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Recession to Depression: A Critical Disambiguation of the 2007/2008 Financial Crisis and a Model for New Age Securities Regulation

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RECESSION TO DEPRESSION: A CRITICAL DISAMBIGUATION OF THE 2007/2008 FINANCIAL CRISIS AND A MODEL FOR NEW AGE SECURITIES REGULATION.

by

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ABSTRACT

During the late 2000s the United States economy was faced with the most traumatic event in United States financial history since the Great Depression. Large multibillion dollar corporations collapsed, families lost their life savings, and the United States economy stood on a precipice for total destruction. In the wake of the Financial Crisis, investment firms such as Merrill Lynch collapsed and their portfolios were sold to competitors for far lower than their estimated value (Sorkin).

In 2008, the Financial Crisis impacted the working man the most. With foreclosures on the rise, an estimated 81.2% increase from the year before, average citizens lost their homes, savings and certainty in the United States Government to protect their best interests (Armour). One of the hardest hit states, Nevada, saw a total foreclosure rate of about 7.3% which was an increase from the previous year of a staggering 125.7% (Armour). All these foreclosures rippled throughout the U.S housing market and made it nigh impossible for the banks securing the loans to collect upon the principle amount loaned, yet alone the interest. The shock from the United States financial sector echoed throughout the world. Correlating with the Financial Crisis, United States and global suicide rates were on the rise. According to a 2009 Article published by the British Medical Journal, United States suicide rates in men age 45-64 increased by over 6.4% of the expected trend ("Male Suicide Rate Rose during 2008 Global Economic Crisis, Says Time-Trend Study"). The Financial Crisis made it so that average individuals felt increased economic strain and an ever looming sense of disparagement.

This is an examination and evaluation of the perhaps one of the greatest schemes in the history of global financial markets; this is a critical analysis of how greed, power and a lack of

moral decency reshaped the world. This is an examination of how, in an age of deregulation, the powerful seemingly take precedence over the masses. This is the Story of the 2007/2008 Recession, of what has been done, of what we need to do, and of moving forward to assign blame and punishment to those responsible for the pain and suffering incurred by so many.

DEDICATION:

For those who were harmed by the malfeasance of investment banking during the 2007/2008 Financial Crisis;

For my mentors Abby Milon and Barry L. Miller, both of whom have shaped my goals and helped inspire my dreams;

And especially for my mother, Andrea Bice, who never faltered in her unwavering support of my convictions and dreams.

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The Rise of Uncertainty

1.1 The End of an Era; A Farewell to Glass-Steagall

Since the inception of modern securities transactions, namely modern trading practices, certain regulations have been imposed by both the United States government and by the various administrative agencies thereunto appointed. Most notably, in 1933, following the onset of the Great Depression and the stock market crash on October 1929, Congress passed the Banking Act of 1933, collectively referred to as Glass-Steagall. The Act was passed in an attempt to stabilize a growing and ever-looming sense of uncertainty in the marketplace.

Second only to the United States Civil War, the Great Depression marked the biggest financial collapse of the United States economy (Romer). In 1929 the stock market crashed, and through 1933 the GDP of the United States had fallen by over 30%. (Romer). During the Great Depression, investment banks took to selling securities that they themselves had underwritten.[1] Economists agree that this process enabled investment banks to cloud the risks associated with the products they were selling- an undeniable conflict of interest[2]. Like the 2007/2008 Financial Crisis, investment firms in the Great Depression deceived the consumers and speculators of the products into believing the security and guaranteed return of the same.

To help combat this growing crisis, Congress passed a bill that, in essence, limited the ability of investment banks to act as either an investment bank, commercial bank or insurance

[1] Underwriting being the process by which investment firms ascertain the risks associated with certain transactions
[2] *See* Crawford, Corinne. *The Repeal of The Glass- Steagall Act and The Current Financial Crisis*. *"Journal of Business and Economics Research* Volume 9.Issue 1 (2011). Print.

agency simultaneously. Enter the Glass-Steagall Act, an Act that for 65 years, regulated the United States economy. Congress believed that this bill would limit the ability that financial conglomerates had to destabilize the United States, and more drastically, the world's economies. Additionally, the Glass-Steagall act prohibited any institution from underwriting their own securities. Under Glass-Steagall banks had to choose which role they wished to play in the marketplace. They could conduct business as a commercial bank and thereby accept consumer deposits, withdrawals and offer loans to consumers; or, they could become investment banks and securitize transactions in turn for a profit. Banks were prohibited from performing the duties of both.

Believing that the troubles of the Great Depression era were at an end the Clinton Administration signed into law the Gramm-Leach-Bliley Act and effectively repealed the above-referenced provisions of Glass-Steagall. Unknowingly, Congress created a law that would create corporations that had unfathomable ability to destabilize the United States financial sector. Some members of Congress believed that, for the United States financial Sector to compete with growing international markets (especially those conducted in a deregulated preface), the United States needed to be deregulated as well to stimulate the total growth of the United States economy (Crawford).

According to the NY Times, in 1999, Senator Bryan L. Dorgan stated, upon the debate for the repeal of Glass-Steagall, that "I think we will look back in 10 years' time and say we should not have done this but we did because we forgot the lessons of the past, and that which is true in the 1930's is true in 2010…" In accordance with Senator Dorgan's sentiment, repealing Glass-Steagall seems to have been a cornerstone for the financial collapse of the late 2000s. Once Investment banks, commercial banks and insurance firms could provide the services of all three,

they are undoubtedly enabled to: 1. Underwrite their own polices; 2. Compete against themselves in order to generate excess revenue; 3. Offer enticing securitization packages and then ultimately bet against them (with the emergence of new derivative products).

With the newfound ability to conduct business as all three financial models comes the ability to, in essence, defraud the American people. With ever-growing income, comes the possibly of unprecedented expansion. This expansion then, in turn, creates the “Too Big to Fail” mentality for, once a massive financial conglomerate, such as Lehman Brothers, JP Morgan Chase, AIG or Bear Sterns begins to collapse, the United States Government must offer restoration packages to these institutions in order to prevent widespread loss to American consumers. This blunt of such malfeasance is bore solely upon the shoulders of American taxpayers.

1.2 The Financial Predator

Throughout the late 1990s and early 2000s investment banks began favoring a new model for the securitization of mortgages. In the prior system, when one wanted a residential mortgage, they would contact a commercial bank to inquire about a home loan. The bank then would approve or deny the application based upon the risk associated with offering the loan. If they expected the applicant to not be able to repay they would deny the loan. If they saw that the payments in the loan would be manageable for the person inquiring, then they would approve the loan. The bank had a vested interest in the ability of the borrower to repay the loan; for, if the borrower defaulted, the bank would be essentially out of luck. The bank would need to go through the process of foreclosure and resell the property to recoup the outstanding balance on the mortgage. This is known as a prime mortgage. However, in the new model, commercial mortgages, like those mentioned above, were cast aside for a favorable new system with the ability to generate more private gains. This was the birth of the subprime mortgage. In order to generate more profits, banks

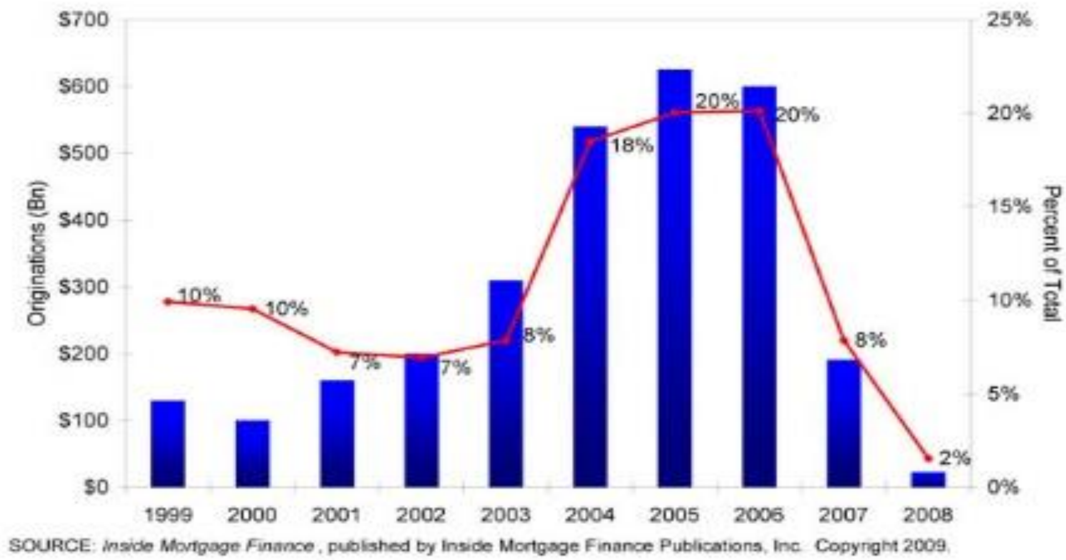
would find those whom they essentially knew weren't able to pay their mortgage based upon their income. They would then take these customers in and lull them into a false sense of security. By offering a mortgage to a customer whom the bank expected to default, the bank is able to reap the rewards of inflated interest-rates.

With the emergence of OTC derivatives came an ability to secure a loan with a form of pseudo-insurance known as a Credit Default Swap. In the event of a default, the bank would collect the remaining balance of the loan from the person selling the swap. This meant that, during the time one was paying a loan, the banks could collect payments from customers with absurdly high interest-rates and still be covered in the event of a default. Banks found that these mortgages were disgustingly profitable as opposed to their forgoing prime modal counterparts.

The 2000s represented an ideological shift between prime and subprime models. As subprime mortgages increased, traditional models were set aside for those generating more profits. In the figure below subprime mortgages began to consume a vast percentage of overall mortgages. As represented in the figure below, 2005 and 2006 marked a peak in subprime mortgages constituting nearly 20% of the mortgages offered to consumers.[3]

[3] According to Danielle DiMartino in her article, The Rise and Fall of Subprime Mortgages, 2007, from 2001 or 2006, just before the Financial Crisis, subprime mortgages shot up to from roughly 40% of all new securitized mortgage contracts.

Figure 4.6 Subprime Mortgage Origination Volume



[4]

Investment banks preyed upon people maliciously to seek more profits. Often times these applications for subprime mortgages were met with little to no formality as associated with the prime model. Some lenders even decided that little to no proof of income was needed. Even more increasingly present were loans that had been approved with little to no down payment, by the borrower, at all. These high-risk loans made it difficult for homeowners to have any equity in their home right from the beginning. These homes, being direct liabilities on behalf of their owners, made the home a burden rather than a blessing. With little equity in the home comes a higher monthly payment as the balance outstanding is inherently greater. The entire purpose of a down-payment is such that: One keeps equity in a home, the interest rates and monthly payments on the principle amount remain lower, and to generally dilute the risk associated with a loan. These practices enabled people to receive a home loan regardless of financial standing. As such,

[4] Please note the change in volume in 2007/2008. This represents the Financial Collapse in which the vast majority of those subprime mortgages began and continued to default.

borrowers subjected themselves to repayment of a mortgage at both an inflated interest rate and higher monthly payment. Accordingly, in 2004, the United States reached a record setting homeownership rate of 69.2% (DiMartino, and Duca).[5]

Facing the beginning of the Financial Crisis lenders began to see quickly receding trends in the opening of new mortgage options. In order to combat the growing risk associated with an increased amount of subprime mortgages lenders decided to scrutinize the application requirements of most of their mortgage transactions (DiMartino, and Duca). This meant that customers needed to commit to higher down payments or face a traditional rejection. This was the banks way of essentially attempting to cut their losses.

1.3 The New Kid in Town: The Derivative.

During the late 1990s and early 2000s, as money became increasingly more liquid, investors began to favor a new type of financial product with unprecedented amounts of profit generation, the derivative. Webster's Dictionary defines a derivative as "a contract or security that derives its value from that of an underlying asset (as another security) or from the value of a rate (as of interest or currency exchange) or index of asset value (as a stock index)." Essentially, a financial derivative would be a speculative product in which one would pay a premium for a certain amount of an asset share, such as a collateralized debt obligation[6].

One such type of derivative product is the collateralized debt obligation, or CDO. A CDO is a derivative that derives its value from an asset pool. Most common would be an asset pool covering various debt instruments such as mortgages, student loan debt, automotive loans, credit card debt,

[5] (Vol II No 11), see DiMartino, and Duca.

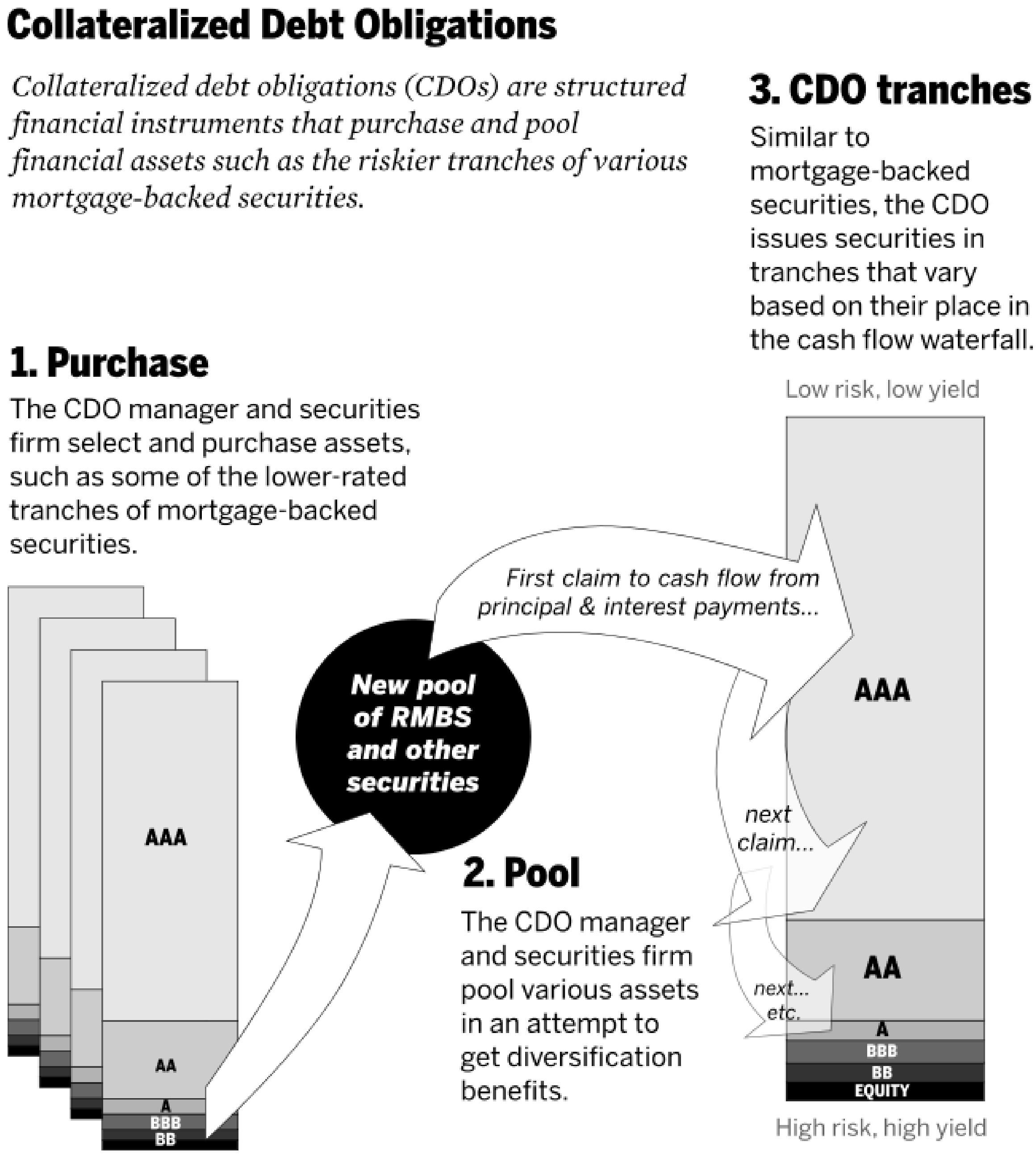
[6] Bear in mind that derivatives can also cover interest rates, assets, or indexes. For purposes of illustration, we shall focus on asset-backed derivatives.

etc. During the 2007/2008 financial crisis these debts were amassed and pooled together into a giant bundle known as a CDO. Investors would then purchase a share of one of these CDO's and, as payments from the consumers whose debts form the CDO were made, investors would take a cut of these profits as a return on their investment. By late 2007, Wall Street firms had issued an approximate total of $700 billion in CDO policies.[7]

CDO's were arranged in a tier-based system that allowed the purchases of these CDO's to bear a return, or risk, relative to the amount of their initial investment. One could purchase a number of various portions of the CDO. The highest tier would receive their payments first and on higher-rated loans than those subsequent. Those who opted to purchase the lower tranches of the CDO collected their payments last and bare the most risk.

The Figure below represents the traditional ordering of a Collateralized Debt Obligation:

[7] The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States. Official Government ed. Washington, DC: Financial Crisis Inquiry Commission :, 2011. Print.


Collateralized Debt Obligations
Collateralized debt obligations (CDOs) are structured financial instruments that purchase and pool financial assets such as the riskier tranches of various mortgage-backed securities.
1. Purchase
The CDO manager and securities firm select and purchase assets, such as some of the lower-rated tranches of mortgage-backed securities.
AAA
AA
A
BBB
BB
New pool of RMBS and other securities
2. Pool
The CDO manager and securities firm pool various assets in an attempt to get diversification benefits.
First claim to cash flow from principal & interest payments...
next claim...
next... etc.
3. CDO tranches
Similar to mortgage-backed securities, the CDO issues securities in tranches that vary based on their place in the cash flow waterfall.
Low risk, low yield
AAA
AA
A
BBB
BB
EQUITY
High risk, high yield

[8]

8 *Ibid.*

From the figure above, all assets in a CDO are pooled together and then broken into tiers. Those who purchase the top tier are the most secure in their investments as they receive their payments first. Rating agencies, such as Standard & Poors, would break these CDOs down and assign ratings to the various tiers. AAA being the highest rating, AA being the next highest, and so on.

Those persons purchasing shares of the higher tiers receive their payments first and in a fixed-amount. Those at the lower tranches would receive their payments last in an amount that is equal to the remainder of the payments. Essentially, this meant that the lower on the tiers the investor purchased, the greater the risk; for, if the cash flowing from payments failed to cover the amount owed to those on the higher tranches, then investors on the lower tiers would receive nothing. Notwithstanding the former, if the same cash from payments and interest was more than enough to cover the amount owed to the higher tranches, then investors at the lower-end would receive all the excess payments.

During the 2007/2008 Financial Crisis, these CDOs were constructed out of the low-standard subprime mortgages. These subprime mortgages were then pooled together with other debt instruments and then sold off to investors in the fashion mentioned above. Prior to their sale, these CDO policies were sent to one of the major credit rating agencies to be rated for security and risk-allocation. Take for instance Standard and Poors, during the 2007/2008 Financial Crisis, Standard and Poors rated these policies based on their typical standards. This process worked well as long as the consumers underlying these polices paid their mortgages and other loans on time.

When consumers failed to pay the debts underlying these policies, then investors would not get paid. During 2007, when more and more consumers began defaulting on their mortgage payments, then these CDO policies began to decline drastically in value.

1.4 The Credit Default Swap.

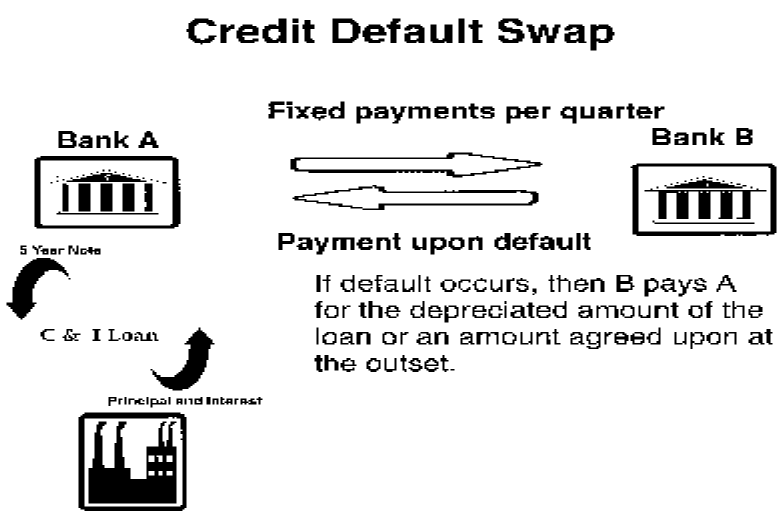
One such financial derivative during the 2007/2008 Financial Crisis that, controversially, caused the collapse, was the credit default swap. The credit default swap is a complex financial derivative that gives the ability for banks to insure their transactions with a form of pseudo-insurance. The problem with these financial products is that they are so deregulated that anyone can use them to speculate on debt that they themselves have no interest in. The problematic issue inherent in CDS's is their ability for any one person, without standing in regards to a particular investment, to speculate on the price on said particular investment[9]. This meant that anyone, regardless of having an actionable interest in the investment at hand, could speculate on a particular financial product.[10]

The credit default swap (CDS) is a way in which one can secure their investments in the event of default. Take for instance, the CDO, if the loans backing the CDO were to all suddenly default, investors and banks would be at a loss[11]. The CDS gives a cash payoff in the event of this happening. Should consumers begin defaulting on their mortgages all simultaneously, as they did in the 2007/2008 Financial Crisis, these policies would trigger so that investors and financial firms didn't lose their initial investment.

The way in which a CDS works is simple. For example, Bank/insurance Company A offers a CDS policy to Bank B in return for a premium or periodic payment. Bank A is the protection seller. Bank B is the protection buyer. Bank B offers a loan to Company C. In regards to the

[9] The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States. Official Government ed. Washington, DC: Financial Crisis Inquiry Commission: 2011. Print.
[10] *Ibid.*
[11] Particularly those investors at the bottom Tranches of a CDO, as they received payments last.

totality of the CDS, Bank B is trying to hedge its risk associated with the loan offered to Company C. Bank B continues its periodic payments to Company A. In the event that Company C defaults on the loan it has offered from Corporation B, then the CDS policy will be triggered, and Bank B will receive a payoff in an amount predetermined by the agreement between A and B.[12] See the figure below for a graphical representation:



[13]

Controversially, the ability to insure a debt in which one has no quantifiable interest in is problematic. This allows speculators to make financial bets on the instability or insolvency of a corporation. In 2013, an investment bank known as Blackstone did just that. Blackstone met with a Spanish gambling firm Codere, and bought bonds therefrom and purchased CDS's against those bonds purchased from Codere (Wile). One of the conditions attached to the deal between Codere

[12] This payoff amount will most-likely be the total balance of both the principle and interest of the loan.
[13] Board of Governors of The Federal Reserve System. TO THE OFFICER IN CHARGE OF SUPERVISION AT EACH FEDERAL RESERVE BANK. Supervisory Guidance for Credit Derivatives August, 12th 1996. TS.

and Blackstone mandated that, if the company paid the loan on time, then it would be liable for the full balance that remained due. Accordingly, Codere missed the payment date and a “Credit Event” and material default under the terms of the bonds arose, thus triggering the CDD’s placed against the same debt. Thus Blackstone collected insurance payoffs in the amount of $15.6 million and continued to collect payments on the bonds purchased from Codere (Wile). The only one who lost in the transaction was essentially the protection seller, who “play(ed) the CDS market incorrectly or didn’t see this as a potential outcome” [14]

1.5 The Malfeasance of Rating Agencies

During the onset of the recession, rating agencies, namely Standard and Poors, Moody’s and Fitch Group, provided ratings to securities and CDO polices. These ratings would then, in turn, play a role in the bursting of the housing bubble. The way in which an investment rating works is simple. Those financial products that carried the least amount of risk associated with a particular investment, received the highest rating, AAA. Many financial industry professionals, such as pension fund managers, must rely on these ratings, for, the money under management by these pension funds, must be secure and any loss could subject said fund to liability. Accordingly, certain financial professionals are required to only invest in products that receive this AAA designation. Standard and Poors describes their AAA rating “An obligation rated 'AAA' has the highest rating assigned by Standard & Poor's. The obligor's capacity to meet its financial

[14] Ruhle, Stephanie, Mary Childs, and Julie Miecamp. "Blackstone Unit Wins in No-Lose Codere Trade: Corporate Finance." Bloomberg.com. Bloomberg, 22 Oct. 2013. Web. 21 Feb. 2015. <http://www.bloomberg.com/news/articles/2013-10-22/blackstone-unit-wins-in-no-lose-codere-trade-corporate-finance>.

commitment on the obligation is extremely strong."[15] These designations are rated essentially as safe as government securities. [16]

During the onset of the crisis, Nationally Recognized Statistical Rating Organizations (NRSRO's) rated these securities for their inherent ability to repay obligations. Those banks involved noted that, in order to be able to sell these new products, the ratings assigned to the same must be high enough that any speculative investor would be encouraged to invest their money therein. This, in turn, would lead to banks offering mass cash incentives and payments to rating agencies to assign these valuable ratings – a direct conflict of interest.[17] Investors unfortunately relied on these ratings which were increasingly being rated AAA. By 2006, everyday Moody's was rating an average of 30 mortgage-backed securities as AAA.[18] It is commonly understood that, during the financial crisis, these securities rated AAA should never have received any designation remotely close to the ones they received.

1.6 The Crash

In late 2008, the Financial Crisis began to hit home as more banks began experiencing financial trouble. The housing bubble, created by a record high homeownership rate of ~66%, finally began to collapse.[19] By early 2007 small financial firms began to feel the first wave of insolvency that would ripple throughout the United States financial sector. Century 21, a large producer of

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[15] "Standard and Poor's Rating Definitions." McGraw Hill Financial, 21 Mar. 2014. Web. 29 Mar. 2015.

[16] Ferguson, Charles H, Audrey Marrs, Chad Beck, Adam Bolt, Matt Damon, Paul A. Volcker, George Soros, Eliot Spitzer, Barney Frank, Dominique Strauss-Kahn, Svetlana Cvetko, Kalyanee Mam, and Alex Heffes. Inside Job. Culver City, Calif: Sony Pictures Home Entertainment, 2011.

[17] The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States. Official Government ed. Washington, DC: Financial Crisis Inquiry Commission: 2011. Print.

[18] *Ibid.*

[19] Flanagan, Christine, and Ellen Wilson. Home Value and Homeownership Rates: Recession and Post-Recession Comparisons From 2007–2009 to 2010–2012. Washington: United States Dept. of Commerce: Economics and Statistics Administration, 2013. Web.

subprime mortgages, filed for bankruptcy in April, 2007.[20] The hardest hit were those banks that originated many of the subprime market. Banks such as HSBC, the largest producer of subprime mortgages in the United States, began to report increasingly detrimental losses. By February, 2007, HSBC reported a total of $1.8 billion in unexpected losses deriving from its subprime mortgage efforts.[21]

By 2007, AIG had written a total of $79 billion in over the counter credit default swaps. The effect of the decline of the mortgage-backed securities market would ripple through AIG's financial services division. As more of the CDO's in which these CDS's were speculating began to default, AIG, as the largest writer of CDS polices, began to feel an increased financial strain. Goldman Sachs, on July 27th sent an invoice to AIG for a total of $21 billion requested in CDS payouts. [22] Similar demands would ensue from various other financial firms throughout the year. By September 12, 2008, AIG retained only $9 billion dollars in cash –a number that many believed would not sustain them for long. In fact, that day AIG had payouts due for $1.4 billion in commercial paper transactions, and another $3.2 billion that would be deemed owed the subsequent week. [23]

By 2007, Lehman Brothers, one of the largest bank-holding corporations in the United States faced similar deteriorations. By the end of 2007, Lehman Brothers had amassed a total of $111 billion in holdings of real estate and mortgage-backed securities, many of which were hedged by AIG. These mortgage-backed securities alone leveraged Lehman 4:1.[24] With the decline of the

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[20] The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States. Official Government ed. Washington, DC: Financial Crisis Inquiry Commission: 2011. Print.
[21] *Ibid.*
[22] *Ibid.*
[23] *Ibid.*
[24] *Ibid.*

mortgage-backed securities market, Lehman faced an unprecedented series of losses. In a desperate attempt to recoup said losses, Lehman attempted to sell itself to Barclay's. This transaction was met with disdain from the Federal Reserve of New York, who required that Barclay's guarantee certain products that Lehman issued in order for the purchase to be approved. Ultimately, the deal went sour. Subsequently, on September 15th, 2008, Lehman Brothers was forced into bankruptcy. This event would mark the greatest bankruptcy of a corporation since the fall of Enron.

Other firms began to falter as well. On September 15th, Bank of America acquired the failing investment firm Merrill Lynch for $50 billion. A deal that would price the value of Merrill's stock at $29 - a decrease from $98 in early 2007.[25]

In response to the growing uncertainty, the United States Federal Reserve, on September 16th, 2008, agreed to bailout AIG citing a commitment for nearly $85 billion in bailout funds. [26] By 2011, this obligation would grow to over $123 billion allocated to AIG.[27]

By early 2015, the United States Dept. of the Treasury had committed $427.1 billion in TARP funds to bailouts of United States Companies with $245.1 billion going specifically to banks and financial institutions in the wake of the crisis.[28]

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[25] Associated Press. *Bank of America to Purchase Merrill Lynch*. United States Business. MSNBC, 15 Sept. 2008. Web. 29 Mar. 2015.
[26] Tracer, Zachary. *AIG Bailout Ends Four Years after Two-Year Plan: Timeline*. Bloomberg.com. Bloomberg, 11 Dec. 2012. Web. 29 Mar. 2015. <http://www.bloomberg.com/news/articles/2012-12-11/aig-bailout-ends-four-years-after-two-year-plan-timeline>.
[27] *TARP Tracker from October 2008 to Date.* United States Dept. of the Treasury. Web. 21 Mar. 2015.
[28] *Ibid.*

Chapter 2:

The Dodd-Frank Wall Street Reform and Consumer Protection Act.

2.1 Title I- Financial Stability- Dodd-Frank Wall Street Reform Act.

Dodd-Frank constituted not only widespread change to the United States financial sector but to the Federal Government's Policies on financial Regulation. With Dodd-Frank came the implementation of new government agencies with powers derived therefrom to oversee systemic risk inherent in United States financial markets. Title I of Dodd-Frank calls for the creation of the Financial Stability Oversight Council (Hereinafter FSOC) within the United States Treasury[29]. This Council has the power, in conjunction with various other regulatory agencies, to offer advice to the United States government regarding the financial stability of the United States economy. The scope of the FSOC is to regulate all industries and constituent corporations that, due to their size or market-activity, may cause rapid or imminent destabilization of the United States economy. The council is made up of voting and nonvoting representatives from various federal regulations including:

Voting Members:

1. The Secretary of the Treasury, who shall serve as the Chairperson of the Council.
2. The Chairman of the Board of Governors of the Federal Reserve
3. The Comptroller of the Currency
4. The Director of the Bureau of Consumer Financial Protection
5. The Chairman of the Securities Exchange Commission
6. The Chairperson of the commodity Futures Trading Commission
7. The Director of the Federal Housing Finance Agency.
8. The Chairperson of the National Credit Union Administration Board.
9. An Independent person appointed by the president, by and with the consent of the Senate

[29] 12 U.S.C. § 5321

Nonvoting Members:

1. The Director of the Office of Financial Research
2. The Chairman of the Nation Credit Union Administration Board
3. A State insurance commissioner, to be designated by a selection process determined by the State insurance commissioners
4. A State insurance commissioner, to be designated by a selection process determined by the State insurance commissioners
5. A State insurance commissioner, to be designated by a selection process determined by the State insurance commissioners

While the nonvoting members serve only an advisory function they have the ability to impact the decisions of the voting members.

The Principle duty of the FSOC is to "identify risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies, or that could arise from outside the financial services marketplace."[30] The council acts on recommendation of various regulatory agencies and promotes the distribution of said information to the other regulatory agencies. The FSOC has the ability to demand production of documents from any nonbank financial company or bank holding company to assess the extent to which a financial activity has the ability to destabilize the United States financial sector.[31]

The FSOC acts on a theory of interconnectedness; that being, that if one financial corporation declares bankruptcy, there will be a resounding echo throughout the industry due to dealings with other financial firms, venture capital efforts, and securities firms. Take the Financial Crisis for example, the sale of CDO's and then purchasing a CDS against those loans caused AIG

[30] *Ibid.* (a)(1)(A)
[31] 12 U.S.C. § 5321 (3)(A)

to nearly collapse when it could not afford to compensate Lehman Brothers or Merrill Lynch for their losses, a compensation that was mandated by the terms of the CDS's themselves.

2.1.1 The Power of the Council to designate Financial Institutions as Systemically Important

The FSOC has tremendous power when it comes to regulation. The members contained therein have the ability to mark financial firms and institutions as "systemically important" and thus inhibit their ability to perform their normal operations or shut down the business entirely in the emergence of crisis. The FSOC marks these Systemically Important Financial Institutions (SIFIs) and thus requires these corporations to submit to extra regulative authority such as increased filings and submission to agency audits. It should be clarified however, that bank holding companies do not receive any official designation as a SIFI, they are subject to heightened regulatory activity only if they meet certain requirements as set forth by the FSOC, namely a balance sheet totaling over $50 billon.[32] Corporations that receive a formal SIFI distinction, in the United States, are only nonbank financial services institutions or market utilities, such as clearing houses.

Many people fear that the power to designate SIFI's creates an unfair marketplace (Wallison 522)[33]. Their argument principally being that designating these institutions as Systemically Important creates a faux-ideal that these corporations are placed in greater esteem in

[32] United States. Cong. House of Representatives. Committee on Financial Services. Subcommittee on Oversight and Investigations. *Hearing on* GAO's Assessment of The Financial Stability Oversight Council and the Office of Financial Research.113th Cong., 1st sess. Washington: GPO, 2013. Print.
[33] Wallison, Peter J. Bad History, Worse Policy: How a False Narrative about the Financial Crisis Led to the Dodd-Frank Act. Washington, D.C.: American Enterprise Institute for Public Policy Research, 2013. Print.

regards to federal protection.[34] In other words, many fear that these designations will make it seem as if these companies are essentially backed by the credit of the United States in instances where collapse of said company is imminent. These accusations seem inherently unwarranted; no business ever prospered from more stringent regulation. While it is true enough that these regulations may help insure that a SIFI does not collapse due to their importance on the United States economy, there is no way these firms will receive aid from the Federal government or the Federal Reserve. In fact, as aforementioned, Title II of the Dodd-Frank act creates a liquidation vessel to ensure that these companies do not receive preferential treatment in the event of a loss.

To date, certain nonbank financial companies and market utility corporations have been subject to these designations. The list, as of March 3rd, 2015, comprises the following institutions[35]:

1. Metlife, Inc.
2. American International Group, Inc.
3. General Electric Capital Corporation, Inc.
4. Prudential Financial, Inc.
5. The Clearing House Payments Company L.L.C. on the basis of its role as operator of the Clearing House Interbank Payments System
6. CLS Bank International
7. Chicago Mercantile Exchange, Inc.
8. The Depository Trust Company
9. Fixed Income Clearing Corporation
10. ICE Clear Credit LLC
11. National Securities Clearing Corporation
12. The Options Clearing Corporation

It should be noted that these designations play no role in any determination to liquidate an institution under the Orderly Liquidation provisions of Title II of Dodd-Frank. These designations

[34] United States. Cong. House of Representatives. Committee on Financial Services. Subcommittee on Oversight and Investigations. *Hearing on* GAO's Assessment of The Financial Stability Oversight Council and the Office of Financial Research.113th Cong., 1st sess. Washington: GPO, 2013. Print.
[35] "Financial Stability Oversight Council." Designations. United States Dept. of the Treasury- Financial Stability Oversight Council, 4 Feb. 2015. Web. 21 Mar. 2015.

neither aid in any determination of the same, nor have any effect upon a corporation already subject to liquidation under Title II. Deputy Assistant Secretary of the Financial Stability Oversight Council, Amias Gerety, noted in a hearing before the United States House of Representatives Committee on Financial Services, that "The action of that designation is simply the imposition of enhanced supervision by the Federal Reserve. Now, separately, Dodd-Frank created an Orderly Liquidation Authority for financial companies, both non-bank financial companies and bank holding companies. The designation is actually not required for the use of that Title II authority."[36]

2.1.2 Living Will of a Corporation.

Under Title I, corporations with consolidated assets greater than $50 billion, are subject to increased regulatory supervision. These regulations mandate that a corporation must, at the discretion of the Office of Financial Research, produce documents that inform the United States Government as to the financial condition of the corporation, the procedures and policies the corporation has in place to monitor risk, any transactions with a subsidiary that is also a depositary institution, and any risk the corporation may pose to the stability of financial markets or the stability of the United States at large.[37]

Section 165 of Title I demands that each company with assets over $50 billion submit a resolution plan. This plan is to detail a resolution in the event of bankruptcy or financial crisis, as bankruptcy is the first remedial option given to corporations under distress. [38,39] This "Living will"

[36] United States. Cong. House of Representatives. Committee on Financial Services. Subcommittee on Oversight and Investigations. *Hearing on* GAO's Assessment of The Financial Stability Oversight Council and the Office of Financial Research.113th Cong., 1st sess. Washington: GPO, 2013. Print.
[37] 12 U.S.C. § 5326 (a)
[38] Bankruptcy is the first resolution before Title II liquidation provisions are invoked.
[39] 12 U.S.C. §5365 (d)(1)

is to give the regulators a clear idea of what would happen to the institution, should things turn south.

This Resolution Plan is demanded by Dodd-Frank to note the following:

(A) Information regarding the manner and extent to which any insured depository institution affiliated with the company is adequately protected from risks arising from the activities of any nonbank subsidiaries of the company;
(B) Full descriptions of the ownership structure, assets, liabilities and contractual obligations of the company;
(C) Identification of the cross-guarantees tied to different securities, identification of major counterparties, and a process for determining to whom the collateral of the company is pledged; and
(D) Any other information that the Board of Governors and the Corporation jointly require, by rule of order.

Additionally, early mediation requirements, as set forth by Sec. 166, demand the production of a more in-depth documentation. This additional information outlines the exact plan for dissolution or bankruptcy. This plan is meant to help "minimize the probability that the company will become insolvent and the potential harm of such insolvency to the financial stability of the United States.[40] The Sec. 166 requirements of Dodd-Frank require that each institution formulate a plan for "the initial stages of financial decline, including limits on capital distributions, acquisitions and asset growth."[41] Furthermore, like the former, companies must also address what is to happen in the later stages of financial decline. [42]

[40] 12 U.S.C. § 5366 (b)
[41] 12 U.S.C. § 5366 (c)
[42] *Ibid.*

2.1.3 Mitigation of Damage

Under Dodd-Frank, should a corporation with asses greater than $50 billon pose a "grave threat" to the United States economy, then the Federal Reserve Board may limit the activity of the financial institution by:

1. Limiting the ability of the company to merge with, acquire, consolidate with, or otherwise become affiliated with another company;
2. Restrict the ability of the company to offer a financial product(s);
3. Require the company to terminate one or more activities;
4. Impose conditions on the manner in which the company conducts one or more activities; or
5. If the Board of Governors determines that the actions describe above are inadequate to mitigate a threat to the financial stability of the United States in its recommendation, require the company to sell or otherwise transfer assets or off-balance-sheet items to unaffiliated entities.[43]

This, in essence, may be quite troubling to some as it gives the United States Government the authority to demand a company sell a certain amount of its assets to an unaffiliated party. Please note that this action requires the approval of both the Board of Governors of the Federal Reserve Board and a vote of two-thirds of the voting members of the Financial Stability Oversight Council.

2.2 Title II- Orderly Liquidation Authority- Dodd-Frank Wall Street Reform Act.

In short, taxpayers felt the burden of the 2007/2008 Financial Crisis the hardest. The United States Government offered $455 billon to failing agencies throughout the country to sedate the growing risk of collapse.[44] AIG alone received a payout of $67.8 billon.[45] This burden was bore solely upon the shoulders of the American people. To ensure that this problem would never be

[43] 12 U.S.C. § 5331 (a)
[44] *"TARP Tracker from October 2008 to Date." United States Dept. of the Treasury. Web. 21 Mar. 2015. <http://www.treasury.gov/initiatives/financial-stability/reports/Pages/TARP-Tracker.aspx#AIG>.*
[45] *Ibid.*

faced again, Congress passed Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act – an act which gives the Federal Deposit Insurance Corporation the ability to dissolve an insolvent institution. This, in theory, would ensure that the corporation is dissolved through regulated means and that no corporation, should or will, be the recipient of any government-funded bailout.

If the Secretary of the Treasury makes a determination that a corporation is insolvent, in default, or at incurable risk of default, then the Secretary shall petition the United States District Court to appoint the FDIC as the "receiver" of the insolvent corporation.[46] The District Court will then have 24 hours in which to make a determination as to the petition from the Secretary. Should it not, then by operation of law, the insolvent corporation is to be subject to immediate receivership by the FDIC.

According to Dodd-Frank, a corporation in default is:

> (A) A case has been, or likely will promptly be, commenced with respect to the financial company under the Bankruptcy Code;
> (B) The financial company has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the company to avoid such depletion;
> (C) The assets of the financial company are, or are likely to be, less than its obligations to creditors and others; or
> (D) The financial company is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business.[47]

Accordingly, should a corporation be close to bankruptcy, then the Secretary of the Treasury reserves the right, after a good faith weighing of the circumstances, to make a determination to petition the United States District Court for receivership.

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[46] 12 U.S.C. § 5382(a)(1)(A)(i)
[47] 12 U.S.C. §5383(c)(4)

2.2.1 A Corporation in Receivership

Once a corporation has yielded to the receivership of the FDIC, they no longer have any authority to operate or manage the company in the traditional sense. Once the FDIC has been appointed a receiver, it is entirely likely that the original executives of the corporation will be removed from their positions.[48]

To fund the liquidation of any company currently in receivership, the FDIC may make loans, purchase loans, take liens against the institution, sell assets of the company, and make payments as deemed appropriate. [49]

Following the receivership of a covered broker/dealer, the FDIC is to appoint, without need for court proceeding or order, the Securities Investor Protection Corporation as the trustee.[50] In the event the failing firm is a covered broker or dealer, then the SIPC will have the power to terminate and liquidate the corporation. The SIPC has the power to[51]:

(A) Make funds available under section 204(d);

(B) To organize, establish, operate, or terminate any bridge financial company[52];

(C) Transfer assets and liabilities;

(D) To enforce or repudiate contracts;

(E) To take any other action relating to such bridge financial company under Sec. 210.

The SIPC then has the power to conduct the liquidation in a manner set forth under 15 U.S.C. § 78. This process usually includes a gathering of assets and then a process of having customers submit claims to the SIPC for approval.

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[48] Or left to manage under the eye of the FDIC.
[49] 12 U.S.C. § 5384 (d)
[50] 12 U.S.C. § 5385 (a)(1)- Note that this receivership is similar to a United States Trustee in bankruptcy.
[51] 12 U.S.C. § 5385 (b)(2)
[52] Bridge financial company being a failing company under receivership.

The FDIC and SIPC are forced to act in the best interests of the United States economy and of the interests of said bridge financial company's customers. No action that either of the aforementioned regulators make should diminish the value of either the property or timely claims made by customers. Customers are to have the rights afforded to them under the Securities Investor Protection Act of 1970.

In regards to disbursements of payments due and payable from the bridge financial institution, payments of which are made in accordance with the following priority of claims[53]:

(1) Repayment of debt incurred by or credit obtained by the Corporation as receiver for a covered financial company, provided that the receiver has determined that it is otherwise unable to obtain unsecured credit for the covered financial company from commercial sources.

(2) Administrative expenses of the receiver, as defined in § 380.22, other than those described in paragraph (a)(1) of this section.

(3) Any amounts owed to the United States, as defined in § 380.23 (which is not an obligation in paragraphs (a)(1) or (2) of this section)

(4) Wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual (other than an individual described in paragraph (a)(9) of this section), but only to the extent of $11,725 for each individual (as adjusted for inflation in accordance with paragraph (b) of this section) earned within 180 days before the date of appointment of the receiver.

(5) Contributions owed to employee benefit plans arising from services rendered within 180 days before the date of appointment of the receiver, to the extent of the number of employees covered by each such plan multiplied by $11,725 (as adjusted for inflation in accordance with paragraph (b) of this section); less the sum of (i) the aggregate amount paid to such employees under paragraph (a)(4) of this section, plus (ii) the aggregate amount paid by the Corporation as receiver on behalf of such employees to any other employee benefit plan.

(6) Any amounts due to creditors who have an allowed claim for loss of setoff rights as described in § 380.24.

(7) Any other general or senior liability of the covered financial company (which is not a liability described under paragraphs (a)(8), (9) or (11) of this section).

(8) Any obligation subordinated to general creditors (which is not an obligation described under paragraphs (a)(9) or (11) of this section).

(9) Any wages, salaries, or commissions, including vacation, severance, and sick leave pay earned, that is owed to senior executives and directors of the covered financial company.

[53] *12 C.F.R.* § 380.21

(10) Post-insolvency interest in accordance with § 380.25, provided that interest shall be paid on allowed claims in the order of priority of the claims set forth in paragraphs (a)(1) through (9) of this section.

(11) Any amount remaining shall be distributed to shareholders, members, general partners, limited partners, or other persons with interests in the equity of the covered financial company arising as a result of their status as shareholders, members, general partners, limited partners, or other persons with interests in the equity of the covered financial company, in proportion to their relative equity interests.

(b) All payments under paragraphs (a)(4) and (a)(5) of this section shall be adjusted for inflation in the same manner that claims under 11 U.S.C. 507(a)(1)(4) are adjusted for inflation by the Judicial Conference of the United States pursuant to 11 U.S.C. 104.

(c) All unsecured claims of any category or priority described in paragraphs (a)(1) through (a)(10) of this section shall be paid in full or provision made for such payment before any claims of lesser priority are paid. If there are insufficient funds to pay all claims of a particular category or priority of claims in full, then distributions to creditors in such category or priority shall be made pro rata. A subordination agreement is enforceable with respect to the priority of payment of allowed claims within any creditor class or among creditor classes to the extent that such agreement is enforceable under applicable non-insolvency law.

As you can see from above, unsecured creditors and shareholders are meant to feel the burden of this default.

2.2.2 Removal of Executives under Receivership

Many feel that the 2007/2008 Financial Crisis came about due to the greed of executives. At the onset of the Financial Crisis, executives were still receiving massive cash bonuses even though their respective financial firms were drastically failing. In 2009, in the wake of the financial crisis and following a United States bailout of AIG under TARP, AIG announced a plan to give cash bonuses to its financial services division of up to $165 million.[54]

So too, does the law find that executives failed to meet public standards. Accordingly, Dodd-Frank mandates that the FDIC, as receiver of a corporation, take action against executives who failed to meet these stands. If any executive, prior to receivership, violated any United States Law or regulation, or failed to comply with any cease-and-desist order which had been finalized, or failed to adhere to any condition mandated by a Federal agency in connection with any action or request, or failed to honor any written agreement between such company and regulatory agency,

[54] Cooper, Helene. *Obama Orders Treasury Chief to Try to Block A.I.G. Bonuses. The New York times* 16 Mar. 2009. The New York Times. Web. 15 Dec. 12. <http://www.nytimes.com/2009/03/17/us/politics/17obama.html?hp>.

then the FDIC could forcibly remove the executive from the company for a period no shorter than two years. Additionally, an executive may be removed for demonstrating a blatant disregard for the financial stability of the company he manages.

2.3 Title VII-Wall Street Transparency and Accountability- Dodd-Frank Wall Street Reform Act.

In the wake of the 2007/2008 Financial Crisis, regulators felt the need to admit standards into review to combat the ever-growing, ever-riskier investments of the era, primarily, swap based securities transactions. Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act does just that. Title VII, confers upon the Securities Exchange Commission and the Commodities Futures Trading Commission the ability to restrict a certain institution's participation in swap-based markets.[55]. Additionally, this Title moves further to expressly prohibit any government funded bailouts of said swap entities[56]. This is an attempt to ensure that no taxpayers "shall bear no [the] losses" associated with any action under Title VII.[57]

Under Dodd-Frank, a "Swaps Entity" is taken to mean "any swap dealer, security-based swap dealer, major swap participant, major security-based swap participant[58]" that is registered under either the Commodity Exchange Act[59] or the Securities Exchange Act of 1934.[60]

2.3.1 Product Approval of Securities Dually Regulated

Section 717 of Dodd-Frank, requires that new financial products, limited to call, put and futures trading, must now be approved jointly by the Securities Exchange Commission, by request,

[55] 15 U.S.C. § 8304
[56] 15 U.S.C. § 8305(a)
[57] 15 U.S.C. § 8305(i)(3)
[58] 15 U.S.C. § 8305 (b)(2)(A)
[59] 7 U.S.C. § 1 et seq.
[60] 15 U.S.C. § 78a et seq.

and by the Commodities Futures Trading Commission. The two regulators are to exercise "Concurrent Jurisdiction[61]" with regards to these products. In an attempt to increase scrutinization of swap-based securities, this clause increased the stringency of the application process for all new options, futures and derivatives contracts, as they are now subject to review by multiple federal regulators(In addition to any state securities agency that nay have jurisdiction.)

As for "novel" products – novel products being those that have elements of both a security and a contract for sale, exchange or delivery of a future or option- applications and proposals must be submitted dually to the SEC and the CFTC for approval.[62] One should note that, it would appear only one agency need to approve the listing; however, if promoted, either the CFTC or the SEC may make a petition to request the determination of the complimentary agency. Any proposal submitted by a company must be given, if so chosen, to the complimentary agency within twenty-one days for a request of determination. This is an effort to ensure that the economy is not slowed or diminished accessibly due to this increased regulatory scrutiny.

2.3.2 Registration and Regulation of Swap Entities and Major Purchasers

Notwithstanding any other provision of United States Code, Dodd-Frank amended the Commodity Exchange Act to require registration of all swap dealers with the CFTC. Further, this new legislation also requires that any major swap participants also register with the Commission. A Major Swap Participant being "a person who is associated with a swap dealer or major swap participant as a partner, officer, employee, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves the solicitation or acceptance of swaps;

[61] 15 U.S.C. *§* 78c-2(a)-(b)
[62] 15 U.S.C. *§* 8306

or the supervision of any person or persons so engaged.[63] Accordingly, both the dealer of a swap contract, transaction or product *and* the purchaser of said contract, transaction and product, must be registered with the commission as a dealer and participant respectively.

Continually, Dodd-Frank mandates new reporting and record-keep compliance mandates. Under the Act, dealers and participants, as defined above, are required to keep daily records of all trades, sales, etc. The CFTC released a question and answer guide for this rule that requires brokers and participants to keep records sufficient to "reconstruct a trade"; further, dealers and participants are to keep a searchable log or database that gives trade-specific information as to each trade.[64] The CFTC went on further to state that all correspondence regarding a particular trade is to be kept as well, which includes: any pre and post-trade communication or correspondence; any information regarding a trade stored on a mobile device, electronic format (such as email or instant messenger); or any telephone calls made regarding the trade.[65] Please note, the Commission made it clear that telephone calls need not be recorded such that the information in those calls is sufficiently justified elsewhere on the record. [66]

This regulation is particularly useful, as government regulators can now artificially recreate trades and spot any malfeasance inherent in the transaction or conveyance of the same. This regulation poses a very unique question: what happens to those who fail to obey? The CFTC is unlikely to have either the time or the resources necessary to review documents each and every day and is more than likely only going to use this information should an issue arise. What one could find particularly disturbing is that records need not be kept if there is a thorough listing of

[63] 7 U.S.C. § 1a(4)(A)
[64] Commodities Futures Trading Commission. *Q & A – Reporting, Recordkeeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants*. Washington, D.C.
[65] *Ibid.*
[66] *Ibid.*

the transaction in other records. This means, in essence, that some documents may be lost or willfully-destroyed to cover malfeasance or delete any substantial record of the same.

This title contains a provision in which risk management compliance procedures are demanded. Each entity participating in swaps is to form a risk-management plan of action for managing normal operations of the entity, or of the particular swaps department within an entity.[67] This particular clause is nominally short, it provides no medium for the reporting of this risk-management policy to any regulatory body, a notion which one may find particularly troubling.

2.3.3 Penalties and Actions against Swap Entities

Dodd-Frank amended the Commodity Exchange Act to read the following:

> It shall be unlawful-
> (1) for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person; or
> (2) for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or swap, that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market-
> (A) To cheat or defraud or attempt to cheat or defraud the other person;
> (B) Willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record;
> (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of paragraph (2), with the other person; or
> (D)(i) To bucket an order if the order is either represented by the person as an order to be executed, or is required to be executed, on or subject to the rules of a designated contract market; or
> (ii) to fill an order by offset against the order or orders of any other person, or willfully and knowingly and without the prior consent of the other person to become the buyer in respect to any selling order of the other person, or become the seller in respect to any buying order of the other person, if the order is either represented by the person as an order to be executed, or is required to be executed, on or subject to the rules of a designated contract

[67] 7 U.S.C. § 6s(j)(2)

market unless the order is executed in accordance with the rules of the designated contract market…

(1) To employ any device, scheme, or artifice to defraud;

(2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.[68]

Accordingly, any act that is found to be a violation of the former is subject to penalization under a determination by either the CFTC or the Prudential Regulator. Prudential Regulator being the regulator or agency that is, first and foremost, the principle regulatory authority for the institution at hand.[69] It falls first upon the prudential regulator to bring about any action for a violation of any part of this Act. Should the prudential regulator fail to do so, the CFTC may then, in turn, notify the prudential regulator as to a basis for a claim that said regulator should bring about. Should the prudential regulator fail to bring about any action or proceeding, then the CFTC may, after a ninety day period following the request to the prudential regulator, bring about an enforcement proceeding.[70] This portion of the Act gives the CFTC the ultimate ability to regulate any swaps-based entity. It may, at its discretion, bring about a proceeding should the primary regulator fail to do so. This ensures that the CFTC can maintain a through regulatory environment as to its legislative charge. In compliment to the former, the prudential regulator also has the ability to bring about an initiation proceeding should it request the CFTC to do the same and receives no or an insufficient response.

To the people's excitement, Dodd-Frank also provides a framework for the regulation of the regulators. Section 746 of Title VII, provides a legislative framework to prevent against the stealing or insider use of information by any government agency, employee, agent, or contractor

[68] 7 U.S.C. *§* 6(b)
[69] 7 U.S.C. § 6b-1
[70] *Ibid.*

to use any information gleaned from any proceeding, action, or gathered in the normal course of business, for personal use and/or gain. [71]

In 2013, an action under this provision was taken by the CFTC against JP Morgan for manipulative conduct in regards to CDS policies. This action alleged that JP Morgan undermined market fairness by intentionally using deceptive and dishonest conduct to sell its CDS policies-policies that actively betted against products it offered. The charged resulted in a settlement of $100 million dollars for alleged securities and fair trading practices violations.[72]

2.3.4 Whistleblowers

When information becomes otherwise unattainable by the regulators, or goes unnoticed, it becomes important to offer incentives to those within corporations who can, by the leave of the law, draw attention to malfeasance and corruptive practices by certain institutions. Accordingly, Title VII provides whistleblower incentives and protections to all those that would come forward with such information, as it pertains to swap-based entities.[73] Those who come forward will be eligible for ten to thirty percent of the total amount collected in any action taken against a corporation[74].

2.4 Tile X- The Consumer Financial Protection Bureau- Dodd Frank Wall Street Reform Act.

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[71] 7 U.S.C. § 6c(A)

[72] RELEASE: Pr6737-13. *CFTC Files and Settles Charges Against JPMorgan Chase Bank, N.A., for Violating Prohibition on Manipulative Conduct In Connection with "London Whale" Swaps Trades*. United States Commodities and Futures Trading Commission, 16 Oct. 2013. Web. 12 Apr. 2015. <http://www.cftc.gov/PressRoom/PressReleases/pr6737-13>.

[73] 7 U.S.C. § 26

[74] This amount must be over $1,000,000 for an award to be paid. 7 U.S.C. *Ibid.*

At the principle heart of the 2007/2008 Financial Crisis, was the consumer. Consumers felt the blunt of the malfeasance of the banks and monetary agencies. To respond to the growing feelings of uncertainty, skepticism, and general sense of let-down by the United States Government and United States businesses, Congress passed the Consumer Financial Protection Act of 2010. The aforementioned Act created the Bureau of Consumer Financial Protection (Hereinafter "CFPB").[75] The agency's charge was to regulate the offering of products to American Consumers; by doing so, Congress attempted to restore confidence in American Consumerism.

The CFPB is an autonomous office under the Federal Reserve System. The Director of the CFPB receives a nomination from the President of the United States.[76] The CPFB is charged with enforcing United States consumer protection laws as they pertain to finance. The CFPB is the regulatory arm of American consumerism. The CFPB acts in the interest of the masses and not that of either United States or Foreign Corporations. To implement this charge, the Bureau is afforded the ability to make rules and regulations that "administer, enforce, and otherwise implement the provisions of Federal consumer financial law." [77] The CFPB receives, analyzes, and acts accordingly to complaints submitted by American consumers.

Since its inception, the CFPB has released numerous rules including a drastic revitalization of the title insurance industry. For instance, effective August 1st, 2015, and pursuant to 12 U.S.C. § 1094, new CFPB regulations amend the current loan statements given to consumers interested in mortgages. The new Loan Estimate and Closing Disclosure statements provide a more consumer-friendly approach to understanding loan statements, as compared to the original and bulky HUD-1 closing disclosure.[78]

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[75] 12 U.S.C. *§ 5491*
[76] 12 U.S.C. § 5491(b)
[77] 12 U.S.C. § 5512(a)
[78] Examples of each are attached as Figure 1.3.

The CFPB's regulations are subject to review by the Financial Stability Oversight Council. Should a regulation of the CFPB constitute a woeful systemic risk to the United States economy, the FSOC has the ability to invalidate any regulation made- The procedure for which is outlined in 12 U.S.C. § 5513(b)(1).

2.5 Mortgage Reform and Anti-Predatory Lending Act- Title XIV- Dodd-Frank Wall Street Reform Act.

During the 2007/2008 Financial Crisis, predatory lending reached an all-time high. During 2005 and 2006 respectively subprime mortgages constituted a $600 billion dollar a year industry. With roughly greater than 20% of all new loan originations being subprime. [79] To combat this ever-growing risk associated with subprime mortgages, and bubbles created therefrom, Congress passed the Mortgage Reform and Anti-Predatory Lending Act. This Act, in part, modified the Truth in Lending Act to include new sweeping reform for mortgage originations and anti-predatory lending.

In 2010, Congress passed this Act stating, "Congress finds that the economic stabilization would be enhanced by the protection, limitation, and regulation of the terms of residential mortgage credit and the practices related to such credit, while ensuring that responsible, affordable mortgage credit remains available to consumers." [80] Accordingly, Title XIV gives the authorization to the CFPB to being regulation of the Loan Origination Market.

2.5.1 Regulations on Loan Origination

[79] Inside Mortgage Finance, published by Inside Mortgage Finance Publications, Inc. 2009
[80] 15 U.S.C. § 1639b(a)(1)

Title XIV amends the Truth in Lending Act to prohibit compensation to mortgage originators that varies based upon the terms of the loan. Essentially, even if a loan balance is greater or lesser, the originator off the loan is to be paid the same without taking into account the terms of the mortgage itself.[81] Additionally Title XIV attempts to further regulate the party which can pay a loan origination fee. Accordingly, only the consumer to whom the credit is given, is able to pay a loan origination fee to the originator, subject to certain exceptions.

This Title goes on further to regulate the reasonable basis of determination, by a commercial lender, as to who is qualified to receive a residential mortgage. Please note, that this qualification is based upon the sole ability of the consumer to repay. Additionally, an originator may not discriminate against an applicant on the basis of race, creed, religion, etc. A loan purchaser must innately have the "reasonable" ability to repay the loan. A mortgage originator is duly prohibited from offering any loan with a predatory characteristic such as any loan that charges excessive or unreasonable interest fees, any loan that strips the consumer of equity in the home, or any loan that has generally abusive terms. [82]

In regards to a consumer's ability to repay, the originator must verify the income of a consumer requesting a mortgage. In order to do so, an originator must verify a consumer's income with payroll receipts, bank statements, tax returns or other documents that give the originator a verifiable basis for determining a loan applicant's ability to repay.

Further, Mortgage originators may not attempt to entice a consumer into a more expensive loan, whilst knowing full and well, that a considerably or even nominally cheaper loan product is

[81] 15 U.S.C. § 1639b(c)(1)
[82] 15 U.S.C. § 1639b(c)(3)

available to the consumer. This is to ensure that banks do not attempt to maximize their profits while promoting substantial public loss, as evidenced in the track-history of the recession. [83]

2.5.2 Liability for Illegal, Deceptive or Unethical Practices.

Under Title XIV, mortgage originators, if found in violation of any provision, afforded under the same title, may be liable to the defrauded consumer in an amount that is either equal to the damages faced by the consumer, or by three times the total amount of compensation or gain that the originator received in regards to the misrepresented loan.[84] Additionally, an equitable defense to foreclosure is granted to any consumer who can demonstrate that they have been harmed by the malfeasance of a loan originator. [85]

This is progress. Now, a consumer has a direct actionable remedy afforded to them. This promotes consumer financial stability and thereby, promotes the financial stability of the United States residential mortgage industry at large. [86]

In 2013, the United States Dept. of Justice settled a lawsuit, taken against JPMorgan, for a total of $13 billion. This suit was taken against JPMorgan for its participation in fraudulent mortgage-backed securities exchange.

In 2007, JPMorgan sought to purchase mortgage-backed securities for the purposes of packaging the securities into CDO policies.[87] These mortgages were then reviewed by JPMorgan for compliance with all applicable law, and to ensure that the appraised value of these mortgages

[83] *Ibid.*
[84] 15 U.S.C. § 1639(d)
[85] 15 U.S.C. § 1640(k)
[86] *Ibid.*
[87] United States Dept. of Justice. *Justice Department, Federal and State Partners Secure Record $13 Billion Global Settlement with JPMorgan for Misleading Investors About Securities Containing Toxic Mortgages.* Washington D.C. U.S. Dept. of Justice. Office of Public Affairs, Nov. 2013. Web. 12 Apr. 2015.

was indeed a true representation of the value of the home itself. JPMorgan hired independent due diligence representation to ensure that these policies were consistent with the aforementioned criterion. The due diligence representatives officially returned to JPMorgan with a report stating that often these loans under scrutiny were appraised higher than the actual value of the property and failed to meet general industry underwriting standards for mortgage origination, and, as a result, were generally unfit for packaging into CDO policies.

JPMorgan decided to package these securities despite the warnings by the due diligence representatives. JPMorgan then sold these policies to investors alleging that their underlying asset pool "generally conformed" with underwriting procedures and that "exceptions were made on a case-by case basis." JPMorgan noted that they would not package any security "if anything has come to [JPMorgan's] attention that would cause it to believe that the representations and warranties of a seller or originator will not be accurate and complete in all material respects in respect of the loan as of the date of initial issuance of the related series of securities.[88]"

Unfortunately, JPMorgan *did* have an indication that these mortgage-backed securities were unfit for distribution and yet decided to package them, despite the warnings, while actively and deceptively making representations and warranties as to the suitability of these particular investments.[89] Accordingly, JPMorgan actively defrauded investors by fraudulently misrepresenting the underwriting standards of these mortgage backed securities.

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88 *Ibid.*
89 *Ibid.*

Chapter 3:

A New Area of Financial Regulation

3.1 Proposal Overview

In order to prevent global financial meltdowns individual countries must form their own regulations to ensure the stability of their respective nations. The United States financial sector has grown exponentially over the past century. With such unprecedented growth it becomes necessary for governments to impose new regulations to combat heightened levels of risk introduced with new financial products. To date, only a handful of cases litigating the issues of the Financial Crisis have been subject to litigation in either a United States federal court or a United States administrative court; accordingly, there is a direct need to create a vessel in which corporations engaging in malfeasance are directly and expeditiously punished for their malfeasance.

The current United States Securities system focuses entirely on preventative measures and penalization taken on a suit-win basis. To elaborate, a corporation is not penalized for fraudulent or illegal activity until such a point in time that a United States Administrative Judge determines that said corporation is guilty and thus damages become due and payable. This is problematic because the damages resulting from these lawsuits are so astronomical, often in the billions, that judges are reluctant to issue down verdicts that could crash a corporation's stock price and thus cripple the United States economy.

To this problem there exists a simple solution. The United States should adopt a penalty based disincentives program that will not directly crash a corporation but will gradually, over time, influence the stock price of the corporation should said corporation continually engage in financial misconduct. This penalty would be charged at the settlement of a financial misconduct case and at

the closing of a lawsuit in which the United States Government successfully charges a corporation and arises victorious in any claim thereunto appertaining. Financial firms engaging in financial misconduct that are not publicly held corporations should be subject to the penalization as well. Unlike the proposed penalization scheme for public corporations, mentioned below, nonpublic financial firms should be charged a penalization rate based upon their: A., number of infractions, and B., their net income per fiscal year. In other words, the greater the amount of penalties accrued, the greater percentage of net income per fiscal year will be penalized.[90]

Unlike their non-public counterparts, public corporations must be scrutinized all the more stringently as they are the corporations that pose the most systemic threat to the United States economy. Any breach of United States Securities Law by a public corporation can ripple through the finances of the stockholders in the corporation. This is especially problematic, for as the number of shares outstanding increases, so too does the potential risk for systemic injury. There should be a way in which public Corporations can be charged this penalty without heavily influencing the stock price of said corporation. This will ensure that companies who engage in financial misconduct pay the burden, not the stockholders. This disincentives program will charge corporations a penalty based upon their: A., Gross amount of shares outstanding; B., the number of penalties accrued over the life of the corporation; and C., the amount of stock shares the corporation owns institutionally of other corporations.[91]

As corporations continually engage in financial misconduct, the penalty associated with that conduct is scaled to grow exponentially. This would result in investor discord and a greater withdrawal of sources of stock funding. As investors notice the continuous malfeasance of their respective investments, they will undoubtedly be swayed to withdraw their money from the guilty

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[90] See Figure 1.2 for rate of penalization for nonpublic corporations.
[91] See Figure 1.1 for rate of penalization for public corporations.

corporation. This will essentially ensure that a corporation will fail due to its own misconduct in a time frame that would not be crippling to investors.

The above proposed penalization would also help ensure the Orderly and Timely Dissolution clause of the Dodd-Frank Wall Street Reform and Consumer Protection Act without the need for judicial review[92]. Systemically important financial institutions would not need to be dissolved by the provisions of Dodd-Frank unless they pose an immediate and grossly substantial threat to the United States economy. The corporation, through its own misconduct, would essentially dissolve itself with its increasing offenses.

To this program, speculators would undoubtedly fear the possibility that a corporation on the brink of penalization, would attempt to reduce or avoid the penalization by restructuring their stock. To avoid this one must view each type of financial restructuring to determine a possible plan of action. Take for instance repurchase agreements. Under this penalty based program there would be a provision that adds the amount of open stock repurchase agreements to the total amount of shares outstanding for that corporation. This would essentially prevent corporations from escaping the penalty by hiding their stock in another corporation.

This disincentives program would be based on the three factors mentioned above. Note specifically criterion C. in which a corporation is also charged a penalty based on the amount of stock that company specifically holds institutionally. This ensures that corporations aren't able to transfer all of their stock to a subsidiary corporation and thus avoid penalization because of the difference in name. I would propose that for these institutionally owned shares that the corporation holding them be charged the full penalization rate for the corporation multiplied by the percentage of shares the purchasing company owns. Take for instance Corporation ABC. Corporation ABC

[92] 12 U.S.C. § 5382 (a)(A)(iv)

is being penalized for the misappropriation and financial defrauding of customers. ABC will be charged their own penalization rate for the amount of shares that they have outstanding. Then also assume that Corporation ABC owns 20% of shares outstanding in Corporation XYZ. Corporation XYZ has 100,000 shares outstanding. Corporation ABC will then be charged the penalization rate for shares that they themselves have outstanding. That amount would then be added to the charge rate for 20,000 shares that Corporation ABC owns in Corporation XYZ.

The United States Government would be able to benefit from this penalization program. The United States economy would flourish because of the increased regulation, and the public sector would experience a new form of revenue generation. I have created a model in which the revenue generated from the penalization of financial misconduct can be used to fund this very program with excess revenue going to various federal and state regulatory agencies. I propose the following breakdown for the distribution of penalization-generated income:

Breakdown for Penalization Profits:

United States Securities and Exchange Commission	20%
United States Commodities and Futures Trading Commission	20%
Distribution to State Securities Agencies	40%
United States Dept. of Education	20%

Please take note that twenty-percent of the profit generation is allocated to state securities agencies. This distribution would be based upon a percentage of the total United States population that each respective state holds. This would prevent a state such as Nebraska -A state with a significantly small population and even smaller financial-services activity- from receiving more allocation than

a state such as New York. This population-based distribution of funds would ensure an evenly spread allocation of funds in relation to financial Services activity in the respective state. In essence, the bigger the state, the more money the state has entwined in financial services, the bigger the allocation of penalty-generated income.

3.1.1 Rates of Penalization

The end-goal of this proposal is not to put investment firms, banks or institutions out of business, no, this proposition is to ensure the stability of the United States financial sector. Accordingly, the rates for penalizations begin at incredibly nominal amounts. [93] These figures then exponentially increase in an attempt to force corporations who continually engage in malfeasance, to more-so feel the burden of their transgressions. These rates also afford the American public the ability to remove their holdings in these institutions should they notice a continual and gradually-increasing rate of transgressions. These rates are meant to gradually decrease, over-time, the value of a corporation's stock. For non-public institutions, this rate of penalization is taken as a percentage of fiscal income. This would ensure that the owners and employees of these institutions attempt all the more vigorously to ensure compliance with federal law.

3.2 The Initiation of Penalization

To ensure the orderly dissolution of corporations continually engaged in financial misconduct, a penalties-based disincentives program is entirely necessary; however, one can't help but ask: What kinds of financial malfeasance would be susceptible to the aforementioned

[93] See Figure 1-1 and Figure 1-2 for rates.

penalization? To answer this question one must first determine the level of scrutiny to which each breach of United States Law directly influences the United States economy, as the end-goal of this proposition is to ensure the stability of the United States financial sector and to protect the general welfare of the United States population.

Different breaches of United States Law have varying effects on the United States economy. Take for instance the crime of Insider trading, those who engage in insider trading are only benefitting themselves and, arguably, not directly or heavily influencing the productivity of the United States economy. This should be contrasted to a corporation engaging in accounting fraud. A multinational, multibillion dollar investment bank engaging in accounting fraud has the ability to destabilize the United States economy due to the interconnectedness of the United States financial sector. As such, certain crimes should be exempt from penalization as they do not contain the potential to destabilize the United States economy. Continually, punishing an investment bank for the crimes of an executive or employee seems to be a poor execution of justice, except in circumstances when that malfeasance could have been mitigated by corporation action or awareness. Certain instances of financial malfeasance are, indeed, well-enough addressed, as is, by current United States Law. This proposition is to concern itself with wrongdoing on the part of a firm itself, and not of an individual; for, it is this firm-wide corruption that poses the greatest threat to the United States economy.

Below is included a list of common different breaches of United States Financial Law:

1. Insider Trading
2. Embezzlement
3. High-Risk Proprietary Trading
4. Predatory Lending
5. Accounting Fraud
6. Point of Sale Fraud
7. Tax Evasion
8. financial Statement Misrepresentation
9. Stock Market Manipulation
10. Misappropriation of Funds
11. Pump and Dump Schemes
12. Micro-Cap Fraud
13. Ponzi Schemes
14. Mutual Fund Fraud
15. Boiler Rooms
16. Insurance Fraud

3.3 Specific Malfeasance- Potential to Destabilize United States Financial Sector

Below, please find a basis for determination as to how a few sample breaches of United States Law or Regulation should be subject to penalization. Please note that these assertions are made solely upon the ability for a particular act to destabilize the United States financial sector; accordingly, any acts that pose a nominal threat, or no threat whatsoever, to the United States financial sector are met with suggestions to defer to applicable, existing United States Law and regulation.

3.3.1 Insider Trading

Insider trading is grounded in the premise that the United States financial sector is to be fair and even to all speculative or potential investors. This proposition will focus less on the effect of insider trading as its ability to destabilize the United States economy is minimal. Accordingly, current United States Law, as set forth under 17 C.F.R. §240.10b5-1, is sufficient to recognize any threat flowing therefrom. This proposition should not, and does not, apply to cases involving insider trading; as, to punish a bank for the greed of an executive, is an unfair administration of justice. If the government was to penalize the firm, in its entirety, for the malfeasances of a director, the stock price of said firm may be moved variably as to affect the United States consumer unjustly, which is not the goal of this proposition.

3.3.2 Embezzlement

Under 18 U.S.C. § 656, Embezzlement is defined as the following:

Whoever, being an officer, director, agent or employee of, or connected in any capacity with any Federal Reserve bank, member bank, depository institution holding company, national bank, insured bank, branch or agency of a foreign bank, or organization operating under section 25 or section 25(a) of the Federal Reserve Act, or a receiver of a national bank, insured bank, branch, agency, or organization or any agent or employee of the receiver, or a Federal Reserve Agent, or an agent or employee of a Federal Reserve Agent or of the Board of Governors of the Federal Reserve System, embezzles, abstracts, purloins or willfully misapplies any of the moneys, funds or credits of such bank, branch, agency, or organization or holding company or any moneys, funds, assets or securities intrusted to the custody or care of such bank, branch, agency, or organization, or holding company or to the custody or care of any such agent, officer, director, employee or receiver, shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both; but if the amount embezzled, abstracted, purloined or misapplied does not exceed $1,000, he shall be fined under this title or imprisoned not more than one year, or both.

Accordingly, embezzlement poses a moderate risk to the United States financial sector. However, like insider trading, embezzlement poses a threat only to a certain firm, and not necessarily to the United States population at large. For purposes of penalization, embezzlement is handled sufficiently by ramifications outlined in 18 U.S.C... § 656. Like insider trading, embezzlement is not a firm-wide corruption that should be subject to this proposed penalization.

3.3.3 High-Risk Proprietary Trading

Section 619 of the Dodd-Frank Act amends the Bank Holding Company Act of 1956[94] and thus constitutes the new-age prohibition on proprietary trading. Proprietary trading, as defined by Investopedia[95], as an act "When a firm trades for direct gain instead of commission dollars. Essentially, the firm has decided to profit from the market rather than from commissions from processing trades." Proprietary trading poses an insurmountable risk to the United States financial sector. Proprietary trading allows an investment bank to essentially compete with their own customers for profit-generation. During the 2007/2008 Crisis, by late 2008, Wall Street firms had announced a staggering loss of ~$230 Billon, all a direct result of risky proprietary trading.[96]

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[94] 12 U.S.C. § 1841

[95] "Proprietary Trading Definition | Investopedia." *Investopedia*. 25 Nov. 2003. Web. 21 Feb. 2015. <http://www.investopedia.com/terms/p/proprietarytrading.asp>.

[96] Knoczal, Michael. *Will It Work? How Will We Know?* Roosevelt Institute: Project on Global Finance: 29-30. Roosevelt Institute. Web. 1 Mar. 2015.

During the 2007/2008 Financial Crisis, proprietary trading greatly aided to the downfall of the United States economy. [97]During 2008 United States taxpayers were forced to bail-out investment firms to cover the losses accumulated from this high-risk trading. By exposing the firm's money, at large, to risk associated with proprietary trading, investor and customer money is put at risk as well. If the bank experiences unprecedented losses, then the value of investments that that bank offers is logically staged to decline drastically.

It is for those aforementioned reasons, that proprietary trading poses a substantial threat to the United States economy and should, resultantly, be subject to penalization at the full effective level as noted below.

3.3.4 Predatory Lending

During the 2007/2008 Financial Crisis, predatory lending was, arguably, the biggest factor in creating the housing bubble that would eventually collapse the economy. In 2008, the Financial Crisis impacted the working man the most. With foreclosures on the rise, an estimated 81.2% increase from the year before, average citizens lost their homes, savings and certainty in the United States Government to protect their best interests (Armour). One of the hardest hit states, Nevada, saw a total foreclosure rate of about 7.3% which was an increase from the previous year of a staggering 125.7% (Armour). All these foreclosures rippled throughout the U.S housing market and made it nigh impossible for the banks securing the loans to collect upon the principle amount loaned, yet alone the interest.

Predatory lending gave investment banks the ability to collect ridiculously inflated interest rates[98] with generally no risk associated with the same in the event of default[99]. Investment banks

[97] *Ibid.*
[98] Due to the poor credit ratings of those seeking loans.
[99] Due to Credit Default Swaps covering the collaterized debt obligations that these loans fell into.

offered loans to those they knew would not be able to pay. First, banks would scan the applicant's credit ratings and assess and applicable interest rate based on their score. Second, these banks would accept the applicant regardless of their financial standing; sometimes requiring little to no proof of income. Third, these banks would give the loan to the now approved applicants and collect the drastically inflated interest payments until such a point in time when the borrower defaulted, and the bank then collected its CDS payout. These subprime mortgages were the backbone of the Financial Crisis.

The problem with this practice is obviously inherent. The general populous of the United States is ignorant of different forms of lending and the complexities of the financial world; they lack the ability to wade through convoluted financial statements and determine the best course of action thereafter. Accordingly, the populous relies on the advice and guidance of one whom they trust knows the financial markets, most notably, their lenders. However, during the 2007/2008 Financial Crisis, lenders were, in essence, misinforming their clients as to their ability to repay.

15 U.S.C. § 1639c provides that:

> In accordance with regulations prescribed by the Board, no creditor may make a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on the verified and documented information that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan, according to its terms, and all applicable taxes, insurance including mortgage guarantee insurance, and assessments.

Accordingly, as set forth by the codified statute above, a bank must have verified attestation as to the consumer's financial ability before consummating a loan. If they fail to do so, the

consumer can claim that the loan was predatory in nature and the consumer may pose this breach as a defense in any foreclosure proceeding[100].

Predatory lending, on a mass scale has the ability to destabilize the United States economy, as demonstrated by the 2007/2008 Financial Crisis. Accordingly, firms engaging in predatory lending or subprime mortgage scandals should be subject to penalization at the full effective level, as noted below.

3.3.5 Accounting Fraud

Accounting Fraud is one of the cornerstones of corporate fraud. By inflating one's books, there exists a possibility to artificially inflate a corporation's stock prices until such a point that said fraud is unraveled, the stock prices plummet and investor's lose out on their initial investments. Accounting fraud is the use of manipulative or deception records such as, overstatement of accounts, debt concealment, etc.

Most notably is the case of Enron, a global energy conglomerate that defrauded millions of consumers, investors, and employees. Because of Enron's fraud, the stock market plummeted, especially the energy and natural gas industries. "The ability of financial markets to revalue stocks based on financial statements and other related information has received much attention in the financial literature. Because firms commonly possess asymmetric information, investors may rely on information about one firm as indirect signals for the valuation of others."[101] The financial malfeasance of Enron's accounting fraud spread through the United States economy.

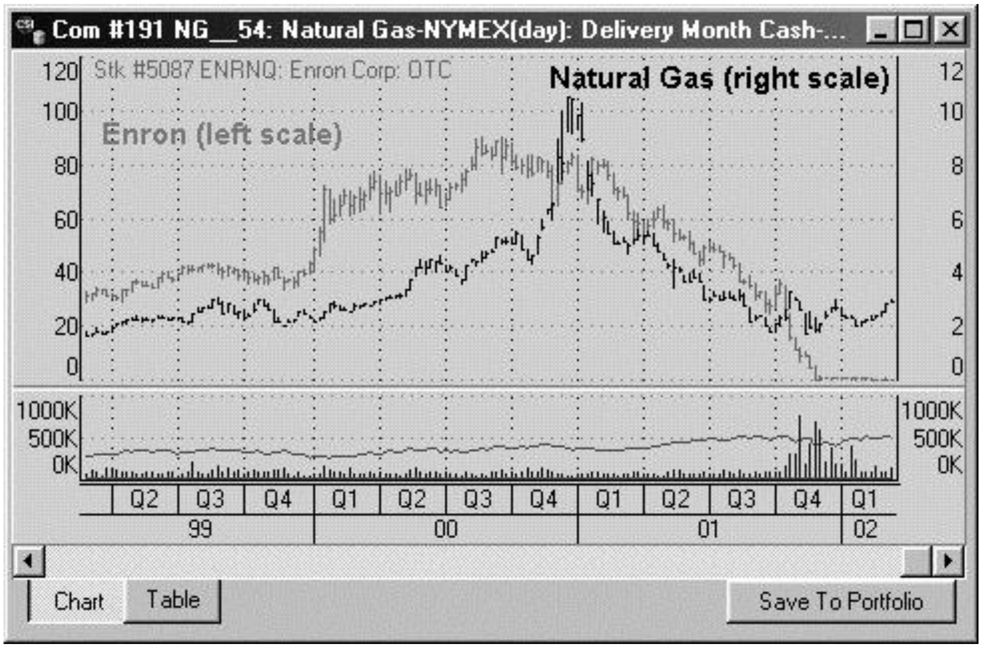
[100] 15 U.S.C. 1639c(k)(1)
[101] Khigbe, Aigbe, Jeff Madura, and Anna D. Martin. *Accounting Contagion: The Case of Enron*. Journal of Economics and Finance29.3 (2005): 187-202. Web. 1 Mar. 2015.

On November 8th, 2001, in a Securities and Exchange Commission release, Enron noted account reporting issues in the sum of $1.2 Billon[102]. Enron used a type of accounting which actively took into account the value of future transactions, adjusted for inflation, commodity pricing, etc. This deceptive form of accounting allowed Enron to artificially inflate its profits whilst keeping Wall St. unaware.

As noted by the Enron Scandal, Accounting Fraud, on a corporate level, has the ability to greatly destabilize the economy, and perhaps the World. In 2000, even the price of natural gas was inflicted by the malfeasance of Enron. The table below shows the price of Enron stock and the relative price of Natural Gas throughout a range from 1999 to the first quarter of 2002. One can undoubtedly observe that the fall of Enron caused the price of energy to peak.[103] Accordingly, Accounting Fraud has an undeniable influence on the United States economy at large. Resultantly, accounting fraud should be subject to penalization at the full rate, as noted below.

[102] *See* http://www.sec.gov/Archives/edgar/data/1024401/000095012901503835/h91831e8-k.txt.

[103] Pelletier, Bob. "April 2002 - Page 1. *Does OPEC Really Control the Price of Oil?* Commodity Services, Inc., Apr. 2002. Web. 01 Mar. 2015.



3.3.6 Test to Determine Systemic Risk.

In an effort to combat systemic risk associated with specific acts of financial malfeasance, it is entirely necessary to create a test in which a judicial officer or regulator could ascertain the system risk associated with a particular act. This test would include:

1. The ability by which a particular act has the ability to destabilize the United States economy or the United States financial sector.
2. The gross interconnectedness of the institution in question.
    a. The number of policies outstanding to other bank or non-bank financial institutions
    b. The scope of these investments.
3. The gross amount of polices outstanding to consumers.
4. The gross amount of customer money deposited into the particular institution.
    a. Including customer deposits in subsidiary institutions.

After a good faith reasonable determination that, in consideration of the factors above, a particular activity has the possibility to destabilize the United States economy, then the regulator or judicial officer in question should initiate a penalization action, as described more-thoroughly below.

3.4 Attempts to Avoid Penalization

Corporations will undoubtedly attempt to avoid penalization by restricting the way in which their respective agencies operate. This is why it is important to create ways in which a company will be subject to penalization at a full rate, regardless of any attempts to reorganize their stock structure.

3.4.1 Stock-Repurchase Agreements

This penalization method would not adequately work should corporations attempt to sell off stock before a penalization vote or preceding. Accordingly, should a corporation attempt to buy back stock, in mass amounts, and then agree to resell that stock, following penalization, a company must be held liable for the stock that remains in the hands of the institution. This is why any open stock repurchase agreements should be taken into account in any assessment of a penalty. Should a company open a stock repurchase agreement within any time, not to exceed four, preceding a settlement, court action or vote by departmental heads as described more thoroughly under section 3.6.1 herein, then those shares subject to repurchase are to be taken into account in the total aggregate amount of shares outstanding for means of penalization.

3.4.2 Reverse Stock Splits

Corporations would undoubtedly attempt to avoid penalization by restructuring their number of share outstanding. One way in which a corporation could go about lowering this number is through a reverse stock split. By dividing the amount of one's share outstanding, a company can attempt to fit itself into a lower penalization bracket, and thereby, avoid penalization. It would be important to take this factor into account such that a company, following a reverse stock-split would be subject to penalization for the amount of shares outstanding *before* said split. That is why corporations subject to penalization by settlement, court action or vote of departmental heads, as described more thoroughly under section 3.6.1 herein, should be subject to penalization on shares outstanding to include all reverse stock splits taken within the preceding four months. If the penalization is initiated by court action, the four month period should take into account the preceding four months *before* the initiation of the action.[104]

3.4.3 Mergers and Acquisitions

Another way in which a corporation could potentially attempt to dilute its stock is by merging or being acquired by another business, and by doing so, attempt to restructure its stock so that it is either no longer subject to penalization or subject to penalization at a lower rate. If a company that is on the brink of penalization attempts to sell itself to another corporation or attempts to merge with another corporation for dilution purposes, then the newly formed corporation is the one that should be subject to penalization. Should a corporation attempt to sell itself to another corporation then the company that is acquiring the corporation should be subject to a penalty for the shares that the purchased company had outstanding *before* the acquisition. This would ensure that the parent company is assessed a charge only at a rate that is proportional to the

[104] Note this is the four months before the action is begun, not four months before the action is concluded. If no verdict is rendered against the corporation, then no penalty is assessed.

amount of stock it acquired. Since the company being sold is the company that committed the malfeasance, the company acquiring the other should be subject to penalty only to an extent at the rate of penalization for the purchased company as if the acquisition or merger had never happened.

When tallying increasing penalties, the merging or acquiring corporation will be assessed a penalty, albeit at a lower rate consistent with the penalization of the original purchased company, and the count of infractions, for future penalization purposes, will be scaled as if the acquiring company had received the penalty itself. This will be in addition to any other penalties the acquiring company received before the acquisition. If two companies merge, then the tally of penalties will be the summation of penalties each company received prior to merging.

3.5 Recommendation for Congressional Delegation of Rulemaking Authority.

Should this program become obsolete in its ability to assess penalization due to new and emerging law and types of stock restructuring, then Congress should take it upon itself to delegate a rulemaking authority for purposes of creating regulations for the assessment of penalties. Notwithstanding any of delegation of authority by United States code, this rulemaking authority shall have the ability to propose new rules such that corporations attempting to evade penalization are met with penalization at a true and justified rate.

3.6. Penalization

3.6.1 Initiation of Penalization- When.

With this program, penalties will be assessed at the authority of a United States Administrative Judge. Dependent upon the type of malfeasance involved, each United States administrative agency will have the ability to offer the penalization in their respective regulatory fields. For instance, the SEC will have the right to bring about a penalty in a case involving

securities fraud, the Federal Trade Commission will have the right to access a penalty for business to business fraud and fraudulent transactions at a point of sale. This penalization will initiate at one of three times: at the onset of any settlement with the United States Government as to an open investigation, administrative case, or inquiry; with a ruling by a United States Administrative Judge in regards to an open case; at any time, by option of the department heads of at least three-fifths of the following agencies: The United States Securities Exchange Commission, The United States Dept. of The Treasury, The Federal Trade Commission, The Chair of the Board of Governors of the Federal Reserve Board, The Consumer Financial Protection Bureau and The Financial Stability Oversight Council.

The first would be assessed at the reaching of any settlement with the United States Government in regards to an open financial misconduct case. This penalty will be charged in addition to any other settlement as the respective administrative agency may deem necessary. This penalization cannot be grounds for discussion as to prorating the amount of the settlement itself. This penalty is in addition to, not in conjunction with, any final settlement reached. The United States Government, may not take into account, the penalty in regards to any settlement discussions. This provision would ensure that the penalty itself, doesn't interfere with any settlement amount that may be reached.

The second method of assessing a penalty would occur at the decision or ruling of a United States Administrative Judge. In any action in which the United States Government shall prevail, the penalty shall be charged and be deemed due and payable, regardless of the amount determined by verdict. Like the method of settlement, the United States Administrative Judge may not take into account, this penalty, in assessing a verdict. The Administrative Judge is to continue with his decision as if this program had never been established. The penalty is to be guaranteed and definite,

should the United States prevail. This penalty would not be subject to the discretion or modification of the United States Administrative Judge. Only in cases in which the verdict is announced null and void, or reversed, by a court of higher jurisdiction, should the penalty charged be refunded.

The third method of assessing a penalty lies with the power and discretion of the heads of various regulatory agencies. By a convening of the various department heads and putting the issue of penalization to a vote, a penalty will be charged so long as four-fifths of the department heads vote yes to penalization. The departmental heads of the United States Securities Exchange Commission, The United States Dept. of The Treasury, The Federal Trade Commission, The Chair of the Board of Governors of the Federal Reserve Board, The Consumer Financial Protection Bureau and The Financial Stability Oversight Council, and those agencies only, shall have the right to vote.

Please note that any of these three methods pertain only to the infractions as noted in section 3.3 of this chapter. Any attempt to penalize infractions notwithstanding section 3.3 will be grounds for a dismissal of all charges, inquiries, etc., by the United States government and will result in a forfeiture of all penalties unless deemed worthy for penalization by the United States Supreme Court. The United States Supreme Court will have the sole jurisdiction to assess a penalty notwithstanding any parts of section 3.3. This is in an effort to avoid unfounded penalization and to ensure that each infraction is penalized solely on a determination that that original infraction caused, or had the ability to cause, a potential destabilization of the United States economy.

3.6.2 Payment, Recording and Disbursement of Penalization Income

In accordance with the initiatives set forth herein, a company would, under this program, be penalized if their conduct is found by any of the three methods for penalization, to constitute a grossly substantial risk to the United States economy.

Should a penalty be assessed at the time of settlement of any open investigation, the penalty should be deemed due and payable at the same time the settlement monies are transferred. This means that if the United States Government demands settlement payment on August 1st, so too, must the penalty be paid on August 1st. Any penalty assed under this method could be included with the total amount for settlement to a respective agency. Say for example, Company A owed a settlement to the SEC, the SEC would then be charged with the collection, recording, and disbursement of said funds to the appropriate agencies as noted in the following section. The records for which shall be sent to both the Government Accountability Office and the Dept. of the Treasury for accurate record-keeping compliance.

Second, any action in which a court decision is reached, in any court having competent jurisdiction, will be deemed due and payable at any time not greater than 30 days following a decision or verdict. Any penalization recorded in this manner shall be paid into the registry of the court following said action. The clerk of that particular court shall be charged with the collection and recording of said penalty. Any funds collected in this particular manner, will then be sent to the United States Dept. of the Treasury for recording and disbursement. Separately, the clerk must also provide records of any transactions regarding this penalty to the Government Accountability Office.

Should a penalty be assessed following a reasonable determination by 80% of the above referenced departmental heads then the order demanding penalization shall include a time by which penalties are subject to payment. The penalty shall be deemed due and payable to the

regulatory agency that initially began the penalization vote or process. For instance, if the Federal Trade Commission opened and presented an inquiry into penalization of Company A, then the FTC will be the agency to receive payment for the penalty. The respective agency will then be charged with the collection, recording and disbursement of those funds as noted by the following section. This agency must then send all records regarding the assessment, collection, and disbursement of these funds to the Government Accountability Office and the Dept. of the Treasury for accurate record-keeping compliance.

3.6.3 Breakdown of Penalization Profits.

This penalty-based disincentives program has the ability to aid in the regulation of investment banks, and to promote the general prosperity of the United States populous. Following the successful penalization, the agency issuing the penalty is eligible to receive a payout for its fees and costs associated with bringing about the penalization, not to exceed 10%. The remainder of the penalty is scaled according to the following scheme:

Breakdown for Penalization Profits:

United States Securities and Exchange Commission	20%
United States Commodities and Futures Trading Commission	20%
Distribution to State Securities Agencies	40%
United States Dept. of Education	20%

In an effort to establish a more sufficient and definite government regulatory framework, the greatest allocation of profits will go to the regulatory agencies for the securities industry, with the remainder being distributed to the United States Dept. of Education. The money afforded to

the Dept. of Education could then, in turn, be used to develop financial awareness programs for youth. These programs would aid in combatting fraud and financial malfeasance by alerting youth as to indicators of these potential activities.

Each agency receiving a payout from any action rewarding penalization must confirm receipt of funds with the Government Accountability Office and the Dept. of the Treasury. This is to ensure that no funds are misappropriated and are checked twice to ensure compliance.

3.7 Notice to Shareholders and Customers

Upon the successful penalization of a corporation, the corporation shall, at the next annual shareholders meeting, make said penalization known to its shareholders. The corporation may also distribute literature regarding the penalization before the shareholders meeting to alert investors. Additionally, the corporation must then also make the penalization known to customers. It shall be sufficient to put customers on notice by use of electronic means such as a web posting or email blast. Failure to comply with this section will result in an action taken against the corporation by the regulator or judge assessing the penalty.

3.8 Example of Penalization

To put this entire proposition into perspective, take for example a large accounting corporation (Corporation A). Corporation A, being a large multinational accounting firm has 5,000,000 of Class A Stock of itself with another 4,500,000 in the hands of public and private investors. The shares outstanding for Corporation A totals 9,500,000. The firm has been harshly scrutinized over the past few months for deceptive auditing practices including: overstatement of client accounts, fraud, misstatements to government officials and false reporting. Jointly, an administrative judge for the Securities Exchange commission demands assessment of a penalty.

Taking into account the 9,500,000 shares outstanding and the fact that this infraction is the first case in which a penalty was demanded by a United States Administrative Judge, the firm will be charged a rate of $.0020 per share outstanding. This amounts for a total penalization of $19,000.

Let us further assume that Corporation B is a subsidiary company under the ownership of Corporation A. Corporation A, as Corporations B's owner, owns 15,000,000 shares of Corporation B. Corporation B has 29,000,000 shares outstanding. Accordingly, Corporation A will be charged for the shares it owns in Corporation B at a rate that is equal to the amount of penalization should Corporation B had been penalized outright. Accordingly this rate is $.0022. Thus Corporation A will be charged $.0022 for each of its 15,000,000 shares in Corporation B. this amounts to a penalization of $33,000.

Combined with the penalization of its proprietary shares, and the penalization of its affiliate ownership. The total charge for the accounting fraud of Corporation A is $52,000.

Assuming the costs for bringing about the penalty are nominal, this charge will then be distributed as follows:

United States Securities and Exchange Commission	$10,400.00
United States Commodities and Futures Trading Commission	$10,400.00[105]
Distribution to State Securities Agencies	$20,800.00
United States Dept. of Education	$10,400.00

[105] Distributed to each of the 50 United States in an amount directly proportional to that respective state's share of the United States Population.

3.9 Penalization Cure Period

After a company has received a penalty, any further infractions only stand to increase any penalty following subsequently. In order to promote commerce, it is important to create a way in which companies can make remedy for their transgressions and thus not be subject to higher penalization in the further. Accordingly, after twenty years following the assessment of a penalty a company may have their penalty tally wiped clean. Essentially this means that if a penalty was assessed in 2015, the corporation could petition the United States Government for release of the counter in 2035. Any release made thereby would essentially ensure that, should the company be further subject to penalization, that the rate for their penalization would be assessed as if they had never be subject to penalization before.

This release would ensure that corporations do not feel the burden associated with the management of those that came before them.

Figure 1-1: Penalization Rate for Publically Traded Corporations

# of Issued Shares	Number of Infractions	Dollar Amount Penalization Per Issued Share
1-50,000	1	$ 0.0010
	2	$ 0.0020
	3	$ 0.0040
50,000-150,000	1	$ 0.0012
	2	$ 0.0024
	3	$ 0.0048
150,001-500,000	1	$ 0.0015
	2	$ 0.0030
	3	$ 0.0060
500,001- 3,000,000	1	$ 0.0018
	2	$ 0.0036
	3	$ 0.0072
3,000,001-10,000,000	1	$ 0.0020

	2	$ 0.0040
	3	$ 0.0080
10,000,001-50,000,000	1	$ 0.0022
	2	$ 0.0044
	3	$ 0.0088
50,000,001-300,000,000	1	$ 0.0024
	2	$ 0.0048
	3	$ 0.0096
300,000,001-1,000,000,000	1	$ 0.0026
	2	$ 0.0052
	3	$ 0.0104
1,000,000,001-15,000,000,000	1	$ 0.0028
	2	$ 0.0056
	3	$ 0.0112
15,000,000,001-35,000,000,000	1	$ 0.0030
	2	$ 0.0060

	3	$ 0.0120
35,000,000,001-50,000,000,000	1	$ 0.0032
	2	$ 0.0064
	3	$ 0.0128
50,000,000,001-	1	$ 0.0034
	2	$ 0.0068
	3	$ 0.0136

Figure 1.2- Penalization Rate for Non-Public Corporations

Non-Public Corporations

Number of Infractions	Percentage of Fiscal income deducted per penalization
1	0.25%
2	0.50%
3	1%
4	2%
5	4%
6	8%
7	16%
8	32%
9	64%
10	128%

Figure 1-3- New CFPB Disclosure Statement v. HUD-1 Closing Disclosure[106]

OLD HUD-1 DISCLOSURE STATEMENT

TRUTH IN LENDING DISCLOSURE STATEMENT

(THIS IS NEITHER A CONTRACT NOR A COMMITMENT TO LEND)

LENDER: Ficus Bank

☐ Preliminary ☒ Final

DATE 09/14/2012

BORROWERS: John A. and Mary B.

LOAN CASE NO. 123456789

ADDRESS 123 Anywhere Street
CITY / STATE / ZIP Anytown, ST 12345
PROPERTY 456 Somewhere Avenue, Anytown, ST 12345

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid after you have made all payments as scheduled.
4.441%	$123,997.58	$156,964.47	$292,420.88

INTEREST RATE AND PAYMENT SUMMARY:

	First 78 Payments	Last 282 Payments
Principal and Interest	$761.78	$761.78
Mortgage Insurance	82.35	-------
Property Tax and Insurance (Escrow)	206.13	206.13
Total Monthly Payment	$1,050.26	$967.91

Truth in Lending Disclosure Statement

106 Consumer Financial Protection Bureau. *Disclosure Comparison.* Washington, D.C. http://www.consumerfinance.gov/knowbeforeyouowe/compare/

LOAN #:123456789

There is no guarantee that you will be able to refinance to lower your rate and payments.
DEMAND FEATURE: [X] This loan does not have a Demand Feature. [ ] This loan has a Demand Feature as follows:
VARIABLE RATE FEATURE: [ ] This loan has a Variable Rate Feature. Variable Rate Disclosures have been provided to you earlier.
SECURITY: You are giving a security interest in the property located at: 456 Somewhere Avenue, Anytown, ST 12345
ASSUMPTION: Someone buying this property [X] cannot assume the remaining balance due under original mortgage terms [ ] may assume, subject to lender's conditions, the remaining balance due under original mortgage terms.
PROPERTY INSURANCE: Hazard insurance, including flood insurance if the property is in a Special Flood Hazard Area, is required as a condition of this loan. You may obtain the insurance coverage from any insurance company acceptable to the lender. Complete details concerning insurance requirements will be provided prior to loan closing.
LATE CHARGES: If your payment is more than 15 days late, you will be charged a late charge of 5.000% of the overdue payment.
PREPAYMENT: If you pay off your loan early, you [ ] may [X] will not be entitled to a refund of part of the finance charge. [ ] may [X] will not have to pay a penalty.
See your contract documents for any additional information regarding non-payment, default, required repayment in full before scheduled date, and prepayment refunds and penalties.

"e" means an estimate

I/We hereby acknowledge reading and receiving a complete copy of this disclosure.

BORROWER John A. ____________________ DATE

BORROWER Mary B. ____________________ DATE

BORROWER ____________________ DATE

BORROWER ____________________ DATE

OMB Approval No. 2502-0265

A. Settlement Statement (HUD-1)

B. Type of Loan

1. ◯ FHA 2. ◯ RHS 3. ◯ Conv. Unins. 4. ◯ VA 5. ◯ Conv. Ins.	6. File Number:	7. Loan Number:	8. Mortgage Insurance Case Number:

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name & Address of Borrower:	E. Name & Address of Seller:	F. Name & Address of Lender:
G. Property Location:	H. Settlement Agent:	I. Settlement Date:
	Place of Settlement:	

J. Summary of Borrower's Transaction

100. Gross Amount Due from Borrower	
101. Contract sales price	
102. Personal property	
103. Settlement charges to borrower (line 1400)	
104.	
105.	
Adjustment for items paid by seller in advance	
106. City/town taxes to	
107. County taxes to	
108. Assessments to	
109.	
110.	
111.	
112.	
120. Gross Amount Due from Borrower	
200. Amount Paid by or in Behalf of Borrower	
201. Deposit or earnest money	
202. Principal amount of new loan(s)	
203. Existing loan(s) taken subject to	
204.	
205.	
206.	
207.	
208.	
209.	
Adjustments for items unpaid by seller	
210. City/town taxes to	
211. County taxes to	
212. Assessments to	
213.	
214.	
215.	
216.	
217.	
218.	
219.	
220. Total Paid by/for Borrower	
300. Cash at Settlement from/to Borrower	
301. Gross amount due from borrower (line 120)	
302. Less amounts paid by/for borrower (line 220)	( )
303. Cash ◯ **From** ◯ **To Borrower**	

K. Summary of Seller's Transaction

400. Gross Amount Due to Seller	
401. Contract sales price	
402. Personal property	
403.	
404.	
405.	
Adjustment for items paid by seller in advance	
406. City/town taxes to	
407. County taxes to	
408. Assessments to	
409.	
410.	
411.	
412.	
420. Gross Amount Due to Seller	
500. Reductions In Amount Due to seller	
501. Excess deposit (see instructions)	
502. Settlement charges to seller (line 1400)	
503. Existing loan(s) taken subject to	
504. Payoff of first mortgage loan	
505. Payoff of second mortgage loan	
506.	
507.	
508.	
509.	
Adjustments for items unpaid by seller	
510. City/town taxes to	
511. County taxes to	
512. Assessments to	
513.	
514.	
515.	
516.	
517.	
518.	
519.	
520. Total Reduction Amount Due Seller	
600. Cash at Settlement to/from Seller	
601. Gross amount due to seller (line 420)	
602. Less reductions in amounts due seller (line 520)	( )
603. Cash ◯ **To** ◯ **From Seller**	

The Public Reporting Burden for this collection of information is estimated at 35 minutes per response for collecting, reviewing, and reporting the data. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. No confidentiality is assured; this disclosure is mandatory. This is designed to provide the parties to a RESPA covered transaction with information during the settlement process.

L. Settlement Charges

700. Total Real Estate Broker Fees	Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
Division of commission (line 700) as follows :		
701. $ to		
702. $ to		
703. Commission paid at settlement		
704.		
800. Items Payable in Connection with Loan		
801. Our origination charge $ (from GFE #1)		
802. Your credit or charge (points) for the specific interest rate chosen $ (from GFE #2)		
803. Your adjusted origination charges (from GFE #A)		
804. Appraisal fee to (from GFE #3)		
805. Credit report to (from GFE #3)		
806. Tax service to (from GFE #3)		
807. Flood certification to (from GFE #3)		
808.		
809.		
810.		
811.		
900. Items Required by Lender to be Paid in Advance		
901. Daily interest charges from to @ $ /day (from GFE #10)		
902. Mortgage insurance premium for months to (from GFE #3)		
903. Homeowner's insurance for years to (from GFE #11)		
904.		
1000. Reserves Deposited with Lender		
1001. Initial deposit for your escrow account (from GFE #9)		
1002. Homeowner's insurance months @ $ per month $		
1003. Mortgage insurance months @ $ per month $		
1004. Property Taxes months @ $ per month $		
1005. months @ $ per month $		
1006. months @ $ per month $		
1007. Aggregate Adjustment -$		
1100. Title Charges		
1101. Title services and lender's title insurance (from GFE #4)		
1102. Settlement or closing fee $		
1103. Owner's title insurance (from GFE #5)		
1104. Lender's title insurance $		
1105. Lender's title policy limit $		
1106. Owner's title policy limit $		
1107. Agent's portion of the total title insurance premium to $		
1108. Underwriter's portion of the total title insurance premium to $		
1109.		
1110.		
1111.		
1200. Government Recording and Transfer Charges		
1201. Government recording charges (from GFE #7)		
1202. Deed $ Mortgage $ Release $		
1203. Transfer taxes (from GFE #8)		
1204. City/County tax/stamps Deed $ Mortgage $		
1205. State tax/stamps Deed $ Mortgage $		
1206.		
1300. Additional Settlement Charges		
1301. Required services that you can shop for (from GFE #6)		
1302. $		
1303. $		
1304.		
1305.		
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)		

Comparison of Good Faith Estimate (GFE) and HUD-1 Charrges		Good Faith Estimate	HUD-1
Charges That Cannot Increase	**HUD-1 Line Number**		
Our origination charge	# 801		
Your credit or charge (points) for the specific interest rate chosen	# 802		
Your adjusted origination charges	# 803		
Transfer taxes	# 1203		

Charges That In Total Cannot Increase More Than 10%		Good Faith Estimate	HUD-1
Government recording charges	# 1201		
	#		
	#		
	#		
	#		
	#		
	#		
	#		
	Total		
	Increase between GFE and HUD-1 Charges	$ or	%

Charges That Can Change		Good Faith Estimate	HUD-1
Initial deposit for your escrow account	# 1001		
Daily interest charges $ /day	# 901		
Homeowner's insurance	# 903		
	#		
	#		
	#		

Loan Terms

Your initial loan amount is	$
Your loan term is	years
Your initial interest rate is	%
Your initial monthly amount owed for principal, interest, and any mortgage insurance is	$ includes ☐ Principal ☐ Interest ☐ Mortgage Insurance
Can your interest rate rise?	○ No ○ Yes, it can rise to a maximum of %. The first change will be on and can change again every after . Every change date, your interest rate can increase or decrease by %. Over the life of the loan, your interest rate is guaranteed to never be **lower** than % or **higher** than %.
Even if you make payments on time, can your loan balance rise?	○ No ○ Yes, it can rise to a maximum of $
Even if you make payments on time, can your monthly amount owed for principal, interest, and mortgage insurance rise?	○ No ○ Yes, the first increase can be on and the monthly amount owed can rise to $. The maximum it can ever rise to is $.
Does your loan have a prepayment penalty?	○ No ○ Yes, your maximum prepayment penalty is $
Does your loan have a balloon payment?	○ No ○ Yes, you have a balloon payment of $ due in years on .
Total monthly amount owed including escrow account payments	○ You do not have a monthly escrow payment for items, such as property taxes and homeowner's insurance. You must pay these items directly yourself. ○ You have an additional monthly escrow payment of $ that results in a total initial monthly amount owed of $. This includes principal, interest, any mortagage insurance and any items checked below: ☐ Property taxes ☐ Homeowner's insurance ☐ Flood insurance ☐ ☐ ☐

Note: If you have any questions about the Settlement Charges and Loan Terms listed on this form, please contact your lender.

NEW CFPB DISCLOSURE STATEMENT

Closing Disclosure

This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.

Closing Information

Date Issued	4/15/2013
Closing Date	4/15/2013
Disbursement Date	4/15/2013
Settlement Agent	Epsilon Title Co.
File #	12-3456
Property	456 Somewhere Ave Anytown, ST 12345
Sale Price	$180,000

Transaction Information

Borrower	Michael Jones and Mary Stone 123 Anywhere Street Anytown, ST 12345
Seller	Steve Cole and Amy Doe 321 Somewhere Drive Anytown, ST 12345
Lender	Ficus Bank

Loan Information

Loan Term	30 years
Purpose	Purchase
Product	Fixed Rate
Loan Type	☒ Conventional ☐ FHA ☐ VA ☐ ___________
Loan ID #	123456789
MIC #	000654321

Loan Terms

Loan Terms		Can this amount increase after closing?
Loan Amount	$162,000	**NO**
Interest Rate	3.875%	**NO**
Monthly Principal & Interest *See Projected Payments below for your Estimated Total Monthly Payment*	$761.78	**NO**
		Does the loan have these features?
Prepayment Penalty		**YES** • **As high as $3,240** if you pay off the loan during the first 2 years
Balloon Payment		**NO**

Projected Payments

Payment Calculation	**Years 1-7**	**Years 8-30**
Principal & Interest	$761.78	$761.78
Mortgage Insurance	+ 82.35	+ —
Estimated Escrow *Amount can increase over time*	+ 206.13	+ 206.13
Estimated Total Monthly Payment	$1,050.26	$967.91

Estimated Taxes, Insurance & Assessments *Amount can increase over time* *See page 4 for details*	$356.13 a month	**This estimate includes**	**In escrow?**
		☒ Property Taxes	**YES**
		☒ Homeowner's Insurance	**YES**
		☒ Other: Homeowner's Association Dues	**NO**
		See Escrow Account on page 4 for details. You must pay for other property costs separately.	

Costs at Closing

Closing Costs	$9,712.10	Includes $4,694.05 in Loan Costs + $5,018.05 in Other Costs – $0 in Lender Credits. *See page 2 for details.*
Cash to Close	$14,147.26	Includes Closing Costs. *See Calculating Cash to Close on page 3 for details.*

Closing Cost Details

Loan Costs	Borrower-Paid At Closing	Borrower-Paid Before Closing	Seller-Paid At Closing	Seller-Paid Before Closing	Paid by Others
A. Origination Charges	**$1,802.00**				
01 0.25 % of Loan Amount (Points)	$405.00				
02 Application Fee	$300.00				
03 Underwriting Fee	$1,097.00				
04					
05					
06					
07					
08					
B. Services Borrower Did Not Shop For	**$236.55**				
01 Appraisal Fee to John Smith Appraisers Inc.					$405.00
02 Credit Report Fee to Information Inc.		$29.80			
03 Flood Determination Fee to Info Co.	$20.00				
04 Flood Monitoring Fee to Info Co.	$31.75				
05 Tax Monitoring Fee to Info Co.	$75.00				
06 Tax Status Research Fee to Info Co.	$80.00				
07					
08					
09					
10					
C. Services Borrower Did Shop For	**$2,655.50**				
01 Pest Inspection Fee to Pests Co.	$120.50				
02 Survey Fee to Surveys Co.	$85.00				
03 Title – Insurance Binder to Epsilon Title Co.	$650.00				
04 Title – Lender's Title Insurance to Epsilon Title Co.	$500.00				
05 Title – Settlement Agent Fee to Epsilon Title Co.	$500.00				
06 Title – Title Search to Epsilon Title Co.	$800.00				
07					
08					
D. TOTAL LOAN COSTS (Borrower-Paid)	**$4,694.05**				
Loan Costs Subtotals (A + B + C)	$4,664.25	$29.80			

Other Costs	Borrower-Paid At Closing	Borrower-Paid Before Closing	Seller-Paid At Closing	Seller-Paid Before Closing	Paid by Others
E. Taxes and Other Government Fees	**$85.00**				
01 Recording Fees Deed: $40.00 Mortgage: $45.00	$85.00				
02 Transfer Tax to Any State			$950.00		
F. Prepaids	**$2,120.80**				
01 Homeowner's Insurance Premium (12 mo.) to Insurance Co.	$1,209.96				
02 Mortgage Insurance Premium (mo.)					
03 Prepaid Interest ($17.44 per day from 4/15/13 to 5/1/13)	$279.04				
04 Property Taxes (6 mo.) to Any County USA	$631.80				
05					
G. Initial Escrow Payment at Closing	**$412.25**				
01 Homeowner's Insurance $100.83 per month for 2 mo.	$201.66				
02 Mortgage Insurance per month for mo.					
03 Property Taxes $105.30 per month for 2 mo.	$210.60				
04					
05					
06					
07					
08 Aggregate Adjustment	– 0.01				
H. Other	**$2,400.00**				
01 HOA Capital Contribution to HOA Acre Inc.	$500.00				
02 HOA Processing Fee to HOA Acre Inc.	$150.00				
03 Home Inspection Fee to Engineers Inc.	$750.00			$750.00	
04 Home Warranty Fee to XYZ Warranty Inc.			$450.00		
05 Real Estate Commission to Alpha Real Estate Broker			$5,700.00		
06 Real Estate Commission to Omega Real Estate Broker			$5,700.00		
07 Title – Owner's Title Insurance (optional) to Epsilon Title Co.	$1,000.00				
08					
I. TOTAL OTHER COSTS (Borrower-Paid)	**$5,018.05**				
Other Costs Subtotals (E + F + G + H)	$5,018.05				

J. TOTAL CLOSING COSTS (Borrower-Paid)	**$9,712.10**				
Closing Costs Subtotals (D + I)	$9,682.30	$29.80	$12,800.00	$750.00	$405.00
Lender Credits					

Calculating Cash to Close

Use this table to see what has changed from your Loan Estimate.

	Loan Estimate	Final	Did this change?	
Total Closing Costs (J)	$8,054.00	$9,712.10	**YES**	• See **Total Loan Costs (D)** and **Total Other Costs (I)**
Closing Costs Paid Before Closing	$0	– $29.80	**YES**	• You paid these Closing Costs **before closing**
Closing Costs Financed (Paid from your Loan Amount)	$0	$0	**NO**	
Down Payment/Funds from Borrower	$18,000.00	$18,000.00	**NO**	
Deposit	– $10,000.00	– $10,000.00	**NO**	
Funds for Borrower	$0	$0	**NO**	
Seller Credits	$0	– $2,500.00	**YES**	• See Seller Credits in **Section L**
Adjustments and Other Credits	$0	– $1,035.04	**YES**	• See details in **Sections K and L**
Cash to Close	$16,054.00	$14,147.26		

Summaries of Transactions

Use this table to see a summary of your transaction.

BORROWER'S TRANSACTION

K. Due from Borrower at Closing					**$189,762.30**
01	Sale Price of Property				$180,000.00
02	Sale Price of Any Personal Property Included in Sale				
03	Closing Costs Paid at Closing (J)				$9,682.30
04					
Adjustments					
05					
06					
07					
Adjustments for Items Paid by Seller in Advance					
08	City/Town Taxes		to		
09	County Taxes		to		
10	Assessments		to		
11	HOA Dues	4/15/13	to	4/30/13	$80.00
12					
13					
14					
15					
L. Paid Already by or on Behalf of Borrower at Closing					**$175,615.04**
01	Deposit				$10,000.00
02	Loan Amount				$162,000.00
03	Existing Loan(s) Assumed or Taken Subject to				
04					
05	Seller Credit				$2,500.00
Other Credits					
06	Rebate from Epsilon Title Co.				$750.00
07					
Adjustments					
08					
09					
10					
11					
Adjustments for Items Unpaid by Seller					
12	City/Town Taxes	1/1/13	to	4/14/13	$365.04
13	County Taxes		to		
14	Assessments		to		
15					
16					
17					
CALCULATION					
Total Due from Borrower at Closing (K)					$189,762.30
Total Paid Already by or on Behalf of Borrower at Closing (L)					– $175,615.04
Cash to Close ☒ From ☐ To Borrower					**$14,147.26**

SELLER'S TRANSACTION

M. Due to Seller at Closing					**$180,080.00**
01	Sale Price of Property				$180,000.00
02	Sale Price of Any Personal Property Included in Sale				
03					
04					
05					
06					
07					
08					
Adjustments for Items Paid by Seller in Advance					
09	City/Town Taxes		to		
10	County Taxes		to		
11	Assessments		to		
12	HOA Dues	4/15/13	to	4/30/13	$80.00
13					
14					
15					
16					
N. Due from Seller at Closing					**$115,665.04**
01	Excess Deposit				
02	Closing Costs Paid at Closing (J)				$12,800.00
03	Existing Loan(s) Assumed or Taken Subject to				
04	Payoff of First Mortgage Loan				$100,000.00
05	Payoff of Second Mortgage Loan				
06					
07					
08	Seller Credit				$2,500.00
09					
10					
11					
12					
13					
Adjustments for Items Unpaid by Seller					
14	City/Town Taxes	1/1/13	to	4/14/13	$365.04
15	County Taxes		to		
16	Assessments		to		
17					
18					
19					
CALCULATION					
Total Due to Seller at Closing (M)					$180,080.00
Total Due from Seller at Closing (N)					– $115,665.04
Cash ☐ From ☒ To Seller					**$64,414.96**

Additional Information About This Loan

Loan Disclosures

Assumption
If you sell or transfer this property to another person, your lender
☐ will allow, under certain conditions, this person to assume this loan on the original terms.
☒ will not allow assumption of this loan on the original terms.

Demand Feature
Your loan
☐ has a demand feature, which permits your lender to require early repayment of the loan. You should review your note for details.
☒ does not have a demand feature.

Late Payment
If your payment is more than *15* days late, your lender will charge a late fee of *5% of the monthly principal and interest payment.*

Negative Amortization (Increase in Loan Amount)
Under your loan terms, you
☐ are scheduled to make monthly payments that do not pay all of the interest due that month. As a result, your loan amount will increase (negatively amortize), and your loan amount will likely become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☐ may have monthly payments that do not pay all of the interest due that month. If you do, your loan amount will increase (negatively amortize), and, as a result, your loan amount may become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☒ do not have a negative amortization feature.

Partial Payments
Your lender
☒ may accept payments that are less than the full amount due (partial payments) and apply them to your loan.
☐ may hold them in a separate account until you pay the rest of the payment, and then apply the full payment to your loan.
☐ does not accept any partial payments.
If this loan is sold, your new lender may have a different policy.

Security Interest
You are granting a security interest in
456 Somewhere Ave., Anytown, ST 12345

You may lose this property if you do not make your payments or satisfy other obligations for this loan.

Escrow Account
For now, your loan
☒ will have an escrow account (also called an "impound" or "trust" account) to pay the property costs listed below. Without an escrow account, you would pay them directly, possibly in one or two large payments a year. Your lender may be liable for penalties and interest for failing to make a payment.

Escrow		
Escrowed Property Costs over Year 1	$2,473.56	Estimated total amount over year 1 for your escrowed property costs: *Homeowner's Insurance* *Property Taxes*
Non-Escrowed Property Costs over Year 1	$1,800.00	Estimated total amount over year 1 for your non-escrowed property costs: *Homeowner's Association Dues* You may have other property costs.
Initial Escrow Payment	$412.25	A cushion for the escrow account you pay at closing. See Section G on page 2.
Monthly Escrow Payment	$206.13	The amount included in your total monthly payment.

☐ will not have an escrow account because ☐ you declined it ☐ your lender does not offer one. You must directly pay your property costs, such as taxes and homeowner's insurance. Contact your lender to ask if your loan can have an escrow account.

No Escrow		
Estimated Property Costs over Year 1		Estimated total amount over year 1. You must pay these costs directly, possibly in one or two large payments a year.
Escrow Waiver Fee		

In the future,
Your property costs may change and, as a result, your escrow payment may change. You may be able to cancel your escrow account, but if you do, you must pay your property costs directly. If you fail to pay your property taxes, your state or local government may (1) impose fines and penalties or (2) place a tax lien on this property. If you fail to pay any of your property costs, your lender may (1) add the amounts to your loan balance, (2) add an escrow account to your loan, or (3) require you to pay for property insurance that the lender buys on your behalf, which likely would cost more and provide fewer benefits than what you could buy on your own.

Loan Calculations

Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	$285,803.36
Finance Charge. The dollar amount the loan will cost you.	$118,830.27
Amount Financed. The loan amount available after paying your upfront finance charge.	$162,000.00
Annual Percentage Rate (APR). Your costs over the loan term expressed as a rate. This is not your interest rate.	4.174%
Total Interest Percentage (TIP). The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	69.46%

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Questions? If you have questions about the loan terms or costs on this form, use the contact information below. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at **www.consumerfinance.gov/mortgage-closing**

Other Disclosures

Appraisal
If the property was appraised for your loan, your lender is required to give you a copy at no additional cost at least 3 days before closing. If you have not yet received it, please contact your lender at the information listed below.

Contract Details
See your note and security instrument for information about
- what happens if you fail to make your payments,
- what is a default on the loan,
- situations in which your lender can require early repayment of the loan, and
- the rules for making payments before they are due.

Liability after Foreclosure
If your lender forecloses on this property and the foreclosure does not cover the amount of unpaid balance on this loan,

☒ state law may protect you from liability for the unpaid balance. If you refinance or take on any additional debt on this property, you may lose this protection and have to pay any debt remaining even after foreclosure. You may want to consult a lawyer for more information.

☐ state law does not protect you from liability for the unpaid balance.

Refinance
Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.

Tax Deductions
If you borrow more than this property is worth, the interest on the loan amount above this property's fair market value is not deductible from your federal income taxes. You should consult a tax advisor for more information.

Contact Information

	Lender	Mortgage Broker	Real Estate Broker (B)	Real Estate Broker (S)	Settlement Agent
Name	Ficus Bank		Omega Real Estate Broker Inc.	Alpha Real Estate Broker Co.	Epsilon Title Co.
Address	4321 Random Blvd. Somecity, ST 12340		789 Local Lane Sometown, ST 12345	987 Suburb Ct. Someplace, ST 12340	123 Commerce Pl. Somecity, ST 12344
NMLS ID					
ST License ID			Z765416	Z61456	Z61616
Contact	Joe Smith		Samuel Green	Joseph Cain	Sarah Arnold
Contact NMLS ID	12345				
Contact ST License ID			P16415	P51461	PT1234
Email	joesmith@ ficusbank.com		sam@omegare.biz	joe@alphare.biz	sarah@ epsilontitle.com
Phone	123-456-7890		123-555-1717	321-555-7171	987-555-4321

Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.

Applicant Signature Date

Co-Applicant Signature Date

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