATION PLAN.—The
2 term ‘capital restoration plan’ means a plan
3 submitted under subsection (e)(2).

4 “(D) COMPENSATION.—The term ‘com-
5 pensation’ includes any payment of money or
6 provision of any other thing of value in consid-
7 eration of employment.

8 “(E) RELEVANT CAPITAL MEASURE.—The
9 term ‘relevant capital measure’ means the
10 measures described in subsection (c).

11 “(F) REQUIRED MINIMUM LEVEL.—The
12 term ‘required minimum level’ means, with re-
13 spect to each relevant capital measure, the min-
14 imum acceptable capital level specified by the
15 Board by regulation.

16 “(G) SENIOR EXECUTIVE OFFICER.—The
17 term ‘senior executive officer’ has the same
18 meaning as the term ‘executive officer’ in sec-
19 tion 22(h) of the Federal Reserve Act (12
20 U.S.C. 375b).

21 “(c) CAPITAL STANDARDS.—

22 “(1) RELEVANT CAPITAL MEASURES.—

23 “(A) IN GENERAL.—The Board shall pre-
24 scribe capital standards for bank holding com-
25 panies, which shall include—

1 “(i) a leverage limit; and

2 “(ii) a risk-based capital requirement.

3 “(B) OTHER CAPITAL MEASURES.—The

4 Board may by regulation—

5 “(i) establish any additional relevant
6 capital measures to carry out this section;

7 or

8 “(ii) rescind any relevant capital
9 measures prescribed under subparagraph
10 (A) upon determining that the measure is
11 no longer an appropriate means for car-
12 rying out this section.

13 “(2) CAPITAL CATEGORIES GENERALLY.—The
14 Board shall, by regulation, specify for each relevant
15 capital measure the levels at which a bank holding
16 company is well capitalized, undercapitalized, and
17 significantly undercapitalized.

18 “(3) CRITICAL CAPITAL.—

19 “(A) BOARD TO SPECIFY LEVEL.—

20 “(i) LEVERAGE LIMIT.—The Board
21 shall, by regulation, specify the ratio of
22 tangible equity to total assets at which a
23 bank holding company is critically under-
24 capitalized.

1 “(ii) OTHER RELEVANT CAPITAL
2 MEASURES.—The Board may, by regula-
3 tion, specify for 1 or more other relevant
4 capital measures, the level at which a bank
5 holding company is critically undercapital-
6 ized.

7 “(B) LEVERAGE LIMIT RANGE.—The level
8 specified under subparagraph (A)(i) shall re-
9 quire tangible equity in an amount—

10 “(i) not less than 2 percent of total
11 assets; and

12 “(ii) except as provided in clause (i),
13 not more than 65 percent of the required
14 minimum level of capital under the lever-
15 age limit.

16 “(d) CAPITAL DISTRIBUTIONS RESTRICTED.—

17 “(1) IN GENERAL.—A bank holding company
18 shall make no capital distribution if, after making
19 the distribution, the bank holding company would be
20 undercapitalized.

21 “(2) EXCEPTION.—Notwithstanding paragraph
22 (1), the Board may permit a bank holding company
23 to repurchase, redeem, retire, or otherwise acquire
24 shares or ownership interests if the repurchase, re-
25 demption, retirement, or other acquisition—

1 “(A) is made in connection with the
2 issuance of additional shares or obligations of
3 the bank holding company in at least an equiva-
4 lent amount; and

5 “(B) will reduce the bank holding com-
6 pany’s financial obligations or otherwise im-
7 prove the bank holding company’s financial con-
8 dition.

9 “(e) PROVISIONS APPLICABLE TO UNDERCAPITAL-
10 IZED BANK HOLDING COMPANIES.—

11 “(1) MONITORING REQUIRED.—The Board
12 shall—

13 “(A) closely monitor the condition of any
14 undercapitalized bank holding company;

15 “(B) closely monitor compliance by any
16 undercapitalized bank holding company with
17 capital restoration plans, restrictions, and re-
18 quirements imposed under this section; and

19 “(C) periodically review the plan, restric-
20 tions, and requirements applicable to any
21 undercapitalized bank holding company to de-
22 termine whether the plan, restrictions, and re-
23 quirements are effective.

24 “(2) CAPITAL RESTORATION PLAN RE-
25 QUIRED.—

1 “(A) IN GENERAL.—An undercapitalized
2 bank holding company shall submit an accept-
3 able capital restoration plan to the Board with-
4 in the time allowed by the Board under sub-
5 paragraph (D).

6 “(B) CONTENTS OF PLAN.—The capital
7 restoration plan shall—

8 “(i) specify—

9 “(I) the steps the bank holding
10 company will take to become well cap-
11 italized;

12 “(II) the levels of capital to be
13 attained by the bank holding company
14 during each year in which the plan
15 will be in effect;

16 “(III) how the bank holding com-
17 pany will comply with the restrictions
18 or requirements then in effect under
19 this section; and

20 “(IV) the types and levels of ac-
21 tivities in which the bank holding
22 company will engage; and

23 “(ii) contain such other information
24 that the Board may require.

1 “(C) CRITERIA FOR ACCEPTING PLAN.—

2 The Board shall not accept a capital restoration
3 plan unless it determines that the plan—

4 “(i) complies with subparagraph (B);

5 “(ii) is based on realistic assumptions,
6 and is likely to succeed in restoring the
7 bank holding company’s capital; and

8 “(iii) would not appreciably increase
9 the risk (including credit risk, interest-rate
10 risk, and other types of risk) to which the
11 bank holding company is exposed.

12 “(D) DEADLINES FOR SUBMISSION AND
13 REVIEW OF PLANS.—The Board shall, by regu-
14 lation, establish deadlines that—

15 “(i) provide bank holding companies
16 with reasonable time to submit capital res-
17 toration plans, and generally require a
18 bank holding company to submit a plan
19 not later than 45 days after it becomes
20 undercapitalized; and

21 “(ii) require the Board to act on cap-
22 ital restoration plans expeditiously, and
23 generally not later than 60 days after the
24 plan is submitted.

1 “(3) ASSET GROWTH RESTRICTED.—An under-
2 capitalized bank holding company shall not permit
3 its average total assets during any calendar quarter
4 to exceed its average total assets during the pre-
5 ceding calendar quarter unless—

6 “(A) the Board has accepted the bank
7 holding company’s capital restoration plan;

8 “(B) any increase in total assets is con-
9 sistent with the plan; and

10 “(C) the bank holding company’s ratio of
11 tangible equity to total assets increases during
12 the calendar quarter at a rate sufficient to en-
13 able it to become well capitalized within a rea-
14 sonable time.

15 “(4) PRIOR APPROVAL REQUIRED FOR ACQUISI-
16 TIONS AND NEW LINES OF BUSINESS.—An under-
17 capitalized bank holding company shall not, directly
18 or indirectly, acquire any interest in any company or
19 insured depository institution, or engage in any new
20 line of business, unless—

21 “(A) the Board has accepted the bank
22 holding company’s capital restoration plan, the
23 bank holding company is implementing the
24 plan, and the Board determines that the pro-

1 posed action is consistent with and will further
2 the achievement of the plan;

3 “(B) the Board determines that the spe-
4 cific proposed action is appropriate; or

5 “(C) the Board has exempted the bank
6 holding company from the requirements of this
7 paragraph with respect to the class of acquisi-
8 tions that includes the proposed action.

9 “(5) DISCRETIONARY SAFEGUARDS.—The
10 Board may, with respect to any undercapitalized
11 bank holding company, take actions described in any
12 subparagraph of subsection (f)(2) if the Board de-
13 termines that those actions are necessary.

14 “(f) PROVISIONS APPLICABLE TO SIGNIFICANTLY
15 UNDERCAPITALIZED BANK HOLDING COMPANIES AND
16 UNDERCAPITALIZED BANK HOLDING COMPANIES THAT
17 FAIL TO SUBMIT AND IMPLEMENT CAPITAL RESTORA-
18 TION PLANS.—

19 “(1) IN GENERAL.—This subsection shall apply
20 with respect to any bank holding company that—

21 “(A) is significantly undercapitalized; or

22 “(B) is undercapitalized and—

23 “(i) fails to submit an acceptable cap-
24 ital restoration plan within the time al-

1 lowed by the Board under subsection
2 (e)(2)(D); or

3 “(ii) fails in any material respect to
4 implement a capital restoration plan ac-
5 cepted by the Board.

6 “(2) SPECIFIC ACTIONS AUTHORIZED.—With
7 respect to a bank holding company to which this
8 subsection applies, the Board shall take 1 or more
9 of the following actions:

10 “(A) REQUIRING RECAPITALIZATION.—
11 Doing one or more of the following:

12 “(i) Requiring the bank holding com-
13 pany to sell enough shares or obligations of
14 the bank holding company so that the
15 bank holding company will be well capital-
16 ized after the sale.

17 “(ii) Further requiring that instru-
18 ments sold under clause (i) be voting
19 shares.

20 “(iii) Requiring the bank holding com-
21 pany to be acquired by or combine with
22 another company.

23 “(B) RESTRICTING TRANSACTIONS WITH
24 AFFILIATES.—

1 “(i) Requiring the bank holding com-
2 pany to comply with section 23A of the
3 Federal Reserve Act (12 U.S.C. 371(c)),
4 as if it were a member bank.

5 “(ii) Further restricting the bank
6 holding company’s transactions with affili-
7 ates and insiders.

8 “(C) RESTRICTING ASSET GROWTH.—Re-
9 stricting the bank holding company’s asset
10 growth more stringently than the requirements
11 under subsection (e)(3), or requiring the bank
12 holding company to reduce its total assets.

13 “(D) RESTRICTING ACTIVITIES.—Requir-
14 ing the bank holding company or any of its sub-
15 sidiaries to alter, reduce, or terminate any ac-
16 tivity that the Board determines poses excessive
17 risk to the bank holding company.

18 “(E) IMPROVING MANAGEMENT.—Doing 1
19 or more of the following:

20 “(i) NEW ELECTION OF DIRECTORS.—
21 Ordering a new election for the bank hold-
22 ing company’s board of directors.

23 “(ii) DISMISSING DIRECTORS OR SEN-
24 IOR EXECUTIVE OFFICERS.—Requiring the
25 bank holding company to dismiss from of-

1 fice any director or senior executive officer
2 who had held office for more than 180
3 days immediately before the bank holding
4 company became undercapitalized. Dis-
5 missal under this clause shall not be con-
6 strued to be a removal under section 8 of
7 the Federal Deposit Insurance Act (12
8 U.S.C. 1818).

9 “(iii) EMPLOYING QUALIFIED SENIOR
10 EXECUTIVE OFFICERS.—Requiring the
11 bank holding company to employ qualified
12 senior executive officers (who, if the Board
13 so specifies, shall be subject to approval by
14 the Board).

15 “(F) REQUIRING DIVESTITURE.—Requir-
16 ing the bank holding company to divest itself of
17 or liquidate any subsidiary if the Board deter-
18 mines that the subsidiary is in danger of be-
19 coming insolvent, poses a significant risk to the
20 bank holding company, or is likely to cause a
21 significant dissipation of the bank holding com-
22 pany’s assets or earnings.

23 “(G) REQUIRING OTHER ACTION.—Requir-
24 ing the bank holding company to take any other
25 action that the Board determines will be better

1 carry out the purpose of this section than any
2 of the actions described in this paragraph.

3 “(3) PRESUMPTION IN FAVOR OF CERTAIN AC-
4 TIONS.—In complying with paragraph (2), the
5 Board shall take the following actions, unless the
6 Board determines that the actions would not be ap-
7 propriate:

8 “(A) The action described in clause (i) or
9 (iii) of paragraph (2)(A) (relating to requiring
10 the sale of shares or obligations, or requiring
11 the bank holding company to be acquired by or
12 combine with another company).

13 “(B) The action described in paragraph
14 (2)(B)(i) (relating to restricting transactions
15 with affiliates).

16 “(4) SENIOR EXECUTIVE OFFICERS’ COMPENSA-
17 TION RESTRICTED.—

18 “(A) IN GENERAL.—The bank holding
19 company shall not do any of the following with-
20 out the prior written approval of the Board:

21 “(i) Pay any bonus to any senior execu-
22 tive officer.

23 “(ii) Provide compensation to any sen-
24 ior executive officer at a rate exceeding
25 that officer’s average rate of compensation

1 (excluding bonuses, stock options, and
2 profit-sharing) during the 12 calendar
3 months preceding the calendar month in
4 which the bank holding company became
5 undercapitalized.

6 “(B) FAILING TO SUBMIT PLAN.—The
7 Board shall not grant any approval under sub-
8 paragraph (A) with respect to a Bank holding
9 company that has failed to submit an accept-
10 able capital restoration plan.

11 “(5) CONSULTATION WITH OTHER REGU-
12 LATORS.—Before the Board makes a determination
13 under paragraph (2)(F) with respect to a subsidiary
14 that is a broker, dealer, government securities
15 broker, government securities dealer, investment
16 company, or investment adviser, the Board shall
17 consult with the Securities and Exchange Commis-
18 sion and, in the case of any other subsidiary which
19 is subject to any financial responsibility or capital
20 requirement, any other appropriate regulator of such
21 subsidiary with respect to the proposed determina-
22 tion of the Board and actions pursuant to such de-
23 termination.

24 “(g) MORE STRINGENT TREATMENT BASED ON
25 OTHER SUPERVISORY CRITERIA.—

1 “(1) IN GENERAL.—If the Board determines
2 (after notice and an opportunity for hearing) that a
3 bank holding company is in an unsafe or unsound
4 condition or, pursuant to section 8(b)(8) of the Fed-
5 eral Deposit Insurance Act (12 U.S.C. 1818(b)(8)),
6 deems the bank holding company to be engaging in
7 an unsafe or unsound practice, the Board may—

8 “(A) if the bank holding company is well
9 capitalized, require the bank holding company
10 to comply with one or more provisions of sub-
11 sections (d) or (e), as if the institution were
12 undercapitalized; or

13 “(B) if the bank holding company is
14 undercapitalized, take any one or more actions
15 authorized under subsection (f)(2) as if the
16 bank holding company were significantly under-
17 capitalized.

18 “(2) CONTENTS OF PLAN.—A plan that may be
19 required pursuant to paragraph (1) shall addition-
20 ally specify the steps that the bank holding company
21 will take to correct the unsafe or unsound condition
22 or practice.

23 “(h) MANDATORY BANKRUPTCY PETITION FOR
24 CRITICALLY UNDERCAPITALIZED BANK HOLDING COM-
25 PANIES.—The Board shall, not later than 90 days after

1 a Bank holding company becomes critically undercapital-
2 ized—

3 “(1) require the bank holding company to file
4 a petition for bankruptcy under section 301 of title
5 11, United States Code; or

6 “(2) file a petition for bankruptcy against the
7 bank holding company under section 303 of title 11,
8 United States Code.

9 “(i) IMPLEMENTATION.—The Board shall prescribe
10 such regulations, issue such orders, and take such other
11 actions as the Board determines necessary to carry out
12 this section.

13 “(j) OTHER AUTHORITY NOT AFFECTED.—This sec-
14 tion does not limit the authority of the Board, any other
15 Federal regulatory agency, or a State to take action in
16 addition to (but not in derogation of) that required under
17 this section.

18 “(k) CONSIDERATIONS WITH REGARD TO FOREIGN
19 BANK HOLDING COMPANIES.—In its regulation and su-
20 pervision of bank holding companies incorporated or orga-
21 nized in a country other than the United States, the Board
22 shall take into account the extent to which such companies
23 are subject to standards in their country of incorporation
24 or organization that are comparable to those standards
25 applied to United States bank holding companies.

1 “(1) ADMINISTRATIVE REVIEW OF DISMISSAL OR-
2 DERS.—

3 “(1) TIMELY PETITION REQUIRED.—A director
4 or senior executive officer dismissed pursuant to an
5 order under subsection (f)(2)(E)(ii) may obtain re-
6 view of that order by filing a written petition for re-
7 instatement with the Board not later than 10 days
8 after receiving notice of the dismissal.

9 “(2) PROCEDURE.—

10 “(A) HEARING REQUIRED.—The Board
11 shall give the petitioner an opportunity to—

12 “(i) submit written materials in sup-
13 port of the petition; and

14 “(ii) appear, personally or through
15 counsel, before 1 or more members of the
16 Board or designated employees of the
17 Board.

18 “(B) DEADLINE FOR HEARING.—The
19 Board shall—

20 “(i) schedule the hearing referred to
21 in subparagraph (A)(ii) promptly after the
22 petition is filed; and

23 “(ii) hold the hearing not later than
24 30 days after the petition is filed, unless

1 the petitioner requests that the hearing be
2 held at a later time.

3 “(C) DEADLINE FOR DECISION.—Not later
4 than 60 days after the date of the hearing, the
5 Board shall—

6 “(i) by order, grant or deny the peti-
7 tion;

8 “(ii) if the order is adverse to the pe-
9 titioner, set forth the basis for the order;
10 and

11 “(iii) notify the petitioner of the
12 order.

13 “(3) STANDARD FOR REVIEW OF DISMISSAL OR-
14 DERS.—The petitioner shall bear the burden of prov-
15 ing that the petitioner’s continued employment
16 would materially strengthen the bank holding com-
17 pany’s ability—

18 “(A) to become well capitalized, to the ex-
19 tent that the order is based on the bank holding
20 company’s capital level or failure to submit or
21 implement a capital restoration plan; and

22 “(B) to correct the unsafe or unsound con-
23 dition or unsafe or unsound practice, to the ex-

1 tent that the order is based on subsection
2 (g)(1).”.

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