

Calendar No. 588

105<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R. 10**

[Report No. 105-336]

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## **A BILL**

To enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, and other financial service providers, and for other purposes.

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SEPTEMBER 18, 1998

Reported with an amendment

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2<sup>D</sup> SESSION**H. R. 10****[Report No. 105-336]**

## IN THE SENATE OF THE UNITED STATES

MAY 14, 1998

Received; read twice and referred to the Committee on Banking, Housing, and  
Urban Affairs

SEPTEMBER 18, 1998

Reported by Mr. D'AMATO, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

**AN ACT**

To enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, and other financial service providers, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; PURPOSES; TABLE OF CON-**  
4 **TENTS.**

5 (a) ~~SHORT TITLE.—~~This Act may be cited as the  
6 ~~“Financial Services Act of 1998”.~~

1       (b) PURPOSES.—The purposes of this Act are as fol-  
2 lows:

3           (1) To enhance competition in the financial  
4 services industry, in order to foster innovation and  
5 efficiency.

6           (2) To ensure the continued safety and sound-  
7 ness of depository institutions.

8           (3) To provide necessary and appropriate pro-  
9 tections for investors and ensure fair and honest  
10 markets in the delivery of financial services.

11          (4) To provide for appropriate functional regu-  
12 lation of insurance activities.

13          (5) To reduce and, to the maximum extent  
14 practicable, to eliminate the legal barriers preventing  
15 affiliation among depository institutions, securities  
16 firms, insurance companies, and other financial serv-  
17 ice providers and to provide a prudential framework  
18 for achieving that result.

19          (6) To enhance the availability of financial serv-  
20 ices to citizens of all economic circumstances and in  
21 all geographic areas.

22          (7) To enhance the competitiveness of United  
23 States financial service providers internationally.

24          (8) To ensure compliance by depository institu-  
25 tions with the provisions of the Community Rein-

1 vestment Act of 1977 and enhance the ability of de-  
 2 pository institutions to meet the capital and credit  
 3 needs of all citizens and communities, including un-  
 4 derserved communities and populations.

5 (c) TABLE OF CONTENTS.—The table of contents for  
 6 this Act is as follows:

Sec. 1. Short title; purposes; table of contents.

TITLE I—FACILITATING AFFILIATION AMONG SECURITIES FIRMS,  
 INSURANCE COMPANIES, AND DEPOSITORY INSTITUTIONS

Subtitle A—Affiliations

Sec. 101. Glass-Steagall Act reformed.

Sec. 102. Activity restrictions applicable to bank holding companies which are  
 not financial holding companies.

Sec. 103. Financial holding companies.

Sec. 104. Certain State laws preempted.

Sec. 105. Mutual bank holding companies authorized.

Sec. 106. Prohibition on deposit production offices.

Sec. 107. Clarification of branch closure requirements.

Sec. 108. Amendments relating to limited purpose banks.

Sec. 109. Responsiveness to community needs for financial services.

Sec. 110. Reports on ongoing FTC study of consumer privacy issues.

Sec. 110A. GAO study of economic impact on community banks and other  
 small financial institutions.

Subtitle B—Streamlining Supervision of Financial Holding Companies

Sec. 111. Streamlining financial holding company supervision.

Sec. 112. Elimination of application requirement for financial holding compa-  
 nies.

Sec. 113. Authority of State insurance regulator and Securities and Exchange  
 Commission.

Sec. 114. Prudential safeguards.

Sec. 115. Examination of investment companies.

Sec. 116. Limitation on rulemaking, prudential, supervisory, and enforcement  
 authority of the Board.

Sec. 117. Interagency consultation.

Subtitle C—Subsidiaries of National Banks

Sec. 121. Permissible activities for subsidiaries of national banks.

Sec. 122. Misrepresentations regarding depository institution liability for obli-  
 gations of affiliates.

Sec. 123. Repeal of stock loan limit in Federal Reserve Act.

Subtitle D—Wholesale Financial Holding Companies; Wholesale Financial  
 Institutions

## CHAPTER 1—WHOLESALE FINANCIAL HOLDING COMPANIES

- Sec. 131. Wholesale financial holding companies established.
- Sec. 132. Authorization to release reports.
- Sec. 133. Conforming amendments.

## CHAPTER 2—WHOLESALE FINANCIAL INSTITUTIONS

- Sec. 136. Wholesale financial institutions.

## Subtitle E—Preservation of FTC Authority

- Sec. 141. Amendment to the Bank Holding Company Act of 1956 to modify notification and post-approval waiting period for section 3 transactions.
- Sec. 142. Interagency data sharing.
- Sec. 143. Clarification of status of subsidiaries and affiliates.
- Sec. 144. Annual GAO report.

## Subtitle F—Applying the Principles of National Treatment and Equality of Competitive Opportunity to Foreign Banks and Foreign Financial Institutions

- Sec. 151. Applying the principles of national treatment and equality of competitive opportunity to foreign banks that are financial holding companies.
- Sec. 152. Applying the principles of national treatment and equality of competitive opportunity to foreign banks and foreign financial institutions that are wholesale financial institutions.

## Subtitle G—Federal Home Loan Bank System

- Sec. 161. Federal home loan banks—
- Sec. 162. Membership and collateral.
- Sec. 163. The Office of Finance.
- Sec. 164. Management of banks.
- Sec. 165. Advances to nonmember borrowers.
- Sec. 166. Powers and duties of banks.
- Sec. 167. Mergers and consolidations of Federal home loan banks.
- Sec. 168. Technical amendments.
- Sec. 169. Definitions.
- Sec. 170. Resolution funding corporation
- Sec. 171. Capital structure of the Federal home loan banks.
- Sec. 172. Investments.
- Sec. 173. Federal Housing Finance Board.

## Subtitle H—Direct Activities of Banks

- Sec. 181. Authority of national banks to underwrite certain municipal bonds

## Subtitle I—Deposit Insurance Funds

- Sec. 186. Study of safety and soundness of funds.

## Subtitle J—Effective Date of Title

- Sec. 191. Effective date.

## TITLE II—FUNCTIONAL REGULATION

Subtitle A—Brokers and Dealers

- Sec. 201. Definition of broker.
- Sec. 202. Definition of dealer.
- Sec. 203. Registration for sales of private securities offerings.
- Sec. 204. Sales practices and complaint procedures.
- Sec. 205. Information sharing.
- Sec. 206. Definition and treatment of banking products.
- Sec. 207. Derivative instrument and qualified investor defined.
- Sec. 208. Government securities defined.
- Sec. 209. Effective date.
- Sec. 210. Rule of construction.

Subtitle B—Bank Investment Company Activities

- Sec. 211. Custody of investment company assets by affiliated bank.
- Sec. 212. Lending to an affiliated investment company.
- Sec. 213. Independent directors.
- Sec. 214. Additional SEC disclosure authority.
- Sec. 215. Definition of broker under the Investment Company Act of 1940.
- Sec. 216. Definition of dealer under the Investment Company Act of 1940.
- Sec. 217. Removal of the exclusion from the definition of investment adviser for banks that advise investment companies.
- Sec. 218. Definition of broker under the Investment Advisers Act of 1940.
- Sec. 219. Definition of dealer under the Investment Advisers Act of 1940.
- Sec. 220. Interagency consultation.
- Sec. 221. Treatment of bank common trust funds.
- Sec. 222. Investment advisers prohibited from having controlling interest in registered investment company.
- Sec. 223. Conforming change in definition.
- Sec. 224. Conforming amendment.
- Sec. 225. Effective date.

Subtitle C—Securities and Exchange Commission Supervision of Investment Bank Holding Companies

- Sec. 231. Supervision of investment bank holding companies by the Securities and Exchange Commission.

Subtitle D—Study

- Sec. 241. Study of methods to inform investors and consumers of uninsured products.
- Sec. 242. Study of limitation on fees associated with acquiring financial products.

Subtitle E—Disclosure of Customer Costs of Acquiring Financial Products

- Sec. 251. Improved and consistent disclosure.

TITLE III—INSURANCE

Subtitle A—State Regulation of Insurance

- Sec. 301. State regulation of the business of insurance.
- Sec. 302. Mandatory insurance licensing requirements.
- Sec. 303. Functional regulation of insurance.
- Sec. 304. Insurance underwriting in national banks.

- Sec. 305. New bank agency activities only through acquisition of existing licensed agents.
- Sec. 306. Title insurance activities of national banks and their affiliates.
- Sec. 307. Expedited and equalized dispute resolution for financial regulators.
- Sec. 308. Consumer protection regulations.
- Sec. 309. Certain State affiliation laws preempted for insurance companies and affiliates.

#### Subtitle B—Redomestication of Mutual Insurers

- Sec. 311. General application.
- Sec. 312. Redomestication of mutual insurers.
- Sec. 313. Effect on State laws restricting redomestication.
- Sec. 314. Other provisions.
- Sec. 315. Definitions.
- Sec. 316. Effective date.

#### Subtitle C—National Association of Registered Agents and Brokers

- Sec. 321. State flexibility in multistate licensing reforms.
- Sec. 322. National Association of Registered Agents and Brokers.
- Sec. 323. Purpose.
- Sec. 324. Relationship to the Federal Government.
- Sec. 325. Membership.
- Sec. 326. Board of directors.
- Sec. 327. Officers.
- Sec. 328. Bylaws, rules, and disciplinary action.
- Sec. 329. Assessments.
- Sec. 330. Functions of the NAIC.
- Sec. 331. Liability of the Association and the directors, officers, and employees of the Association.
- Sec. 332. Elimination of NAIC oversight.
- Sec. 333. Relationship to State law.
- Sec. 334. Coordination with other regulators.
- Sec. 335. Judicial review.
- Sec. 336. Definitions.

#### TITLE IV—UNITARY SAVINGS AND LOAN HOLDING COMPANIES

- Sec. 401. Termination of expanded powers for new unitary S&L holding companies.
- Sec. 402. Retention of “Federal” in name of converted Federal savings association.

1 **TITLE I—FACILITATING AFFILI-**  
2 **ATION AMONG SECURITIES**  
3 **FIRMS, INSURANCE COMPA-**  
4 **NIES, AND DEPOSITORY IN-**  
5 **STITUTIONS**

6 **Subtitle A—Affiliations**

7 **SEC. 101. GLASS-STEAGALL ACT REFORMED.**

8 (a) ~~SECTION 20 REPEALED.~~—Section 20 (12 U.S.C.  
9 377) of the Banking Act of 1933 (commonly referred to  
10 as the “Glass-Steagall Act”) is repealed.

11 (b) ~~SECTION 32 REPEALED.~~—Section 32 (12 U.S.C.  
12 78) of the Banking Act of 1933 is repealed.

13 **SEC. 102. ACTIVITY RESTRICTIONS APPLICABLE TO BANK**  
14 **HOLDING COMPANIES WHICH ARE NOT FI-**  
15 **NANCIAL HOLDING COMPANIES.**

16 (a) ~~IN GENERAL.~~—Section 4(e)(8) of the Bank Hold-  
17 ing Company Act of 1956 (12 U.S.C. 1843(e)(8)) is  
18 amended to read as follows:

19 “(8) shares of any company the activities of  
20 which had been determined by the Board by regula-  
21 tion under this paragraph as of the day before the  
22 date of the enactment of the Financial Services Act  
23 of 1998, to be so closely related to banking as to be  
24 a proper incident thereto (subject to such terms and

1 conditions contained in such regulation, unless modi-  
2 fied by the Board);”.

3 (b) CONFORMING CHANGES TO OTHER STATUTES.—

4 (1) AMENDMENT TO THE BANK HOLDING COM-  
5 PANY ACT AMENDMENTS OF 1970.—Section 105 of  
6 the Bank Holding Company Act Amendments of  
7 1970 (12 U.S.C. 1850) is amended by striking “, to  
8 engage directly or indirectly in a nonbanking activity  
9 pursuant to section 4 of such Act,”.

10 (2) AMENDMENT TO THE BANK SERVICE COM-  
11 PANY ACT.—Section 4(f) of the Bank Service Com-  
12 pany Act (12 U.S.C. 1864(f)) is amended by strik-  
13 ing the period and adding at the end the following:  
14 “as of the day before the date of enactment of the  
15 Financial Services Act of 1998.”.

16 **SEC. 103. FINANCIAL HOLDING COMPANIES.**

17 (a) IN GENERAL.—The Bank Holding Company Act  
18 of 1956 is amended by inserting after section 5 (12 U.S.C.  
19 1844) the following new section:

20 **“SEC. 6. FINANCIAL HOLDING COMPANIES.**

21 **“(a) FINANCIAL HOLDING COMPANY DEFINED.—**  
22 For purposes of this section, the term ‘financial holding  
23 company’ means a bank holding company which meets the  
24 requirements of subsection (b).”

1       “(b) ELIGIBILITY REQUIREMENTS FOR FINANCIAL  
2 HOLDING COMPANIES.—

3               “(1) IN GENERAL.—No bank holding company  
4 may engage in any activity or directly or indirectly  
5 acquire or retain shares of any company under this  
6 section unless the bank holding company meets the  
7 following requirements:

8                       “(A) All of the subsidiary depository insti-  
9 tutions of the bank holding company are well  
10 capitalized.

11                      “(B) All of the subsidiary depository insti-  
12 tutions of the bank holding company are well  
13 managed.

14                      “(C) All of the subsidiary depository insti-  
15 tutions of the bank holding company have  
16 achieved a rating of ‘satisfactory record of  
17 meeting community credit needs’, or better, at  
18 the most recent examination of each such insti-  
19 tution under the Community Reinvestment Act  
20 of 1977.

21                      “(D) All of the subsidiary insured deposi-  
22 tory institutions of the bank holding company  
23 (other than any such depository institution  
24 which does not, in the ordinary course of the  
25 business of the depository institution, offer con-

1 consumer transaction accounts to the general pub-  
2 lic) offer and maintain low-cost basic banking  
3 accounts.

4 “(E) The company has filed with the  
5 Board a declaration that the company elects to  
6 be a financial holding company and certifying  
7 that the company meets the requirements of  
8 subparagraphs (A) through (D).

9 “(2) FOREIGN BANKS AND COMPANIES.—For  
10 purposes of paragraph (1), the Board shall establish  
11 and apply comparable capital standards to a foreign  
12 bank that operates a branch or agency or owns or  
13 controls a bank or commercial lending company in  
14 the United States, and any company that owns or  
15 controls such foreign bank, giving due regard to the  
16 principle of national treatment and equality of com-  
17 petitive opportunity.

18 “(3) LIMITED EXCLUSIONS FROM COMMUNITY  
19 NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DE-  
20 POSITORY INSTITUTIONS.—

21 “(A) IN GENERAL.—If the requirements of  
22 subparagraph (B) are met, any depository insti-  
23 tution acquired by a bank holding company  
24 during the 24-month period preceding the sub-  
25 mission of a declaration under paragraph

1           ~~(1)(E)~~ and any depository institution acquired  
2           after the submission of such declaration may be  
3           excluded for purposes of paragraph ~~(1)(C)~~ until  
4           the later of—

5                   “(i) the end of the 24-month period  
6                   beginning on the date the acquisition of  
7                   the depository institution by such company  
8                   is consummated; or

9                   “(ii) the date of completion of the  
10                  first examination of such depository insti-  
11                  tution under the Community Reinvestment  
12                  Act of 1977 which is conducted after the  
13                  date of the acquisition of the depository in-  
14                  stitution.

15           ~~“(B) REQUIREMENTS.—~~The requirements  
16           of this subparagraph are met with respect to  
17           any bank holding company referred to in sub-  
18           paragraph ~~(A)~~ if—

19                   “(i) the bank holding company has  
20                   submitted an affirmative plan to the ap-  
21                   propriate Federal banking agency to take  
22                   such action as may be necessary in order  
23                   for such institution to achieve a rating of  
24                   ‘satisfactory record of meeting community  
25                   credit needs’, or better, at the next exam-

1 ination of the institution under the Com-  
2 munity Reinvestment Act of 1977; and

3 “(ii) the plan has been approved by  
4 such agency.

5 “(e) ENGAGING IN ACTIVITIES FINANCIAL IN NA-  
6 TURE.—

7 “(1) IN GENERAL.—Notwithstanding section  
8 4(a), a financial holding company and a wholesale fi-  
9 nancial holding company may engage in any activity,  
10 and acquire and retain the shares of any company  
11 engaged in any activity, which the Board has deter-  
12 mined (by regulation or order) to be financial in na-  
13 ture or incidental to such financial activities.

14 “(2) FACTORS TO BE CONSIDERED.—In deter-  
15 mining whether an activity is financial in nature or  
16 incidental to financial activities, the Board shall take  
17 into account—

18 “(A) the purposes of this Act and the Fi-  
19 nancial Services Act of 1998;

20 “(B) changes or reasonably expected  
21 changes in the marketplace in which bank hold-  
22 ing companies compete;

23 “(C) changes or reasonably expected  
24 changes in the technology for delivering finan-  
25 cial services; and

1           “(D) whether such activity is necessary or  
2 appropriate to allow a bank holding company  
3 and the affiliates of a bank holding company  
4 to—

5           “(i) compete effectively with any com-  
6 pany seeking to provide financial services  
7 in the United States;

8           “(ii) use any available or emerging  
9 technological means, including any applica-  
10 tion necessary to protect the security or ef-  
11 ficacy of systems for the transmission of  
12 data or financial transactions, in providing  
13 financial services; and

14           “(iii) offer customers any available or  
15 emerging technological means for using fi-  
16 nancial services.

17           “(3) ACTIVITIES THAT ARE FINANCIAL IN NA-  
18 TURE.—The following activities shall be considered  
19 to be financial in nature:

20           “(A) Lending, exchanging, transferring, in-  
21 vesting for others, or safeguarding money or se-  
22 curities.

23           “(B) Insuring, guaranteeing, or indemnify-  
24 ing against loss, harm, damage, illness, disabil-  
25 ity, or death, or providing and issuing annu-

1           ities, and acting as principal, agent, or broker  
2           for purposes of the foregoing.

3           “(C) Providing financial, investment, or  
4           economic advisory services, including advising  
5           an investment company (as defined in section 3  
6           of the Investment Company Act of 1940).

7           “(D) Issuing or selling instruments rep-  
8           resenting interests in pools of assets permissible  
9           for a bank to hold directly.

10          “(E) Underwriting, dealing in, or making  
11          a market in securities.

12          “(F) Engaging in any activity that the  
13          Board has determined, by order or regulation  
14          that is in effect on the date of enactment of the  
15          Financial Services Act of 1998, to be so closely  
16          related to banking or managing or controlling  
17          banks as to be a proper incident thereto (sub-  
18          ject to the same terms and conditions contained  
19          in such order or regulation, unless modified by  
20          the Board).

21          “(G) Engaging, in the United States, in  
22          any activity that—

23                  “(i) a bank holding company may en-  
24                  gage in outside the United States; and

1           “(ii) the Board has determined, under  
2           regulations issued pursuant to section  
3           4(e)(13) of this Act (as in effect on the  
4           day before the date of enactment of the Fi-  
5           nancial Services Act of 1998) to be usual  
6           in connection with the transaction of bank-  
7           ing or other financial operations abroad.

8           “(H) Directly or indirectly acquiring or  
9           controlling, whether as principal, on behalf of 1  
10          or more entities (including entities, other than  
11          a depository institution or subsidiary of a de-  
12          pository institution, that the bank holding com-  
13          pany controls) or otherwise, shares, assets, or  
14          ownership interests (including without limita-  
15          tion debt or equity securities, partnership inter-  
16          ests, trust certificates or other instruments rep-  
17          resenting ownership) of a company or other en-  
18          tity, whether or not constituting control of such  
19          company or entity, engaged in any activity not  
20          authorized pursuant to this section if—

21               “(i) the shares, assets, or ownership  
22               interests are not acquired or held by a de-  
23               pository institution or subsidiary of a de-  
24               pository institution;

1           “(ii) such shares, assets, or ownership  
2 interests are acquired and held by a securi-  
3 ties affiliate or an affiliate thereof as part  
4 of a bona fide underwriting or merchant  
5 banking activity, including investment ac-  
6 tivities engaged in for the purpose of ap-  
7 preciation and ultimate resale or disposi-  
8 tion of the investment;

9           “(iii) such shares, assets, or owner-  
10 ship interests, are held only for such a pe-  
11 riod of time as will permit the sale or dis-  
12 position thereof on a reasonable basis con-  
13 sistent with the nature of the activities de-  
14 scribed in clause (ii); and

15           “(iv) during the period such shares,  
16 assets, or ownership interests are held, the  
17 bank holding company does not actively  
18 participate in the day to day management  
19 or operation of such company or entity, ex-  
20 cept insofar as necessary to achieve the ob-  
21 jectives of clause (ii).

22           “(I) Directly or indirectly acquiring or con-  
23 trolling, whether as principal, on behalf of 1 or  
24 more entities (including entities, other than a  
25 depository institution or subsidiary of a deposi-

1 tory institution, that the bank holding company  
2 controls) or otherwise, shares, assets, or owner-  
3 ship interests (including without limitation debt  
4 or equity securities, partnership interests, trust  
5 certificates or other instruments representing  
6 ownership) of a company or other entity, wheth-  
7 er or not constituting control of such company  
8 or entity, engaged in any activity not authorized  
9 pursuant to this section if—

10 “(i) the shares, assets, or ownership  
11 interests are not acquired or held by a de-  
12 pository institution or a subsidiary of a de-  
13 pository institution;

14 “(ii) such shares, assets, or ownership  
15 interests are acquired and held by an in-  
16 surance company that is predominantly en-  
17 gaged in underwriting life, accident and  
18 health, or property and casualty insurance  
19 (other than credit-related insurance);

20 “(iii) such shares, assets, or owner-  
21 ship interests represent an investment  
22 made in the ordinary course of business of  
23 such insurance company in accordance  
24 with relevant State law governing such in-  
25 vestments; and

1           ~~“(iv) during the period such shares,~~  
2           ~~assets, or ownership interests are held, the~~  
3           ~~bank holding company does not directly or~~  
4           ~~indirectly participate in the day-to-day~~  
5           ~~management or operation of the company~~  
6           ~~or entity except insofar as necessary to~~  
7           ~~achieve the objectives of clauses (ii) and~~  
8           ~~(iii).~~

9           ~~“(4) ACTIONS REQUIRED.—The Board shall, by~~  
10          ~~regulation or order, define, consistent with the pur-~~  
11          ~~poses of this Act, the following activities as, and the~~  
12          ~~extent to which such activities are, financial in na-~~  
13          ~~ture or incidental to activities which are financial in~~  
14          ~~nature:~~

15                 ~~“(A) Lending, exchanging, transferring, in-~~  
16                 ~~vesting for others, or safeguarding financial as-~~  
17                 ~~sets other than money or securities.~~

18                 ~~“(B) Providing any device or other instru-~~  
19                 ~~mentality for transferring money or other finan-~~  
20                 ~~cial assets;~~

21                 ~~“(C) Arranging, effecting, or facilitating fi-~~  
22                 ~~nancial transactions for the account of third~~  
23                 ~~parties.~~

24           ~~“(5) POST CONSUMMATION NOTIFICATION.—~~

1           “(A) IN GENERAL.—A financial holding  
2           company and a wholesale financial holding com-  
3           pany that acquires any company, or commences  
4           any activity, pursuant to this subsection shall  
5           provide written notice to the Board describing  
6           the activity commenced or conducted by the  
7           company acquired no later than 30 calendar  
8           days after commencing the activity or con-  
9           summing the acquisition.

10           “(B) APPROVAL NOT REQUIRED FOR CER-  
11           TAIN FINANCIAL ACTIVITIES.—Except as pro-  
12           vided in section 4(j) with regard to the acquisi-  
13           tion of a savings association, a financial holding  
14           company and a wholesale financial holding com-  
15           pany may commence any activity, or acquire  
16           any company, pursuant to paragraph (3) or any  
17           regulation prescribed or order issued under  
18           paragraph (4), without prior approval of the  
19           Board.

20           “(d) PROVISIONS APPLICABLE TO FINANCIAL HOLD-  
21           ING COMPANIES THAT FAIL TO MEET REQUIREMENTS.—

22           “(1) IN GENERAL.—If the Board finds that a  
23           financial holding company is not in compliance with  
24           the requirements of subparagraph (A), (B), (C), or

1       (D) of subsection (b)(1), the Board shall give notice  
2       of such finding to the company.

3           ~~“(2) AGREEMENT TO CORRECT CONDITIONS RE-~~  
4       ~~QUIRED.—~~Within 45 days of receipt by a financial  
5       holding company of a notice given under paragraph  
6       (1) (or such additional period as the Board may per-  
7       mit), the company shall execute an agreement ac-  
8       ceptable to the Board to comply with the require-  
9       ments applicable to a financial holding company.

10          ~~“(3) BOARD MAY IMPOSE LIMITATIONS.—~~Until  
11       the conditions described in a notice to a financial  
12       holding company under paragraph (1) are corrected,  
13       the Board may impose such limitations on the con-  
14       duct or activities of the company or any affiliate of  
15       the company as the Board determines to be appro-  
16       priate under the circumstances.

17          ~~“(4) FAILURE TO CORRECT.—~~If, after receiving  
18       a notice under paragraph (1), a financial holding  
19       company does not—

20           ~~“(A) execute and implement an agreement~~  
21       ~~in accordance with paragraph (2);~~

22           ~~“(B) comply with any limitations imposed~~  
23       ~~under paragraph (3);~~

24           ~~“(C) in the case of a notice of failure to~~  
25       ~~comply with subsection (b)(1)(A), restore each~~

1 depository institution subsidiary to well capital-  
2 ized status before the end of the 180-day period  
3 beginning on the date such notice is received by  
4 the company (or such other period permitted by  
5 the Board); or

6 “(D) in the case of a notice of failure to  
7 comply with subparagraph (B), (C), or (D) of  
8 subsection (b)(1), restore compliance with any  
9 such subparagraph by the date the next exam-  
10 ination of the depository institution subsidiary  
11 is completed or by the end of such other period  
12 as the Board determines to be appropriate;

13 the Board may require such company, under such  
14 terms and conditions as may be imposed by the  
15 Board and subject to such extension of time as may  
16 be granted in the Board’s discretion, to divest con-  
17 trol of any depository institution subsidiary or, at  
18 the election of the financial holding company, in-  
19 stead to cease to engage in any activity conducted by  
20 such company or its subsidiaries pursuant to this  
21 section.

22 “(5) CONSULTATION.—In taking any action  
23 under this subsection, the Board shall consult with  
24 all relevant Federal and State regulatory agencies.

1       “(e) SAFEGUARDS FOR BANK SUBSIDIARIES.—A fi-  
2 nancial holding company shall assure that—

3           “(1) the procedures of the holding company for  
4 identifying and managing financial and operational  
5 risks within the company, and the subsidiaries of  
6 such company; adequately protect the subsidiaries of  
7 such company which are insured depository institu-  
8 tions from such risks;

9           “(2) the holding company has reasonable poli-  
10 cies and procedures to preserve the separate cor-  
11 porate identity and limited liability of such company  
12 and the subsidiaries of such company; for the pro-  
13 tection of the company’s subsidiary insured deposi-  
14 tory institutions; and

15           “(3) the holding company complies with this  
16 section.

17       “(f) AUTHORITY TO RETAIN LIMITED NON-  
18 FINANCIAL ACTIVITIES AND AFFILIATIONS.—

19           “(1) IN GENERAL.—Notwithstanding section  
20 4(a), a company that is not a bank holding company  
21 or a foreign bank (as defined in section 1(b)(7) of  
22 the International Banking Act of 1978) and becomes  
23 a financial holding company after the date of the en-  
24 actment of the Financial Services Act of 1998 may  
25 continue to engage in any activity and retain direct

1 or indirect ownership or control of shares of a com-  
2 pany engaged in any activity if—

3 “(A) the holding company lawfully was en-  
4 gaged in the activity or held the shares of such  
5 company on September 30, 1997;

6 “(B) the holding company is predomi-  
7 nantly engaged in financial activities as defined  
8 in paragraph (2); and

9 “(C) the company engaged in such activity  
10 continues to engage only in the same activities  
11 that such company conducted on September 30,  
12 1997, and other activities permissible under  
13 this Act.

14 “(2) **PREDOMINANTLY FINANCIAL.**—For pur-  
15 poses of this subsection, a company is predominantly  
16 engaged in financial activities if the annual gross  
17 revenues derived by the holding company and all  
18 subsidiaries of the holding company (excluding reve-  
19 nues derived from subsidiary depository institu-  
20 tions), on a consolidated basis, from engaging in ac-  
21 tivities that are financial in nature or are incidental  
22 to activities that are financial in nature under sub-  
23 section (c) represent at least 85 percent of the con-  
24 solidated annual gross revenues of the company.

1           “(3) NO EXPANSION OF GRANDFATHERED COM-  
2           MERCIAL ACTIVITIES THROUGH MERGER OR CON-  
3           SOLIDATION.—A financial holding company that en-  
4           gages in activities or holds shares pursuant to this  
5           subsection, or a subsidiary of such financial holding  
6           company, may not acquire, in any merger, consolida-  
7           tion, or other type of business combination, assets of  
8           any other company which is engaged in any activity  
9           which the Board has not determined to be financial  
10          in nature or incidental to activities that are financial  
11          in nature under subsection (e).

12          “(4) CONTINUING REVENUE LIMITATION ON  
13          GRANDFATHERED COMMERCIAL ACTIVITIES.—Not-  
14          withstanding any other provision of this subsection,  
15          a financial holding company may continue to engage  
16          in activities or hold shares in companies pursuant to  
17          this subsection only to the extent that the aggregate  
18          annual gross revenues derived from all such activi-  
19          ties and all such companies does not exceed 15 per-  
20          cent of the consolidated annual gross revenues of the  
21          financial holding company (excluding revenues de-  
22          rived from subsidiary depository institutions).

23          “(5) CROSS MARKETING RESTRICTIONS APPLI-  
24          CABLE TO COMMERCIAL ACTIVITIES.—A depository

1 institution controlled by a financial holding company  
2 shall not—

3 “(A) offer or market, directly or through  
4 any arrangement, any product or service of a  
5 company whose activities are conducted or  
6 whose shares are owned or controlled by the fi-  
7 nancial holding company pursuant to this sub-  
8 section or subparagraph (H) or (I) of sub-  
9 section (c)(3); or

10 “(B) permit any of its products or services  
11 to be offered or marketed, directly or through  
12 any arrangement, by or through any company  
13 described in subparagraph (A).

14 “(6) TRANSACTIONS WITH NONFINANCIAL AF-  
15 FILIATES.—An insured depository institution con-  
16 trolled by a financial holding company may not en-  
17 gage in a covered transaction (as defined by section  
18 ~~23A(b)(7)~~ of the Federal Reserve Act) with any af-  
19 filiate controlled by the company pursuant to this  
20 subsection or subparagraph (H) or (I) of subsection  
21 (c)(3).

22 “(7) SUNSET OF GRANDFATHER.—A financial  
23 holding company engaged in any activity, or retain-  
24 ing direct or indirect ownership or control of shares  
25 of a company, pursuant to this subsection, shall ter-

1       minate such activity and divest ownership or control  
2       of the shares of such company before the end of the  
3       10-year period beginning on the date of the enact-  
4       ment of the Financial Services Act of 1998. The  
5       Board may, upon application by a financial holding  
6       company, extend such 10-year period by not to ex-  
7       ceed an additional 5 years if such extension would  
8       not be detrimental to the public interest.

9       “(g) DEVELOPING ACTIVITIES.—A financial holding  
10      company and a wholesale financial holding company may  
11      engage directly or indirectly, or acquire shares of any com-  
12      pany engaged, in any activity that the Board has not de-  
13      termined to be financial in nature or incidental to financial  
14      activities under subsection (e) if—

15             “(1) the holding company reasonably concludes  
16             that the activity is financial in nature or incidental  
17             to financial activities;

18             “(2) the gross revenues from all activities con-  
19             ducted under this subsection represent less than 5  
20             percent of the consolidated gross revenues of the  
21             holding company;

22             “(3) the aggregate total assets of all companies  
23             the shares of which are held under this subsection  
24             do not exceed 5 percent of the holding company’s  
25             consolidated total assets;

1           “(4) the total capital invested in activities con-  
2           ducted under this subsection represents less than 5  
3           percent of the consolidated total capital of the hold-  
4           ing company;

5           “(5) the Board has not determined that the ac-  
6           tivity is not financial in nature or incidental to fi-  
7           nancial activities under subsection (c); and

8           “(6) the holding company provides written noti-  
9           fication to the Board describing the activity com-  
10          menced or conducted by the company acquired no  
11          later than 10 business days after commencing the  
12          activity or consummating the acquisition.”.

13 **SEC. 104. CERTAIN STATE LAWS PREEMPTED.**

14          (a) **AFFILIATIONS.**—No State may by statute, regula-  
15          tion, order, interpretation, or otherwise, prevent or signifi-  
16          cantly interfere with the ability of an insured depository  
17          institution or a wholesale financial institution to be affili-  
18          ated with an entity (including an entity engaged in insur-  
19          ance activities) as authorized by this Act or any other pro-  
20          vision of Federal law.

21          (b) **ACTIVITIES.**—

22                 (1) Except as provided in paragraphs (2), (3),  
23                 and (4), no State may by statute, regulation, order,  
24                 interpretation, or otherwise, prevent or significantly  
25                 interfere with the ability of an insured depository in-

1       stitution or a wholesale financial institution to en-  
2       gage, directly or indirectly or in conjunction with an  
3       affiliate, in any activity authorized under this Act or  
4       any other provision of Federal law.

5           (2) In accordance with the decision of the Su-  
6       preme Court of the United States in *Barnett Bank*  
7       of Marion County, N.A. v. Nelson, 116 S.Ct. 1103  
8       (1996), no State may, by statute, regulation, order,  
9       interpretation, or otherwise, prevent or significantly  
10      interfere with the ability of an insured depository in-  
11      stitution or wholesale financial institution to engage,  
12      directly or indirectly, or in conjunction with an affili-  
13      ate, in any insurance sales or solicitation activity,  
14      except that—

15           (A) State statutes and regulations govern-  
16      ing insurance sales and solicitations which are  
17      no more restrictive than provisions in the Illi-  
18      nois “Act Authorizing and Regulating the Sale  
19      of Insurance by Financial Institutions, Public  
20      Act 90-41” (215 ILCS 5/1400-1416), as in ef-  
21      fect on October 1, 1997, shall not be deemed to  
22      prevent or significantly interfere with the ability  
23      of an insured depository institution or wholesale  
24      financial institution to engage, directly or indi-

1 rectly, or in conjunction with an affiliate, in any  
2 insurance sales or solicitation activity; and

3 ~~(B) subparagraph (A) shall not create any~~  
4 ~~inference regarding State statutes and regula-~~  
5 ~~tions governing insurance sales and solicitations~~  
6 ~~other than State statutes and regulations de-~~  
7 ~~scribed in subparagraph (A).~~

8 ~~(3) State statutes, regulations, orders, and in-~~  
9 ~~terpretations or otherwise shall not be preempted~~  
10 ~~under paragraph (1) if they—~~

11 ~~(A) relate to, or are enacted or issued for~~  
12 ~~the purpose of regulating, the business of insur-~~  
13 ~~ance in accordance with the McCarran-Fer-~~  
14 ~~guson Act;~~

15 ~~(B) apply only to entities that are not in-~~  
16 ~~sured depository institutions or wholesale finan-~~  
17 ~~cial institutions but which are engaged in the~~  
18 ~~business of insurance;~~

19 ~~(C) do not relate to, and are not enacted~~  
20 ~~or issued for the purpose of regulating—~~

21 ~~(i) cross-marketing; or~~

22 ~~(ii) activities, including cross-market-~~  
23 ~~ing, which are subject to paragraph (2);~~

24 ~~(D) are applicable to and are applied in~~  
25 ~~the same manner with respect to an affiliate of~~

1 an insured depository institution or a wholesale  
2 financial institution as they are applicable to  
3 and are applied to those entities that are not  
4 affiliated with an insured depository institution  
5 or a wholesale financial institution; and

6 ~~(E)~~ do not prevent or significantly inter-  
7 fere with the ability of an insured depository in-  
8 stitution or wholesale financial institution to en-  
9 gage in activities authorized for such institution  
10 under this Act or any other provision of Federal  
11 law.

12 ~~(4)~~ Paragraphs ~~(1)~~ and ~~(2)~~ shall not be con-  
13 strued as affecting the jurisdiction of the securities  
14 commission (or any agency or office performing like  
15 functions) of any State, under the laws of such  
16 State, to investigate and bring enforcement actions,  
17 consistent with section 18(e) of the Securities Act of  
18 1933, with respect to fraud or deceit or unlawful  
19 conduct by any person, in connection with securities  
20 or securities transactions.

21 **SEC. 105. MUTUAL BANK HOLDING COMPANIES AUTHOR-**  
22 **IZED.**

23 (a) ~~IN GENERAL.~~—Section 3(g)(2) of the Bank Hold-  
24 ing Company Act of 1956 (12 U.S.C. 1842(g)(2)) is  
25 amended to read as follows:



1 “and any bank controlled by an out-of-State bank holding  
 2 company (as defined in section 2(o)(7) of the Bank Hold-  
 3 ing Company Act of 1956)” before the period.

4 **SEC. 108. AMENDMENTS RELATING TO LIMITED PURPOSE**  
 5 **BANKS.**

6 Section 4(f) of the Bank Holding Company Act of  
 7 1956 (12 U.S.C. 1843(f)) is amended—

8 (1) in paragraph (2)(A)(ii)—

9 (A) by striking “and” at the end of sub-  
 10 clause (IX);

11 (B) by inserting “and” after the semicolon  
 12 at the end of subclause (X); and

13 (C) by inserting after subclause (X) the  
 14 following new subclause:

15 “(XI) assets that are derived  
 16 from, or are incidental to, activities in  
 17 which institutions described in section  
 18 2(e)(2)(F) are permitted to engage,”;

19 (2) in paragraph (2), by striking subparagraph  
 20 (B) and inserting the following new subparagraphs:

21 “(B) any bank subsidiary of such company  
 22 engages in any activity in which the bank was  
 23 not lawfully engaged as of March 5, 1987, un-  
 24 less the bank is well managed and well capital-  
 25 ized;

1           “(C) any bank subsidiary of such company  
2 both—

3           “(i) accepts demand deposits or de-  
4 posits that the depositor may withdraw by  
5 check or similar means for payment to  
6 third parties; and

7           “(ii) engages in the business of mak-  
8 ing commercial loans (and, for purposes of  
9 this clause, loans made in the ordinary  
10 course of a credit card operation shall not  
11 be treated as commercial loans); or

12           “(D) after the date of the enactment of the  
13 Competitive Equality Amendments of 1987, any  
14 bank subsidiary of such company permits any  
15 overdraft (including any intraday overdraft), or  
16 incurs any such overdraft in such bank’s ac-  
17 count at a Federal reserve bank, on behalf of  
18 an affiliate, other than an overdraft described  
19 in paragraph (3).”;

20           (3) by striking paragraphs (3) and (4) and in-  
21 serting the following new paragraphs:

22           “(3) PERMISSIBLE OVERDRAFTS DESCRIBED.—  
23 For purposes of paragraph (2)(D), an overdraft is  
24 described in this paragraph if—

1           “(A) such overdraft results from an inad-  
2           vertent computer or accounting error that is be-  
3           yond the control of both the bank and the affili-  
4           ate; or

5           “(B) such overdraft—

6           “(i) is permitted or incurred on behalf  
7           of an affiliate which is monitored by, re-  
8           ports to, and is recognized as a primary  
9           dealer by the Federal Reserve Bank of  
10          New York; and

11          “(ii) is fully secured, as required by  
12          the Board, by bonds, notes, or other obli-  
13          gations which are direct obligations of the  
14          United States or on which the principal  
15          and interest are fully guaranteed by the  
16          United States or by securities and obliga-  
17          tions eligible for settlement on the Federal  
18          Reserve book entry system.

19          “(4) DIVESTITURE IN CASE OF LOSS OF EX-  
20          EMPTION.—If any company described in paragraph  
21          (1) fails to qualify for the exemption provided under  
22          such paragraph by operation of paragraph (2), such  
23          exemption shall cease to apply to such company and  
24          such company shall divest control of each bank it  
25          controls before the end of the 180-day period begin-

1       ning on the date that the company receives notice  
 2       from the Board that the company has failed to con-  
 3       tinue to qualify for such exemption, unless before  
 4       the end of such 180-day period, the company has—

5               “(A) corrected the condition or ceased the  
 6               activity that caused the company to fail to con-  
 7               tinue to qualify for the exemption; and

8               “(B) implemented procedures that are rea-  
 9               sonably adapted to avoid the recurrence of  
 10              such condition or activity.”.

11 **SEC. 109. RESPONSIVENESS TO COMMUNITY NEEDS FOR FI-**  
 12 **NANCIAL SERVICES.**

13       (a) **STUDY.**—The Secretary of the Treasury, in con-  
 14 sultation with the Federal banking agencies (as defined  
 15 in section 3(z) of the Federal Deposit Insurance Act) and  
 16 the Securities and Exchange Commission, shall conduct  
 17 a study of the extent to which adequate services are being  
 18 provided as intended by the Community Reinvestment Act  
 19 of 1977, including services in low- and moderate-income  
 20 neighborhoods and for persons of modest means, as a re-  
 21 sult of the enactment of this Act.

22       (b) **REPORT.**—Before the end of the 2-year period be-  
 23 ginning on the date of the enactment of this Act, the Sec-  
 24 retary of the Treasury, in consultation with the Federal  
 25 banking agencies and the Securities and Exchange Com-

1 mission, shall submit a report to the Congress on the  
2 study conducted pursuant to subsection (a) and shall in-  
3 clude such recommendations as the Secretary determines  
4 to be appropriate for administrative and legislative action  
5 with respect to institutions covered under the Community  
6 Reinvestment Act of 1977.

7 **SEC. 110. REPORTS ON ONGOING FTC STUDY OF CON-**  
8 **SUMER PRIVACY ISSUES.**

9 With respect to the ongoing multistage study being  
10 conducted by the Federal Trade Commission on consumer  
11 privacy issues, the Commission shall submit to the Con-  
12 gress an interim report on the findings and conclusions  
13 of the Commission, together with such recommendations  
14 for legislative and administrative action as the Commis-  
15 sion determines to be appropriate, at the conclusion of  
16 each stage of such study and a final report at the conclu-  
17 sion of the study.

18 **SEC. 110A. GAO STUDY OF ECONOMIC IMPACT ON COMMU-**  
19 **NITY BANKS AND OTHER SMALL FINANCIAL**  
20 **INSTITUTIONS.**

21 (a) **STUDY REQUIRED.**—The Comptroller General of  
22 the United States shall conduct a study of the projected  
23 economic impact that the enactment of this Act will have  
24 on financial institutions which have total assets of  
25 \$100,000,000 or less.

1       (b) REPORT TO THE CONGRESS.—The Comptroller  
 2 General of the United States shall submit a report to the  
 3 Congress before the end of the 6-month period beginning  
 4 on the date of the date of the enactment of this Act con-  
 5 taining the findings and conclusions of the Comptroller  
 6 General with regard to the study required under sub-  
 7 section (a) and such recommendations for legislative or  
 8 administrative action as the Comptroller General may de-  
 9 termine to be appropriate.

10 **Subtitle B—Streamlining Super-**  
 11 **vision of Financial Holding**  
 12 **Companies**

13 **SEC. 111. STREAMLINING FINANCIAL HOLDING COMPANY**  
 14 **SUPERVISION.**

15       Section 5(e) of the Bank Holding Company Act of  
 16 1956 (12 U.S.C. 1844(e)) is amended to read as follows:

17       “(e) REPORTS AND EXAMINATIONS.—

18               “(1) REPORTS.—

19                       “(A) IN GENERAL.—The Board from time  
 20 to time may require any bank holding company  
 21 and any subsidiary of such company to submit  
 22 reports under oath to keep the Board informed  
 23 as to—

24                               “(i) its financial condition; systems  
 25 for monitoring and controlling financial

1 and operating risks; and transactions with  
2 depository institution subsidiaries of the  
3 holding company; and

4 “(ii) compliance by the company or  
5 subsidiary with applicable provisions of  
6 this Act.

7 “(B) USE OF EXISTING REPORTS.—

8 “(i) IN GENERAL.—The Board shall,  
9 to the fullest extent possible, accept re-  
10 ports in fulfillment of the Board’s report-  
11 ing requirements under this paragraph  
12 that a bank holding company or any sub-  
13 sidiary of such company has provided or  
14 been required to provide to other Federal  
15 and State supervisors or to appropriate  
16 self-regulatory organizations.

17 “(ii) AVAILABILITY.—A bank holding  
18 company or a subsidiary of such company  
19 shall provide to the Board, at the request  
20 of the Board, a report referred to in clause  
21 (i).

22 “(iii) REQUIRED USE OF PUBLICLY  
23 REPORTED INFORMATION.—The Board  
24 shall, to the fullest extent possible, accept  
25 in fulfillment of any reporting or record-

1 keeping requirements under this Act infor-  
2 mation that is otherwise required to be re-  
3 ported publicly and externally audited fi-  
4 nancial statements.

5 “(iv) REPORTS FILED WITH OTHER  
6 AGENCIES.—In the event the Board re-  
7 quires a report from a functionally regu-  
8 lated nondepository institution subsidiary  
9 of a bank holding company of a kind that  
10 is not required by another Federal or State  
11 regulator or appropriate self-regulatory or-  
12 ganization, the Board shall request that  
13 the appropriate regulator or self-regulatory  
14 organization obtain such report. If the re-  
15 port is not made available to the Board,  
16 and the report is necessary to assess a ma-  
17 terial risk to the bank holding company or  
18 its subsidiary depository institution or  
19 compliance with this Act, the Board may  
20 require such subsidiary to provide such a  
21 report to the Board.

22 “(C) DEFINITION.—For purposes of this  
23 subsection, the term ‘functionally regulated  
24 nondepository institution’ means—

1           “(i) a broker or dealer registered  
2           under the Securities Exchange Act of  
3           1934;

4           “(ii) an investment adviser registered  
5           under the Investment Advisers Act of  
6           1940, with respect to the investment advi-  
7           sory activities of such investment adviser  
8           and activities incidental to such investment  
9           advisory activities;

10          “(iii) an insurance company subject to  
11          supervision by a State insurance commis-  
12          sion, agency, or similar authority; and

13          “(iv) an entity subject to regulation  
14          by the Commodity Futures Trading Com-  
15          mission, with respect to the commodities  
16          activities of such entity and activities inci-  
17          dental to such commodities activities.

18          “(2) EXAMINATIONS.—

19               “(A) EXAMINATION AUTHORITY.—

20                   “(i) IN GENERAL.—The Board may  
21                   make examinations of each bank holding  
22                   company and each subsidiary of a bank  
23                   holding company.

24                   “(ii) FUNCTIONALLY REGULATED  
25                   NONDEPOSITORY INSTITUTION SUBSIDI-

1           ARIES.—Notwithstanding clause (i), the  
2           Board may make examinations of a func-  
3           tionally regulated nondepository institution  
4           subsidiary of a bank holding company only  
5           if—

6                   “(I) the Board has reasonable  
7                   cause to believe that such subsidiary  
8                   is engaged in activities that pose a  
9                   material risk to an affiliated depository  
10                  institution; or

11                  “(II) based on reports and other  
12                  available information, the Board has  
13                  reasonable cause to believe that a sub-  
14                  sidiary is not in compliance with this  
15                  Act or with provisions relating to  
16                  transactions with an affiliated depository  
17                  institution and the Board cannot  
18                  make such determination through ex-  
19                  amination of the affiliated depository  
20                  institution or bank holding company.

21                  “(B) LIMITATIONS ON EXAMINATION AU-  
22                  THORITY FOR BANK HOLDING COMPANIES AND  
23                  SUBSIDIARIES.—Subject to subparagraph  
24                  (A)(ii), the Board may make examinations  
25                  under subparagraph (A)(i) of each bank holding

1 company and each subsidiary of such holding  
2 company in order to—

3 “(i) inform the Board of the nature of  
4 the operations and financial condition of  
5 the holding company and such subsidiaries;

6 “(ii) inform the Board of—

7 “(I) the financial and operational  
8 risks within the holding company sys-  
9 tem that may pose a threat to the  
10 safety and soundness of any subsidi-  
11 ary depository institution of such  
12 holding company; and

13 “(II) the systems for monitoring  
14 and controlling such risks; and

15 “(iii) monitor compliance with the  
16 provisions of this Act and those governing  
17 transactions and relationships between any  
18 subsidiary depository institution and its af-  
19 filiates.

20 “(C) RESTRICTED FOCUS OF EXAMINA-  
21 TIONS.—The Board shall, to the fullest extent  
22 possible, limit the focus and scope of any exam-  
23 ination of a bank holding company to—

24 “(i) the bank holding company; and

1           “(ii) any subsidiary of the holding  
2           company that, because of—

3                   “(I) the size, condition, or activi-  
4                   ties of the subsidiary;

5                   “(II) the nature or size of trans-  
6                   actions between such subsidiary and  
7                   any depository institution which is  
8                   also a subsidiary of such holding com-  
9                   pany; or

10                   “(III) the centralization of func-  
11                   tions within the holding company sys-  
12                   tem;

13           could have a materially adverse effect on  
14           the safety and soundness of any depository  
15           institution affiliate of the holding company.

16                   “(D) DEFERENCE TO BANK EXAMINA-  
17                   TIONS.—The Board shall, to the fullest extent  
18                   possible, use, for the purposes of this para-  
19                   graph, the reports of examinations of depository  
20                   institutions made by the appropriate Federal  
21                   and State depository institution supervisory au-  
22                   thority.

23                   “(E) DEFERENCE TO OTHER EXAMINA-  
24                   TIONS.—The Board shall, to the fullest extent  
25                   possible, address the circumstances which might

1 otherwise permit or require an examination by  
2 the Board by forgoing an examination and in-  
3 stead reviewing the reports of examination  
4 made of—

5 “(i) any registered broker or dealer or  
6 registered investment adviser by or on be-  
7 half of the Securities and Exchange Com-  
8 mission;

9 “(ii) any licensed insurance company  
10 by or on behalf of any state regulatory au-  
11 thority responsible for the supervision of  
12 insurance companies; and

13 “(iii) any other subsidiary that the  
14 Board finds to be comprehensively super-  
15 vised by a Federal or State authority.

16 ~~“(3) CAPITAL.—~~

17 ~~“(A) IN GENERAL.—The Board shall not,~~  
18 ~~by regulation, guideline, order or otherwise, pre-~~  
19 ~~scribe or impose any capital or capital adequacy~~  
20 ~~rules, guidelines, standards, or requirements on~~  
21 ~~any subsidiary of a financial holding company~~  
22 ~~that is not a depository institution and—~~

23 “(i) is in compliance with applicable  
24 capital requirements of another Federal  
25 regulatory authority (including the Securi-

1           ties and Exchange Commission) or State  
2           insurance authority; or

3           “(ii) is registered as an investment  
4           adviser under the Investment Advisers Act  
5           of 1940.

6           “(B) RULE OF CONSTRUCTION.—Subpara-  
7           graph (A) shall not be construed as preventing  
8           the Board from imposing capital or capital ade-  
9           quacy rules, guidelines, standards, or require-  
10          ments with respect to activities of a registered  
11          investment adviser other than investment advi-  
12          sory activities or activities incidental to invest-  
13          ment advisory activities.

14          “(4) TRANSFER OF BOARD AUTHORITY TO AP-  
15          PROPRIATE FEDERAL BANKING AGENCY.—

16          “(A) IN GENERAL.—In the case of any  
17          bank holding company which is not significantly  
18          engaged in nonbanking activities, the Board, in  
19          consultation with the appropriate Federal bank-  
20          ing agency, may designate the appropriate Fed-  
21          eral banking agency of the lead insured deposi-  
22          tory institution subsidiary of such holding com-  
23          pany as the appropriate Federal banking agen-  
24          cy for the bank holding company.

1           “(B) AUTHORITY TRANSFERRED.—An  
2 agency designated by the Board under subpara-  
3 graph (A) shall have the same authority as the  
4 Board under this Act to—

5           “(i) examine and require reports from  
6 the bank holding company and any affiliate  
7 of such company (other than a depository  
8 institution) under section 5;

9           “(ii) approve or disapprove applica-  
10 tions or transactions under section 3;

11           “(iii) take actions and impose pen-  
12 alties under subsections (e) and (f) of sec-  
13 tion 5 and section 8; and

14           “(iv) take actions regarding the hold-  
15 ing company, any affiliate of the holding  
16 company (other than a depository institu-  
17 tion), or any institution-affiliated party of  
18 such company or affiliate under the Fed-  
19 eral Deposit Insurance Act and any other  
20 statute which the Board may designate.

21           “(C) AGENCY ORDERS.—Section 9 (of this  
22 Act) and section 105 of the Bank Holding  
23 Company Act Amendments of 1970 shall apply  
24 to orders issued by an agency designated under

1           subparagraph (A) in the same manner such sec-  
2           tions apply to orders issued by the Board.

3           ~~“(5) FUNCTIONAL REGULATION OF SECURITIES~~  
4           ~~AND INSURANCE ACTIVITIES.—~~The Board shall defer  
5           to—

6                   “(A) the Securities and Exchange Commis-  
7                   sion with regard to all interpretations of, and  
8                   the enforcement of, applicable Federal securi-  
9                   ties laws relating to the activities, conduct, and  
10                  operations of registered brokers, dealers, invest-  
11                  ment advisers, and investment companies; and

12                   “(B) the relevant State insurance authori-  
13                   ties with regard to all interpretations of, and  
14                   the enforcement of, applicable State insurance  
15                   laws relating to the activities, conduct, and op-  
16                   erations of insurance companies and insurance  
17                   agents.”.

18   **SEC. 112. ELIMINATION OF APPLICATION REQUIREMENT**  
19                   **FOR FINANCIAL HOLDING COMPANIES.**

20           (a) **PREVENTION OF DUPLICATIVE FILINGS.—**See-  
21           tion 5(a) of the Bank Holding Company Act of 1956 (12  
22           U.S.C. 1844(a)) is amended by adding the following new  
23           sentence at the end: “A declaration filed in accordance  
24           with section 6(b)(1)(E) shall satisfy the requirements of  
25           this subsection with regard to the registration of a bank

1 holding company but not any requirement to file an appli-  
2 cation to acquire a bank pursuant to section 3.”.

3 (b) DIVESTITURE PROCEDURES.—Section 5(e)(1) of  
4 the Bank Holding Company Act of 1956 (12 U.S.C.  
5 1844(e)(1)) is amended—

6 (1) by striking “Financial Institutions Super-  
7 visory Act of 1966, order” and inserting “Financial  
8 Institutions Supervisory Act of 1966, at the election  
9 of the bank holding company—

10 “(A) order”; and

11 (2) by striking “shareholders of the bank hold-  
12 ing company. Such distribution” and inserting  
13 “shareholders of the bank holding company; or

14 “(B) order the bank holding company, after due  
15 notice and opportunity for hearing, and after con-  
16 sultation with the bank’s primary supervisor, which  
17 shall be the Comptroller of the Currency in the case  
18 of a national bank, and the Federal Deposit Insur-  
19 ance Corporation and the appropriate State super-  
20 visor in the case of an insured nonmember bank, to  
21 terminate (within 120 days or such longer period as  
22 the Board may direct) the ownership or control of  
23 any such bank by such company.

24 “The distribution referred to in subparagraph (A)”.

1 **SEC. 113. AUTHORITY OF STATE INSURANCE REGULATOR**  
 2 **AND SECURITIES AND EXCHANGE COMMIS-**  
 3 **SION.**

4 Section 5 of the Bank Holding Company Act of 1956  
 5 (12 U.S.C. 1844) is amended by adding at the end the  
 6 following new subsection:

7 “(g) **AUTHORITY OF STATE INSURANCE REGULATOR**  
 8 **AND THE SECURITIES AND EXCHANGE COMMISSION.—**

9 “(1) **IN GENERAL.—**Notwithstanding any other  
 10 provision of law, any regulation, order, or other ac-  
 11 tion of the Board which requires a bank holding  
 12 company to provide funds or other assets to a sub-  
 13 sidiary insured depository institution shall not be ef-  
 14 fective nor enforceable if—

15 “(A) such funds or assets are to be pro-  
 16 vided by—

17 “(i) a bank holding company that is  
 18 an insurance company or is a broker or  
 19 dealer registered under the Securities Ex-  
 20 change Act of 1934; or

21 “(ii) an affiliate of the depository in-  
 22 stitution which is an insurance company or  
 23 a broker or dealer registered under such  
 24 Act; and

25 “(B) the State insurance authority for the  
 26 insurance company or the Securities and Ex-

1 change Commission for the registered broker or  
2 dealer, as the case may be, determines in writ-  
3 ing sent to the holding company and the Board  
4 that the holding company shall not provide such  
5 funds or assets because such action would have  
6 a material adverse effect on the financial condi-  
7 tion of the insurance company or the broker or  
8 dealer, as the case may be.

9 “(2) NOTICE TO STATE INSURANCE AUTHORITY  
10 OR SEC REQUIRED.—If the Board requires a bank  
11 holding company, or an affiliate of a bank holding  
12 company, which is an insurance company or a  
13 broker or dealer described in paragraph (1)(A) to  
14 provide funds or assets to an insured depository in-  
15 stitution subsidiary of the holding company pursuant  
16 to any regulation, order, or other action of the  
17 Board referred to in paragraph (1), the Board shall  
18 promptly notify the State insurance authority for the  
19 insurance company or the Securities and Exchange  
20 Commission, as the case may be, of such require-  
21 ment.

22 “(3) DIVESTITURE IN LIEU OF OTHER AC-  
23 TION.—If the Board receives a notice described in  
24 paragraph (1)(B) from a State insurance authority  
25 or the Securities and Exchange Commission with re-

1       gard to a bank holding company or affiliate referred  
2       to in such paragraph, the Board may order the bank  
3       holding company to divest the insured depository in-  
4       stitution within 180 days of receiving notice or such  
5       longer period as the Board determines consistent  
6       with the safe and sound operation of the insured de-  
7       pository institution.

8               “(4) CONDITIONS BEFORE DIVESTITURE.—Dur-  
9       ing the period beginning on the date an order to di-  
10       vest is issued by the Board under paragraph (3) to  
11       a bank holding company and ending on the date the  
12       divestiture is completed, the Board may impose any  
13       conditions or restrictions on the holding company’s  
14       ownership or operation of the insured depository in-  
15       stitution, including restricting or prohibiting trans-  
16       actions between the insured depository institution  
17       and any affiliate of the institution, as are appro-  
18       priate under the circumstances.”.

19 **SEC. 114. PRUDENTIAL SAFEGUARDS.**

20       Section 5 of the Bank Holding Company Act of 1956  
21       (12 U.S.C. 1844) is amended by inserting after subsection  
22       (g) (as added by section 113 of this subtitle) the following  
23       new subsection:

24               “(h) PRUDENTIAL SAFEGUARDS.—

1           “(1) IN GENERAL.—The Board may, by regula-  
2           tion or order, impose restrictions or requirements on  
3           relationships or transactions between a depository  
4           institution subsidiary of a bank holding company  
5           and any affiliate of such depository institution (other  
6           than a subsidiary of such institution) which the  
7           Board finds is consistent with the public interest,  
8           the purposes of this Act, the Financial Services Act  
9           of 1998, the Federal Reserve Act, and other Federal  
10          law applicable to depository institution subsidiaries  
11          of bank holding companies and the standards in  
12          paragraph (2).

13          “(2) STANDARDS.—The Board may exercise au-  
14          thority under paragraph (1) if the Board finds that  
15          such action will have any of the following effects:

16                 “(A) Avoid any significant risk to the safe-  
17                 ty and soundness of depository institutions or  
18                 any Federal deposit insurance fund.

19                 “(B) Enhance the financial stability of  
20                 bank holding companies.

21                 “(C) Avoid conflicts of interest or other  
22                 abuses.

23                 “(D) Enhance the privacy of customers of  
24                 depository institutions.

1           “(E) Promote the application of national  
2           treatment and equality of competitive oppor-  
3           tunity between nonbank affiliates owned or con-  
4           trolled by domestic bank holding companies and  
5           nonbank affiliates owned or controlled by for-  
6           eign banks operating in the United States.

7           “(3) REVIEW.—The Board shall regularly—

8           “(A) review all restrictions or requirements  
9           established pursuant to paragraph (1) to deter-  
10          mine whether there is a continuing need for any  
11          such restriction or requirement to carry out the  
12          purposes of the Act, including any purpose de-  
13          scribed in paragraph (2); and

14          “(B) modify or eliminate any restriction or  
15          requirement the Board finds is no longer re-  
16          quired for such purposes.”.

17 **SEC. 115. EXAMINATION OF INVESTMENT COMPANIES.**

18       (a) **EXCLUSIVE COMMISSION AUTHORITY.—**

19           (1) **IN GENERAL.—**The Commission shall be the  
20           sole Federal agency with authority to inspect and ex-  
21           amine any registered investment company that is not  
22           a bank holding company.

23           (2) **PROHIBITION ON BANKING AGENCIES.—**A  
24           Federal banking agency may not inspect or examine

1 any registered investment company that is not a  
2 bank holding company.

3 (b) EXAMINATION RESULTS AND OTHER INFORMA-  
4 TION.—The Commission shall provide to any Federal  
5 banking agency, upon request, the results of any examina-  
6 tion, reports, records, or other information with respect  
7 to any registered investment company to the extent nec-  
8 essary for the agency to carry out its statutory responsibil-  
9 ities.

10 (c) DEFINITIONS.—For purposes of this section, the  
11 following definitions shall apply:

12 (1) BANK HOLDING COMPANY.—The term  
13 “bank holding company” has the meaning given to  
14 such term in section 2 of the Bank Holding Com-  
15 pany Act of 1956.

16 (2) COMMISSION.—The term “Commission”  
17 means the Securities and Exchange Commission.

18 (3) FEDERAL BANKING AGENCY.—The term  
19 “Federal banking agency” has the meaning given to  
20 such term in section 3(z) of the Federal Deposit In-  
21 surance Act.

22 (4) REGISTERED INVESTMENT COMPANY.—The  
23 term “registered investment company” means an in-  
24 vestment company which is registered with the Com-  
25 mission under the Investment Company Act of 1940.

1 **SEC. 116. LIMITATION ON RULEMAKING, PRUDENTIAL, SU-**  
 2 **PERVISORY, AND ENFORCEMENT AUTHORITY**  
 3 **OF THE BOARD.**

4 The Bank Holding Company Act of 1956 (12 U.S.C.  
 5 1841 et seq.) is amended by inserting after section 10 the  
 6 following new section:

7 **“SEC. 10A. LIMITATION ON RULEMAKING, PRUDENTIAL, SU-**  
 8 **PERVISORY, AND ENFORCEMENT AUTHORITY**  
 9 **OF THE BOARD.**

10 **“(a) LIMITATION ON DIRECT ACTION.—**

11 **“(1) IN GENERAL.—**The Board may not pre-  
 12 scribe regulations, issue or seek entry of orders, im-  
 13 pose restraints, restrictions, guidelines, require-  
 14 ments, safeguards, or standards, or otherwise take  
 15 any action under or pursuant to any provision of  
 16 this Act or section 8 of the Federal Deposit Insur-  
 17 ance Act against or with respect to a regulated sub-  
 18 sidiary of a bank holding company unless the action  
 19 is necessary to prevent or redress an unsafe or un-  
 20 sound practice or breach of fiduciary duty by such  
 21 subsidiary that poses a material risk to—

22 **“(A) the financial safety, soundness, or**  
 23 **stability of an affiliated depository institution;**  
 24 **or**

25 **“(B) the domestic or international pay-**  
 26 **ment system.**

1           “(2) CRITERIA FOR BOARD ACTION.—The  
2           Board shall not take action otherwise permitted  
3           under paragraph (1) unless the Board finds that it  
4           is not reasonably possible to effectively protect  
5           against the material risk at issue through action di-  
6           rected at or against the affiliated depository institu-  
7           tion or against depository institutions generally.

8           “(b) LIMITATION ON INDIRECT ACTION.—The Board  
9           may not prescribe regulations, issue or seek entry of or-  
10          ders, impose restraints, restrictions, guidelines, require-  
11          ments, safeguards, or standards, or otherwise take any ac-  
12          tion under or pursuant to any provision of this Act or sec-  
13          tion 8 of the Federal Deposit Insurance Act against or  
14          with respect to a financial holding company or a wholesale  
15          financial holding company where the purpose or effect of  
16          doing so would be to take action indirectly against or with  
17          respect to a regulated subsidiary that may not be taken  
18          directly against or with respect to such subsidiary in ac-  
19          cordance with subsection (a).

20          “(c) ACTIONS SPECIFICALLY AUTHORIZED.—Not-  
21          withstanding subsection (a), the Board may take action  
22          under this Act or section 8 of the Federal Deposit Insur-  
23          ance Act to enforce compliance by a regulated subsidiary  
24          with Federal law that the Board has specific jurisdiction  
25          to enforce against such subsidiary.

1 “(d) REGULATED SUBSIDIARY DEFINED.—For pur-  
2 poses of this section, the term ‘regulated subsidiary’  
3 means any company that is not a bank holding company  
4 and is—

5 “(1) a broker or dealer registered under the Se-  
6 curities Exchange Act of 1934;

7 “(2) an investment adviser registered under the  
8 Investment Advisers Act of 1940, with respect to the  
9 investment advisory activities of such investment ad-  
10 viser and activities incidental to such investment ad-  
11 visory activities;

12 “(3) an investment company registered under  
13 the Investment Company Act of 1940;

14 “(4) an insurance company or an insurance  
15 agency subject to supervision by a State insurance  
16 commission, agency, or similar authority; or

17 “(5) an entity subject to regulation by the Com-  
18 modity Futures Trading Commission, with respect  
19 to the commodities activities of such entity and ac-  
20 tivities incidental to such commodities activities.”.

21 **SEC. 117. INTERAGENCY CONSULTATION.**

22 (a) PURPOSE.—It is the intention of Congress that  
23 the Board of Governors of the Federal Reserve System,  
24 as the umbrella supervisor for financial holding compa-  
25 nies, and the State insurance regulators, as the functional

1 regulators of companies engaged in insurance activities,  
2 coordinate efforts to supervise companies that control both  
3 a depository institution and a company engaged in insur-  
4 ance activities regulated under State law. In particular,  
5 Congress believes that the Board and the State insurance  
6 regulators should share, on a confidential basis, informa-  
7 tion relevant to the supervision of companies that control  
8 both a depository institution and a company engaged in  
9 insurance activities, including information regarding the  
10 financial health of the consolidated organization and infor-  
11 mation regarding transactions and relationships between  
12 insurance companies and affiliated depository institutions.  
13 The appropriate Federal banking agencies for depository  
14 institutions should also share, on a confidential basis, in-  
15 formation with the relevant State insurance regulators re-  
16 garding transactions and relationships between depository  
17 institutions and affiliated companies engaged in insurance  
18 activities. The purpose of this section is to encourage this  
19 coordination and confidential sharing of information, and  
20 to thereby improve both the efficiency and the quality of  
21 the supervision of financial holding companies and their  
22 affiliated depository institutions and companies engaged  
23 in insurance activities.

24 (b) EXAMINATION RESULTS AND OTHER INFORMA-  
25 TION.—

1           (1) INFORMATION OF THE BOARD.—Upon the  
2 request of the appropriate insurance regulator of  
3 any State, the Board may provide any information  
4 of the Board regarding the financial condition, risk  
5 management policies, and operations of any financial  
6 holding company that controls a company that is en-  
7 gaged in insurance activities and is regulated by  
8 such State insurance regulator, and regarding any  
9 transaction or relationship between such an insur-  
10 ance company and any affiliated depository institu-  
11 tion. The Board may provide any other information  
12 to the appropriate State insurance regulator that the  
13 Board believes is necessary or appropriate to permit  
14 the State insurance regulator to administer and en-  
15 force applicable State insurance laws.

16           (2) BANKING AGENCY INFORMATION.—Upon  
17 the request of the appropriate insurance regulator of  
18 any State, the appropriate Federal banking agency  
19 may provide any information of the agency regard-  
20 ing any transaction or relationship between a deposi-  
21 tory institution supervised by such Federal banking  
22 agency and any affiliated company that is engaged  
23 in insurance activities regulated by such State insur-  
24 ance regulator. The appropriate Federal banking  
25 agency may provide any other information to the ap-

1 appropriate State insurance regulator that the agency  
2 believes is necessary or appropriate to permit the  
3 State insurance regulator to administer and enforce  
4 applicable State insurance laws.

5 ~~(3) STATE INSURANCE REGULATOR INFORMA-~~  
6 ~~TION.—~~Upon the request of the Board or the appro-  
7 priate Federal banking agency, a State insurance  
8 regulator may provide any examination or other re-  
9 ports, records, or other information to which such  
10 insurance regulator may have access with respect to  
11 a company which—

12 ~~(A) is engaged in insurance activities and~~  
13 ~~regulated by such insurance regulator; and~~

14 ~~(B) is an affiliate of an insured depository~~  
15 ~~institution, wholesale financial institution, or fi-~~  
16 ~~ancial holding company.~~

17 ~~(c) CONSULTATION.—~~Before making any determina-  
18 tion relating to the initial affiliation of, or the continuing  
19 affiliation of, an insured depository institution, wholesale  
20 financial institution, or financial holding company with a  
21 company engaged in insurance activities, the appropriate  
22 Federal banking agency shall consult with the appropriate  
23 State insurance regulator of such company and take the  
24 views of such insurance regulator into account in making  
25 such determination.

1       (d) EFFECT ON OTHER AUTHORITY.—Nothing in this  
2 section shall limit in any respect the authority of the ap-  
3 propriate Federal banking agency with respect to an in-  
4 sured depository institution, wholesale financial institu-  
5 tion, or bank holding company or any affiliate thereof  
6 under any provision of law.

7       (e) CONFIDENTIALITY AND PRIVILEGE.—

8           (1) CONFIDENTIALITY.—The appropriate Fed-  
9 eral banking agency shall not provide any informa-  
10 tion or material that is entitled to confidential treat-  
11 ment under applicable Federal banking agency regu-  
12 lations, or other applicable law, to a State insurance  
13 regulator unless such regulator agrees to maintain  
14 the information or material in confidence and to  
15 take all reasonable steps to oppose any effort to se-  
16 cure disclosure of the information or material by the  
17 regulator. The appropriate Federal banking agency  
18 shall treat as confidential any information or mate-  
19 rial obtained from a State insurance regulator that  
20 is entitled to confidential treatment under applicable  
21 State regulations, or other applicable law, and take  
22 all reasonable steps to oppose any effort to secure  
23 disclosure of the information or material by the Fed-  
24 eral banking agency.

1           (2) PRIVILEGE.—The provision pursuant to this  
2 section of information or material by a Federal  
3 banking agency or State insurance regulator shall  
4 not constitute a waiver of, or otherwise affect, any  
5 privilege to which the information or material is oth-  
6 erwise subject.

7           (f) DEFINITIONS.—For purposes of this section, the  
8 following definitions shall apply:

9           (1) APPROPRIATE FEDERAL BANKING AGENCY;  
10 INSURED DEPOSITORY INSTITUTION.—The terms  
11 “appropriate Federal banking agency” and “insured  
12 depository institution” shall have the same meanings  
13 as in section 3 of the Federal Deposit Insurance  
14 Act.

15           (2) BOARD; FINANCIAL HOLDING COMPANY;  
16 AND WHOLESALE FINANCIAL INSTITUTION.—The  
17 terms “Board”, “financial holding company”, and  
18 “wholesale financial institution” shall have the same  
19 meanings as in section 2 of the Bank Holding Com-  
20 pany Act of 1956.

1                   **Subtitle C—Subsidiaries of**  
 2                   **National Banks**

3   **SEC. 121. PERMISSIBLE ACTIVITIES FOR SUBSIDIARIES OF**  
 4                   **NATIONAL BANKS.**

5           (a) FINANCIAL SUBSIDIARIES OF NATIONAL  
 6 BANKS.—Chapter one of title LXII of the Revised Stat-  
 7 utes of United States (12 U.S.C. 21 et seq.) is amended—

8                   (1) by redesignating section 5136A as section  
 9                   5136C; and

10                   (2) by inserting after section 5136 (12 U.S.C.  
 11                   24) the following new section:

12   **“SEC. 5136A. SUBSIDIARIES OF NATIONAL BANKS.**

13           **“(a) SUBSIDIARIES OF NATIONAL BANKS AUTHOR-**  
 14   **IZED TO ENGAGE IN FINANCIAL ACTIVITIES.—**

15                   **“(1) EXCLUSIVE AUTHORITY.—**No provision of  
 16                   section 5136 or any other provision of this title  
 17                   LXII of the Revised Statutes shall be construed as  
 18                   authorizing a subsidiary of a national bank to en-  
 19                   gage in, or own any share of or any other interest  
 20                   in any company engaged in, any activity that—

21                           **“(A) is not permissible for a national bank**  
 22                           to engage in directly; or

23                           **“(B) is conducted under terms or condi-**  
 24                           tions other than those that would govern the  
 25                           conduct of such activity by a national bank;

1 unless a national bank is specifically authorized by  
2 the express terms of a Federal statute and not by  
3 implication or interpretation to acquire shares of or  
4 an interest in, or to control, such subsidiary, such as  
5 by paragraph (2) of this subsection and section 25A  
6 of the Federal Reserve Act.

7 “(2) SPECIFIC AUTHORIZATION TO CONDUCT  
8 AGENCY ACTIVITIES WHICH ARE FINANCIAL IN NA-  
9 TURE.—A national bank may control a company  
10 that engages in agency activities that have been de-  
11 termined to be financial in nature or incidental to  
12 such financial activities pursuant to and in accord-  
13 ance with section 6(e) of the Bank Holding Com-  
14 pany Act of 1956 if—

15 “(A) the company engages in such activi-  
16 ties solely as agent and not directly or indirectly  
17 as principal;

18 “(B) the national bank is well capitalized  
19 and well managed, and has achieved a rating of  
20 satisfactory or better at the most recent exam-  
21 ination of the bank under the Community Reim-  
22 vestment Act of 1977;

23 “(C) all depository institution affiliates of  
24 the national bank are well capitalized and well  
25 managed, and have achieved a rating of satis-

1 factory or better at the most recent examina-  
2 tion of each such depository institution under  
3 the Community Reinvestment Act of 1977; and

4 “(D) the bank has received the approval of  
5 the Comptroller of the Currency.

6 “(3) DEFINITIONS.—

7 “(A) COMPANY; CONTROL; SUBSIDIARY.—  
8 The terms ‘company’, ‘control’, and ‘subsidiary’  
9 have the meanings given to such terms in sec-  
10 tion 2 of the Bank Holding Company Act of  
11 1956.

12 “(B) WELL CAPITALIZED.—The term ‘well  
13 capitalized’ has the same meaning as in section  
14 38 of the Federal Deposit Insurance Act and,  
15 for purposes of this section, the Comptroller  
16 shall have exclusive jurisdiction to determine  
17 whether a national bank is well capitalized.

18 “(C) WELL MANAGED.—The term ‘well  
19 managed’ means—

20 “(i) in the case of a bank that has  
21 been examined, unless otherwise deter-  
22 mined in writing by the Comptroller—

23 “(I) the achievement of a com-  
24 posite rating of 1 or 2 under the Uni-  
25 form Financial Institutions Rating

1 System (or an equivalent rating under  
 2 an equivalent rating system) in con-  
 3 nection with the most recent examina-  
 4 tion or subsequent review of the bank;  
 5 and

6 “(H) at least a rating of 2 for  
 7 management, if that rating is given;  
 8 or

9 “(ii) in the case of any national bank  
 10 that has not been examined, the existence  
 11 and use of managerial resources that the  
 12 Comptroller determines are satisfactory.

13 “(b) LIMITED EXCLUSIONS FROM COMMUNITY  
 14 NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DEPOSIT-  
 15 TORY INSTITUTIONS.—Any depository institution which  
 16 becomes affiliated with a national bank during the 24-  
 17 month period preceding the submission of an application  
 18 to acquire a subsidiary under subsection (a)(2), and any  
 19 depository institution which becomes so affiliated after the  
 20 approval of such application, may be excluded for purposes  
 21 of subsection (a)(2)(B) during the 24-month period begin-  
 22 ning on the date of such acquisition if—

23 “(1) the depository institution has submitted an  
 24 affirmative plan to the appropriate Federal banking  
 25 agency (as defined in section 3 of the Federal De-

1       posit Insurance Act) to take such action as may be  
2       necessary in order for such institution to achieve a  
3       ‘satisfactory record of meeting community credit  
4       needs’, or better, at the next examination of the in-  
5       stitution under the Community Reinvestment Act of  
6       1977; and

7               “(2) the plan has been approved by the appro-  
8       priate Federal banking agency.”.

9       (b) ~~LIMITATION ON CERTAIN ACTIVITIES IN SUB-~~  
10       ~~SIDIARIES.~~—Section 21(a)(1) of the Banking Act of 1933  
11       (12 U.S.C. 378(a)(1)) is amended—

12               (1) by inserting “, or to be a subsidiary of any  
13       person, firm, corporation, association, business trust,  
14       or similar organization engaged (unless such subsidi-  
15       ary (A) was engaged in such securities activities as  
16       of September 15, 1997, or (B) is a nondepository  
17       subsidiary of a foreign bank and is not also a sub-  
18       sidiary of a domestic depository institution),” after  
19       “to engage at the same time”; and

20               (2) by inserting “or any subsidiary of such  
21       bank, company, or institution” after “or private  
22       bankers”.

23       (c) ~~TECHNICAL AND CONFORMING AMENDMENTS.~~—

24               (1) ~~ANTIPLYING.~~—Section 106(a) of the Bank  
25       Holding Company Act Amendments of 1970 is

1 amended by adding at the end the following new  
2 sentence: “For purposes of this section, a subsidiary  
3 of a national bank which engages in activities as an  
4 agent pursuant to section 5136A(a)(2) shall be  
5 deemed to be a subsidiary of a bank holding com-  
6 pany, and not a subsidiary of a bank.”.

7 (2) SECTION 23B.—Section 23B(a) of the Fed-  
8 eral Reserve Act (12 U.S.C. 371e–1(a)) is amended  
9 by adding at the end the following new paragraph:

10 “(4) SUBSIDIARY OF NATIONAL BANK.—For  
11 purposes of this section, a subsidiary of a national  
12 bank which engages in activities as an agent pursu-  
13 ant to section 5136A(a)(2) shall be deemed to be an  
14 affiliate of the national bank and not a subsidiary of  
15 the bank.”.

16 (d) CLERICAL AMENDMENT.—The table of sections  
17 for chapter one of title LXII of the Revised Statutes of  
18 the United States is amended—

19 (1) by redesignating the item relating to section  
20 5136A as section 5136C; and

21 (2) by inserting after the item relating to sec-  
22 tion 5136 the following new item:

“5136A. Financial subsidiaries of national banks.”.

1 **SEC. 122. MISREPRESENTATIONS REGARDING DEPOSITORY**  
2 **INSTITUTION LIABILITY FOR OBLIGATIONS**  
3 **OF AFFILIATES.**

4 (a) **IN GENERAL.**—Chapter 47 of title 18, United  
5 States Code, is amended by inserting after section 1007  
6 the following new section:

7 **“§ 1008. Misrepresentations regarding financial insti-**  
8 **tution liability for obligations of affiliates**

9 “(a) **IN GENERAL.**—No institution-affiliated party of  
10 an insured depository institution or institution-affiliated  
11 party of a subsidiary or affiliate of an insured depository  
12 institution shall fraudulently represent that the institution  
13 is or will be liable for any obligation of a subsidiary or  
14 other affiliate of the institution.

15 “(b) **CRIMINAL PENALTY.**—Whoever violates sub-  
16 section (a) shall be fined under this title, imprisoned for  
17 not more than 1 year, or both.

18 “(c) **INSTITUTION-AFFILIATED PARTY DEFINED.**—  
19 For purposes of this section, the term ‘institution-affili-  
20 ated party’ with respect to a subsidiary or affiliate has  
21 the same meaning as in section 3 except references to an  
22 insured depository institution shall be deemed to be ref-  
23 erences to a subsidiary or affiliate of an insured depository  
24 institution.

25 “(d) **OTHER DEFINITIONS.**—For purposes of this  
26 section, the terms ‘affiliate’, ‘insured depository institu-

tion’, and ‘subsidiary’ have same meanings as in section 3 of the Federal Deposit Insurance Act.”.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 47 of title 18, United States Code, is amended by inserting after the item relating to section 1007 the following new item:

“1008. Misrepresentations regarding financial institution liability for obligations of affiliates.”.

**SEC. 123. REPEAL OF STOCK LOAN LIMIT IN FEDERAL RESERVE ACT.**

Section 11 of the Federal Reserve Act (12 U.S.C. 248) is amended by striking the paragraph designated as “(m)” and inserting “(m) [Repealed]”.

**Subtitle D—Wholesale Financial Holding Companies; Wholesale Financial Institutions**

**CHAPTER 1—WHOLESALE FINANCIAL HOLDING COMPANIES**

**SEC. 131. WHOLESALE FINANCIAL HOLDING COMPANIES ESTABLISHED.**

(a) DEFINITION AND SUPERVISION.—Section 10 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended to read as follows:

**“SEC. 10. WHOLESALE FINANCIAL HOLDING COMPANIES.**

**“(a) COMPANIES THAT CONTROL WHOLESALE FINANCIAL INSTITUTIONS.—**

1           “(1) WHOLESALE FINANCIAL HOLDING COM-  
2           PANY DEFINED.—The term ‘wholesale financial  
3           holding company’ means any company that—

4                   “(A) is registered as a bank holding com-  
5           pany;

6                   “(B) is predominantly engaged in financial  
7           activities as defined in section 6(g)(2);

8                   “(C) controls 1 or more wholesale financial  
9           institutions;

10                  “(D) does not control—

11                          “(i) a bank other than a wholesale fi-  
12           nancial institution;

13                          “(ii) an insured bank other than an  
14           institution permitted under subparagraph  
15           (D), (F), or (G) of section 2(e)(2); or

16                          “(iii) a savings association; and

17                   “(E) is not a foreign bank (as defined in  
18           section 1(b)(7) of the International Banking  
19           Act of 1978).

20           “(2) SAVINGS ASSOCIATION TRANSITION PE-  
21           RIOD.—Notwithstanding paragraph (1)(C)(iii), the  
22           Board may permit a company that controls a sav-  
23           ings association and that otherwise meets the re-  
24           quirements of paragraph (1) to become supervised  
25           under paragraph (1), if the company divests control

1 of any such savings association within such period  
2 not to exceed 5 years after becoming supervised  
3 under paragraph (1) as permitted by the Board.

4 “(b) SUPERVISION BY THE BOARD.—

5 “(1) IN GENERAL.—The provisions of this sec-  
6 tion shall govern the reporting, examination, and  
7 capital requirements of wholesale financial holding  
8 companies.

9 “(2) REPORTS.—

10 “(A) IN GENERAL.—The Board from time  
11 to time may require any wholesale financial  
12 holding company and any subsidiary of such  
13 company to submit reports under oath to keep  
14 the Board informed as to—

15 “(i) the company’s or subsidiary’s ac-  
16 tivities, financial condition, policies, sys-  
17 tems for monitoring and controlling finan-  
18 cial and operational risks, and transactions  
19 with depository institution subsidiaries of  
20 the holding company; and

21 “(ii) the extent to which the company  
22 or subsidiary has complied with the provi-  
23 sions of this Act and regulations prescribed  
24 and orders issued under this Act.

25 “(B) USE OF EXISTING REPORTS.—

1           “(i) IN GENERAL.—The Board shall,  
2           to the fullest extent possible, accept re-  
3           ports in fulfillment of the Board’s report-  
4           ing requirements under this paragraph  
5           that the wholesale financial holding com-  
6           pany or any subsidiary of such company  
7           has provided or been required to provide to  
8           other Federal and State supervisors or to  
9           appropriate self-regulatory organizations.

10           “(ii) AVAILABILITY.—A wholesale fi-  
11           nancial holding company or a subsidiary of  
12           such company shall provide to the Board,  
13           at the request of the Board, a report re-  
14           ferred to in clause (i).

15           “(C) EXEMPTIONS FROM REPORTING RE-  
16           QUIREMENTS.—

17           “(i) IN GENERAL.—The Board may,  
18           by regulation or order, exempt any com-  
19           pany or class of companies, under such  
20           terms and conditions and for such periods  
21           as the Board shall provide in such regula-  
22           tion or order, from the provisions of this  
23           paragraph and any regulation prescribed  
24           under this paragraph.

1           “(ii) CRITERIA FOR CONSIDER-  
2           ATION.—In making any determination  
3           under clause (i) with regard to any exemp-  
4           tion under such clause, the Board shall  
5           consider, among such other factors as the  
6           Board may determine to be appropriate,  
7           the following factors:

8                   “(I) Whether information of the  
9                   type required under this paragraph is  
10                  available from a supervisory agency  
11                  (as defined in section 1101(7) of the  
12                  Right to Financial Privacy Act of  
13                  1978) or a foreign regulatory author-  
14                  ity of a similar type.

15                  “(II) The primary business of the  
16                  company.

17                  “(III) The nature and extent of  
18                  the domestic and foreign regulation of  
19                  the activities of the company.

20           “(3) EXAMINATIONS.—

21                   “(A) LIMITED USE OF EXAMINATION AU-  
22                  THORITY.—The Board may make examinations  
23                  of each wholesale financial holding company  
24                  and each subsidiary of such company in order  
25                  to—

1 “(i) inform the Board regarding the  
2 nature of the operations and financial con-  
3 dition of the wholesale financial holding  
4 company and its subsidiaries;

5 “(ii) inform the Board regarding—

6 “(I) the financial and operational  
7 risks within the wholesale financial  
8 holding company system that may af-  
9 fect any depository institution owned  
10 by such holding company; and

11 “(II) the systems of the holding  
12 company and its subsidiaries for mon-  
13 itoring and controlling those risks;  
14 and

15 “(iii) monitor compliance with the  
16 provisions of this Act and those governing  
17 transactions and relationships between any  
18 depository institution controlled by the  
19 wholesale financial holding company and  
20 any of the company’s other subsidiaries.

21 “(B) RESTRICTED FOCUS OF EXAMINA-  
22 TIONS.—The Board shall, to the fullest extent  
23 possible, limit the focus and scope of any exam-  
24 ination of a wholesale financial holding com-  
25 pany under this paragraph to—

1                   “(i) the holding company; and

2                   “(ii) any subsidiary (other than an in-  
3                   sured depository institution subsidiary) of  
4                   the holding company that, because of the  
5                   size, condition, or activities of the subsidi-  
6                   ary, the nature or size of transactions be-  
7                   tween such subsidiary and any affiliated  
8                   depository institution, or the centralization  
9                   of functions within the holding company  
10                  system, could have a materially adverse ef-  
11                  fect on the safety and soundness of any de-  
12                  pository institution affiliate of the holding  
13                  company.

14                  “(C) DEFERENCE TO BANK EXAMINA-  
15                  TIONS.—The Board shall, to the fullest extent  
16                  possible, use the reports of examination of de-  
17                  pository institutions made by the Comptroller of  
18                  the Currency, the Federal Deposit Insurance  
19                  Corporation, the Director of the Office of Thrift  
20                  Supervision or the appropriate State depository  
21                  institution supervisory authority for the pur-  
22                  poses of this section.

23                  “(D) DEFERENCE TO OTHER EXAMINA-  
24                  TIONS.—The Board shall, to the fullest extent  
25                  possible, address the circumstances which might

1 otherwise permit or require an examination by  
2 the Board by forgoing an examination and by  
3 instead reviewing the reports of examination  
4 made of—

5 “(i) any registered broker or dealer or  
6 any registered investment adviser by or on  
7 behalf of the Commission; and

8 “(ii) any licensed insurance company  
9 by or on behalf of any State government  
10 insurance agency responsible for the super-  
11 vision of the insurance company.

12 “(E) CONFIDENTIALITY OF REPORTED IN-  
13 FORMATION.—

14 “(i) IN GENERAL.—Notwithstanding  
15 any other provision of law, the Board shall  
16 not be compelled to disclose any nonpublic  
17 information required to be reported under  
18 this paragraph, or any information sup-  
19 plied to the Board by any domestic or for-  
20 eign regulatory agency, that relates to the  
21 financial or operational condition of any  
22 wholesale financial holding company or any  
23 subsidiary of such company.

24 “(ii) COMPLIANCE WITH REQUESTS  
25 FOR INFORMATION.—No provision of this

1           subparagraph shall be construed as author-  
2           izing the Board to withhold information  
3           from the Congress, or preventing the  
4           Board from complying with a request for  
5           information from any other Federal de-  
6           partment or agency for purposes within the  
7           scope of such department's or agency's ju-  
8           risdiction, or from complying with any  
9           order of a court of competent jurisdiction  
10          in an action brought by the United States  
11          or the Board.

12           “(iii) COORDINATION WITH OTHER  
13          LAW.—For purposes of section 552 of title  
14          5, United States Code, this subparagraph  
15          shall be considered to be a statute de-  
16          scribed in subsection (b)(3)(B) of such sec-  
17          tion.

18           “(iv) DESIGNATION OF CONFIDENTIAL  
19          INFORMATION.—In prescribing regulations  
20          to carry out the requirements of this sub-  
21          section, the Board shall designate informa-  
22          tion described in or obtained pursuant to  
23          this paragraph as confidential information.

24           “(F) COSTS.—The cost of any examination  
25          conducted by the Board under this section may

1 be assessed against, and made payable by, the  
2 wholesale financial holding company.

3 ~~“(4) CAPITAL ADEQUACY GUIDELINES.—~~

4 ~~“(A) CAPITAL ADEQUACY PROVISIONS.—~~

5 Subject to the requirements of, and solely in ac-  
6 cordance with, the terms of this paragraph, the  
7 Board may adopt capital adequacy rules or  
8 guidelines for wholesale financial holding com-  
9 panies.

10 ~~“(B) METHOD OF CALCULATION.—In de-~~  
11 ~~veloping rules or guidelines under this para-~~  
12 ~~graph, the following provisions shall apply:~~

13 ~~“(i) FOCUS ON DOUBLE LEVERAGE.—~~

14 The Board shall focus on the use by whole-  
15 sale financial holding companies of debt  
16 and other liabilities to fund capital invest-  
17 ments in subsidiaries.

18 ~~“(ii) NO UNWEIGHTED CAPITAL~~  
19 ~~RATIO.—The Board shall not, by regula-~~  
20 ~~tion, guideline, order, or otherwise, impose~~  
21 ~~under this section a capital ratio that is~~  
22 ~~not based on appropriate risk-weighting~~  
23 ~~considerations.~~

24 ~~“(iii) NO CAPITAL REQUIREMENT ON~~  
25 ~~REGULATED ENTITIES.—The Board shall~~

1 not, by regulation, guideline, order or oth-  
2 erwise, prescribe or impose any capital or  
3 capital adequacy rules, standards, guide-  
4 lines, or requirements upon any subsidiary  
5 that—

6 “(I) is not a depository institu-  
7 tion; and

8 “(II) is in compliance with appli-  
9 cable capital requirements of another  
10 Federal regulatory authority (includ-  
11 ing the Securities and Exchange Com-  
12 mission) or State insurance authority.

13 “(iv) LIMITATION.—The Board shall  
14 not, by regulation, guideline, order or oth-  
15 erwise, prescribe or impose any capital or  
16 capital adequacy rules, standards, guide-  
17 lines, or requirements upon any subsidiary  
18 that is not a depository institution and  
19 that is registered as an investment adviser  
20 under the Investment Advisers Act of  
21 1940, except that this clause shall not be  
22 construed as preventing the Board from  
23 imposing capital or capital adequacy rules,  
24 guidelines, standards, or requirements with  
25 respect to activities of a registered invest-

1           ment adviser other than investment advi-  
2           sory activities or activities incidental to in-  
3           vestment advisory activities.

4           “(v) APPROPRIATE EXCLUSIONS.—

5           The Board shall take full account of—

6                   “(I) the capital requirements  
7                   made applicable to any subsidiary that  
8                   is not a depository institution by an-  
9                   other Federal regulatory authority or  
10                  State insurance authority; and

11                  “(II) industry norms for capital-  
12                  ization of a company’s unregulated  
13                  subsidiaries and activities.

14           “(vi) INTERNAL RISK MANAGEMENT  
15           MODELS.—The Board may incorporate in-  
16           ternal risk management models of whole-  
17           sale financial holding companies into its  
18           capital adequacy guidelines or rules and  
19           may take account of the extent to which  
20           resources of a subsidiary depository insti-  
21           tution may be used to service the debt or  
22           other liabilities of the wholesale financial  
23           holding company.

24           “(e) NONFINANCIAL ACTIVITIES AND INVEST-  
25           MENTS.—

1           ~~“(1) GRANDFATHERED ACTIVITIES.—~~

2                   ~~“(A) IN GENERAL.—Notwithstanding sec-~~  
3           ~~tion 4(a), a company that becomes a wholesale~~  
4           ~~financial holding company may continue to en-~~  
5           ~~gage, directly or indirectly, in any activity and~~  
6           ~~may retain ownership and control of shares of~~  
7           ~~a company engaged in any activity if—~~

8                   ~~“(i) on the date of the enactment of~~  
9                   ~~the Financial Services Act of 1998, such~~  
10           ~~wholesale financial holding company was~~  
11           ~~lawfully engaged in that nonfinancial activ-~~  
12           ~~ity, held the shares of such company, or~~  
13           ~~had entered into a contract to acquire~~  
14           ~~shares of any company engaged in such ac-~~  
15           ~~tivity; and~~

16                   ~~“(ii) the company engaged in such ac-~~  
17           ~~tivity continues to engage only in the same~~  
18           ~~activities that such company conducted on~~  
19           ~~the date of the enactment of the Financial~~  
20           ~~Services Act of 1998, and other activities~~  
21           ~~permissible under this Act.~~

22                   ~~“(B) NO EXPANSION OF GRANDFATHERED~~  
23           ~~COMMERCIAL ACTIVITIES THROUGH MERGER OR~~  
24           ~~CONSOLIDATION.—A wholesale financial holding~~  
25           ~~company that engages in activities or holds~~

1 shares pursuant to this paragraph, or a subsidi-  
2 ary of such wholesale financial holding com-  
3 pany, may not acquire, in any merger, consoli-  
4 dation, or other type of business combination,  
5 assets of any other company which is engaged  
6 in any activity which the Board has not deter-  
7 mined to be financial in nature or incidental to  
8 activities that are financial in nature under sec-  
9 tion 6(e).

10 “(C) LIMITATION TO SINGLE EXEMP-  
11 TION.—No company that engages in any activ-  
12 ity or controls any shares under subsection (f)  
13 of section 6 may engage in any activity or own  
14 any shares pursuant to this paragraph or para-  
15 graph (1).

16 “(2) COMMODITIES.—

17 “(A) IN GENERAL.—Notwithstanding sec-  
18 tion 4(a), a wholesale financial holding company  
19 which was predominately engaged as of Janu-  
20 ary 1, 1997, in financial activities in the United  
21 States (or any successor to any such company)  
22 may engage in, or directly or indirectly own or  
23 control shares of a company engaged in, activi-  
24 ties related to the trading, sale, or investment  
25 in commodities and underlying physical prop-

1           erties that were not permissible for bank hold-  
2           ing companies to conduct in the United States  
3           as of January 1, 1997, if such wholesale finan-  
4           cial holding company, or any subsidiary of such  
5           holding company, was engaged directly, indi-  
6           rectly, or through any such company in any of  
7           such activities as of January 1, 1997, in the  
8           United States.

9           “(B) LIMITATION.—The attributed aggre-  
10          gate consolidated assets of a wholesale financial  
11          holding company held under the authority  
12          granted under this paragraph and not otherwise  
13          permitted to be held by all wholesale financial  
14          holding companies under this section may not  
15          exceed 5 percent of the total consolidated assets  
16          of the wholesale financial holding company, ex-  
17          cept that the Board may increase such percent-  
18          age of total consolidated assets by such  
19          amounts and under such circumstances as the  
20          Board considers appropriate, consistent with  
21          the purposes of this Act.

22          “(3) CROSS MARKETING RESTRICTIONS.—A  
23          wholesale financial holding company shall not per-  
24          mit—

1           “(A) any company whose shares it owns or  
2           controls pursuant to paragraph (1) or (2) to  
3           offer or market any product or service of an af-  
4           filiated wholesale financial institution; or

5           “(B) any affiliated wholesale financial in-  
6           stitution to offer or market any product or serv-  
7           ice of any company whose shares are owned or  
8           controlled by such wholesale financial holding  
9           company pursuant to such paragraphs.

10          “(d) QUALIFICATION OF FOREIGN BANK AS WHOLE-  
11          SALE FINANCIAL HOLDING COMPANY.—

12           “(1) IN GENERAL.—Any foreign bank, or any  
13          company that owns or controls a foreign bank,  
14          that—

15           “(A) operates a branch, agency, or com-  
16          mercial lending company in the United States,  
17          including a foreign bank or company that owns  
18          or controls a wholesale financial institution; and

19           “(B) owns, controls, or is affiliated with a  
20          security affiliate that engages in underwriting  
21          corporate equity securities,

22          may request a determination from the Board that  
23          such bank or company be treated as a wholesale fi-  
24          nancial holding company for purposes of subsection  
25          (e).

1           “(2) CONDITIONS FOR TREATMENT AS A  
2           WHOLESALE FINANCIAL HOLDING COMPANY.—A for-  
3           eign bank and a company that owns or controls a  
4           foreign bank may not be treated as a wholesale fi-  
5           nancial holding company unless the bank and com-  
6           pany meet and continue to meet the following cri-  
7           teria:

8                   “(A) NO INSURED DEPOSITS.—No deposits  
9                   held directly by a foreign bank or through an  
10                  affiliate (other than an institution described in  
11                  subparagraph (D) or (F) of section 2(e)(2)) are  
12                  insured under the Federal Deposit Insurance  
13                  Act.

14                  “(B) CAPITAL STANDARDS.—The foreign  
15                  bank meets risk-based capital standards com-  
16                  parable to the capital standards required for a  
17                  wholesale financial institution, giving due re-  
18                  gard to the principle of national treatment and  
19                  equality of competitive opportunity.

20                  “(C) TRANSACTION WITH AFFILIATES.—  
21                  Transactions between a branch, agency, or com-  
22                  mercial lending company subsidiary of the for-  
23                  eign bank in the United States, and any securi-  
24                  ties affiliate or company in which the foreign  
25                  bank (or any company that owns or controls

1 such foreign bank) has invested pursuant to  
2 subsection (d) comply with the provisions of  
3 sections 23A and 23B of the Federal Reserve  
4 Act in the same manner and to the same extent  
5 as such transactions would be required to com-  
6 ply with such sections if the bank were a mem-  
7 ber bank.

8 “(3) TREATMENT AS A WHOLESALE FINANCIAL  
9 INSTITUTION.—Any foreign bank which is, or is af-  
10 filiated with a company which is, treated as a whole-  
11 sale financial holding company under this subsection  
12 shall be treated as a wholesale financial institution  
13 for purposes of subsection (e)(4) of this section and  
14 subsections (e)(1)(C) and (e)(3) of section 9B of the  
15 Federal Reserve Act, and any such foreign bank or  
16 company shall be subject to paragraphs (3), (4), and  
17 (5) of section 9B(d) of the Federal Reserve Act, ex-  
18 cept that the Board may adopt such modifications,  
19 conditions, or exemptions as the Board deems appro-  
20 priate, giving due regard to the principle of national  
21 treatment and equality of competitive opportunity.

22 “(4) NONAPPLICABILITY OF OTHER EXEMP-  
23 TION.—Any foreign bank or company which is treat-  
24 ed as a wholesale financial holding company under

1 this subsection shall not be eligible for any exception  
2 described in section 2(h).

3 ~~“(5) SUPERVISION OF FOREIGN BANK WHICH~~  
4 ~~MAINTAINS NO BANKING PRESENCE OTHER THAN~~  
5 ~~CONTROL OF A WHOLESALE FINANCIAL INSTITU-~~  
6 ~~TION.—A foreign bank that owns or controls a~~  
7 ~~wholesale financial institution but does not operate~~  
8 ~~a branch, agency, or commercial lending company in~~  
9 ~~the United States (and any company that owns or~~  
10 ~~controls such foreign bank) may request a deter-~~  
11 ~~mination from the Board that such bank or com-~~  
12 ~~pany be treated as a wholesale financial holding~~  
13 ~~company for purposes of subsection (c), except that~~  
14 ~~such bank or company shall be subject to the restric-~~  
15 ~~tions of paragraphs (2)(A), (3), and (4) of this sub-~~  
16 ~~section.~~

17 ~~“(6) NO EFFECT ON OTHER PROVISIONS.—This~~  
18 ~~section shall not be construed as limiting the author-~~  
19 ~~ity of the Board under the International Banking~~  
20 ~~Act of 1978 with respect to the regulation, super-~~  
21 ~~vision, or examination of foreign banks and their of-~~  
22 ~~fices and affiliates in the United States.~~

23 ~~“(7) APPLICABILITY OF COMMUNITY REINVEST-~~  
24 ~~MENT ACT OF 1977.—The branches in the United~~  
25 ~~States of a foreign bank that is, or is affiliated with~~

1 a company that is, treated as a wholesale financial  
2 holding company shall be subject to section  
3 9B(b)(11) of the Federal Reserve Act as if the for-  
4 eign bank were a wholesale financial institution  
5 under such section. The Board and the Comptroller  
6 of the Currency shall apply the provisions of sections  
7 803(2), 804, and 807(1) of the Community Rein-  
8 vestment Act of 1977 to branches of foreign banks  
9 which receive only such deposits as are permissible  
10 for receipt by a corporation organized under section  
11 25A of the Federal Reserve Act, in the same manner  
12 and to the same extent such sections apply to such  
13 a corporation.”.

14 (b) UNINSURED STATE BANKS.—Section 9 of the  
15 Federal Reserve Act (U.S.C. 321 et seq.) is amended by  
16 adding at the end the following new paragraph:

17 “(24) ENFORCEMENT AUTHORITY OVER UNIN-  
18 SURED STATE MEMBER BANKS.—Section 3(u) of the  
19 Federal Deposit Insurance Act, subsections (j) and  
20 (k) of section 7 of such Act, and subsections (b)  
21 through (n), (s), (u), and (v) of section 8 of such  
22 Act shall apply to an uninsured State member bank  
23 in the same manner and to the same extent such  
24 provisions apply to an insured State member bank  
25 and any reference in any such provision to ‘insured

1 depository institution' shall be deemed to be a ref-  
2 erence to 'uninsured State member bank' for pur-  
3 poses of this paragraph.'.

4 **SEC. 132. AUTHORIZATION TO RELEASE REPORTS.**

5 (a) FEDERAL RESERVE ACT.—The last sentence of  
6 the eighth undesignated paragraph of section 9 of the  
7 Federal Reserve Act (12 U.S.C. 326) is amended to read  
8 as follows: "The Board of Governors of the Federal Re-  
9 serve System, at its discretion, may furnish reports of ex-  
10 amination or other confidential supervisory information  
11 concerning State member banks or any other entities ex-  
12 amined under any other authority of the Board to any  
13 Federal or State authorities with supervisory or regulatory  
14 authority over the examined entity, to officers, directors,  
15 or receivers of the examined entity, and to any other per-  
16 son that the Board determines to be proper.'.

17 (b) COMMODITY FUTURES TRADING COMMISSION.—

18 (1) Section 1101(7) of the Right to Financial  
19 Privacy Act of 1978 (12 U.S.C. 3401(7)) is amend-  
20 ed—

21 (A) by redesignating subparagraphs (G)  
22 and (H) as subparagraphs (H) and (I), respec-  
23 tively; and

24 (B) by inserting after subparagraph (F)  
25 the following new subparagraph:

1           “(G) the Commodity Futures Trading  
2           Commission; or” and

3           (2) Section 1112(e) of the Right to Financial  
4           Privacy Act (12 U.S.C. 3412(e)) is amended by  
5           striking “and the Securities and Exchange Commis-  
6           sion” and inserting “; the Securities and Exchange  
7           Commission; and the Commodity Futures Trading  
8           Commission”.

9   **SEC. 133. CONFORMING AMENDMENTS.**

10   (a) **BANK HOLDING COMPANY ACT OF 1956.**—

11           (1) **DEFINITIONS.**—Section 2 of the Bank  
12           Holding Company Act of 1956 (12 U.S.C. 1842) is  
13           amended by adding at the end the following new  
14           subsections:

15           “(p) **WHOLESALE FINANCIAL INSTITUTION.**—The  
16           term ‘wholesale financial institution’ means a wholesale fi-  
17           nancial institution subject to section 9B of the Federal  
18           Reserve Act.

19           “(q) **COMMISSION.**—The term ‘Commission’ means  
20           the Securities and Exchange Commission.

21           “(r) **DEPOSITORY INSTITUTION.**—The term ‘deposi-  
22           tory institution’—

23                   “(1) has the meaning given to such term in sec-  
24                   tion 3 of the Federal Deposit Insurance Act; and

25                   “(2) includes a wholesale financial institution.”.

1           (2) DEFINITION OF BANK INCLUDES WHOLE-  
2           SALE FINANCIAL INSTITUTION.—Section 2(e)(1) of  
3           the Bank Holding Company Act of 1956 (12 U.S.C.  
4           1841(e)(1)) is amended by adding at the end the fol-  
5           lowing new subparagraph:

6                     “(C) A wholesale financial institution.”.

7           (3) INCORPORATED DEFINITIONS.—Section  
8           2(n) of the Bank Holding Company Act of 1956 (12  
9           U.S.C. 1841(n)) is amended by inserting “‘insured  
10          bank’,” after “‘in danger of default’,”.

11          (4) EXCEPTION TO DEPOSIT INSURANCE RE-  
12          QUIREMENT.—Section 3(e) of the Bank Holding  
13          Company Act of 1956 (12 U.S.C. 1842(e)) is  
14          amended by adding at the end the following: “This  
15          subsection shall not apply to a wholesale financial  
16          institution.”.

17          (b) FEDERAL DEPOSIT INSURANCE ACT.—Section  
18          3(q)(2)(A) of the Federal Deposit Insurance Act (12  
19          U.S.C. 1813(q)(2)(A)) is amended to read as follows:

20                     “(A) any State member insured bank (ex-  
21                     cept a District bank) and any wholesale finan-  
22                     cial institution as authorized pursuant to sec-  
23                     tion 9B of the Federal Reserve Act;”.

1       **CHAPTER 2—WHOLESALE FINANCIAL**  
 2                                   **INSTITUTIONS**

3   **SEC. 136. WHOLESALE FINANCIAL INSTITUTIONS.**

4       (a) NATIONAL WHOLESALE FINANCIAL INSTITU-  
 5   TIONS.—

6               (1) IN GENERAL.—Chapter one of title LXII of  
 7   the Revised Statutes of the United States (12  
 8   U.S.C. 21 et seq.) is amended by inserting after sec-  
 9   tion 5136A (as added by section 121(a) of this title)  
 10   the following new section:

11   **“SEC. 5136B. NATIONAL WHOLESALE FINANCIAL INSTITU-**  
 12                                   **TIONS.**

13       “(a) AUTHORIZATION OF THE COMPTROLLER RE-  
 14   QUIRED.—A national bank may apply to the Comptroller  
 15   on such forms and in accordance with such regulations  
 16   as the Comptroller may prescribe, for permission to oper-  
 17   ate as a national wholesale financial institution.

18       “(b) REGULATION.—A national wholesale financial  
 19   institution may exercise, in accordance with such institu-  
 20   tion’s articles of incorporation and regulations issued by  
 21   the Comptroller, all the powers and privileges of a national  
 22   bank formed in accordance with section 5133 of the Re-  
 23   vised Statutes of the United States, subject to section 9B  
 24   of the Federal Reserve Act and the limitations and restric-  
 25   tions contained therein.

1       “(e) COMMUNITY REINVESTMENT ACT OF 1977.—A  
2 national wholesale financial institution shall be subject to  
3 the Community Reinvestment Act of 1977.

4       “(d) EXAMINATION REPORTS.—The Comptroller of  
5 the Currency shall, to the fullest extent possible, use the  
6 report of examinations made by the Board of Governors  
7 of the Federal Reserve System of a wholesale financial in-  
8 stitution.”.

9           (2) CLERICAL AMENDMENT.—The table of sec-  
10 tions for chapter one of title LXII of the Revised  
11 Statutes of the United States is amended by insert-  
12 ing after the item relating to section 5136A (as  
13 added by section 121(d) of this title) the following  
14 new item:

“5136B. National wholesale financial institutions.”.

15       (b) STATE WHOLESALE FINANCIAL INSTITUTIONS.—  
16 The Federal Reserve Act (12 U.S.C. 221 et seq.) is  
17 amended by inserting after section 9A the following new  
18 section:

19 **“SEC. 9B. WHOLESALE FINANCIAL INSTITUTIONS.**

20       “(a) APPLICATION FOR MEMBERSHIP AS WHOLE-  
21 SALE FINANCIAL INSTITUTION.—

22           “(1) APPLICATION REQUIRED.—

23                   “(A) IN GENERAL.—Any bank may apply  
24 to the Board of Governors of the Federal Re-  
25 serve System to become a wholesale financial

1 institution and, as a wholesale financial institu-  
2 tion, to subscribe to the stock of the Federal re-  
3 serve bank organized within the district where  
4 the applying bank is located.

5 “(B) TREATMENT AS MEMBER BANK.—  
6 Any application under subparagraph (A) shall  
7 be treated as an application under, and shall be  
8 subject to the provisions of section 9.

9 “(2) INSURANCE TERMINATION.—No bank the  
10 deposits of which are insured under the Federal De-  
11 posit Insurance Act may become a wholesale finan-  
12 cial institution unless it has met all requirements  
13 under that Act for voluntary termination of deposit  
14 insurance.

15 “(b) GENERAL REQUIREMENTS APPLICABLE TO  
16 WHOLESALE FINANCIAL INSTITUTIONS.—

17 “(1) FEDERAL RESERVE ACT.—Except as oth-  
18 erwise provided in this section, wholesale financial  
19 institutions shall be member banks and shall be sub-  
20 ject to the provisions of this Act that apply to mem-  
21 ber banks to the same extent and in the same man-  
22 ner as State member insured banks, except that a  
23 wholesale financial institution may terminate mem-  
24 bership under this Act only with the prior written  
25 approval of the Board and on terms and conditions

1 that the Board determines are appropriate to carry  
2 out the purposes of this Act.

3 “(2) PROMPT CORRECTIVE ACTION.—A whole-  
4 sale financial institution shall be deemed to be an in-  
5 sured depository institution for purposes of section  
6 38 of the Federal Deposit Insurance Act except  
7 that—

8 “(A) the relevant capital levels and capital  
9 measures for each capital category shall be the  
10 levels specified by the Board for wholesale fi-  
11 nancial institutions; and

12 “(B) all references to the appropriate Fed-  
13 eral banking agency or to the Corporation in  
14 that section shall be deemed to be references to  
15 the Board.

16 “(3) ENFORCEMENT AUTHORITY.—Subsections  
17 (j) and (k) of section 7, subsections (b) through (n),  
18 (s), and (v) of section 8, and section 19 of the Fed-  
19 eral Deposit Insurance Act shall apply to a wholesale  
20 financial institution in the same manner and to the  
21 same extent as such provisions apply to State mem-  
22 ber insured banks and any reference in such sections  
23 to an insured depository institution shall be deemed  
24 to include a reference to a wholesale financial insti-  
25 tution.

1           “(4) CERTAIN OTHER STATUTES APPLICA-  
2           BLE.—A wholesale financial institution shall be  
3           deemed to be a banking institution, and the Board  
4           shall be the appropriate Federal banking agency for  
5           such bank and all such bank’s affiliates, for pur-  
6           poses of the International Lending Supervision Act.

7           “(5) BANK MERGER ACT.—A wholesale finan-  
8           cial institution shall be subject to sections 18(e) and  
9           44 of the Federal Deposit Insurance Act in the same  
10          manner and to the same extent the wholesale finan-  
11          cial institution would be subject to such sections if  
12          the institution were a State member insured bank.

13          “(6) BRANCHING.—Notwithstanding any other  
14          provision of law, a wholesale financial institution  
15          may establish and operate a branch at any location  
16          on such terms and conditions as established by the  
17          Board and, in the case of a State-chartered whole-  
18          sale financial institution, with the approval of the  
19          Board, and, in the case of a national bank wholesale  
20          financial institution, with the approval of the Comp-  
21          troller of the Currency.

22          “(7) ACTIVITIES OF OUT-OF-STATE BRANCHES  
23          OF WHOLESALE FINANCIAL INSTITUTIONS.—

24                  “(A) GENERAL.—A State-chartered whole-  
25                  sale financial institution shall be deemed a

1 State bank and an insured State bank and a  
2 national wholesale financial institution shall be  
3 deemed a national bank for purposes of para-  
4 graphs (1), (2), and (3) of section 24(j) of the  
5 Federal Deposit Insurance Act.

6 “(B) DEFINITIONS.—The following defini-  
7 tions shall apply solely for purposes of applying  
8 paragraph (1):

9 “(i) HOME STATE.—The term ‘home  
10 State’ means—

11 “(I) with respect to a national  
12 wholesale financial institution, the  
13 State in which the main office of the  
14 institution is located; and

15 “(II) with respect to a State-  
16 chartered wholesale financial institu-  
17 tion, the State by which the institu-  
18 tion is chartered.

19 “(ii) HOST STATE.—The term ‘host  
20 State’ means a State, other than the home  
21 State of the wholesale financial institution,  
22 in which the institution maintains, or seeks  
23 to establish and maintain, a branch.

24 “(iii) OUT-OF-STATE BANK.—The  
25 term ‘out-of-State bank’ means, with re-

1           spect to any State, a wholesale financial  
2           institution whose home State is another  
3           State.

4           “(8) DISCRIMINATION REGARDING INTEREST  
5           RATES.—Section 27 of the Federal Deposit Insur-  
6           ance Act shall apply to State-chartered wholesale fi-  
7           nancial institutions in the same manner and to the  
8           same extent as such provisions apply to State mem-  
9           ber insured banks and any reference in such section  
10          to a State-chartered insured depository institution  
11          shall be deemed to include a reference to a State-  
12          chartered wholesale financial institution.

13          “(9) PREEMPTION OF STATE LAWS REQUIRING  
14          DEPOSIT INSURANCE FOR WHOLESALE FINANCIAL  
15          INSTITUTIONS.—The appropriate State banking au-  
16          thority may grant a charter to a wholesale financial  
17          institution notwithstanding any State constitution or  
18          statute requiring that the institution obtain insur-  
19          ance of its deposits and any such State constitution  
20          or statute is hereby preempted solely for purposes of  
21          this paragraph.

22          “(10) PARITY FOR WHOLESALE FINANCIAL IN-  
23          STITUTIONS.—A State bank that is a wholesale fi-  
24          nancial institution under this section shall have all  
25          of the rights, powers, privileges, and immunities (in-

1 eluding those derived from status as a federally  
 2 chartered institution) of and as if it were a national  
 3 bank, subject to such terms and conditions as estab-  
 4 lished by the Board.

5 “(11) COMMUNITY REINVESTMENT ACT OF  
 6 1977.—A State wholesale financial institution shall  
 7 be subject to the Community Reinvestment Act of  
 8 1977.

9 “(e) SPECIFIC REQUIREMENTS APPLICABLE TO  
 10 WHOLESALE FINANCIAL INSTITUTIONS.—

11 “(1) LIMITATIONS ON DEPOSITS.—

12 “(A) MINIMUM AMOUNT.—

13 “(i) IN GENERAL.—No wholesale fi-  
 14 nancial institution may receive initial de-  
 15 posits of \$100,000 or less, other than on  
 16 an incidental and occasional basis.

17 “(ii) LIMITATION ON DEPOSITS OF  
 18 LESS THAN \$100,000.—No wholesale finan-  
 19 cial institution may receive initial deposits  
 20 of \$100,000 or less if such deposits con-  
 21 stitute more than 5 percent of the institu-  
 22 tion’s total deposits.

23 “(B) NO DEPOSIT INSURANCE.—No depos-  
 24 its held by a wholesale financial institution shall

1 be insured deposits under the Federal Deposit  
2 Insurance Act.

3 ~~“(C) ADVERTISING AND DISCLOSURE.—~~

4 The Board shall prescribe regulations pertain-  
5 ing to advertising and disclosure by wholesale  
6 financial institutions to ensure that each deposi-  
7 tor is notified that deposits at the wholesale fi-  
8 nancial institution are not federally insured or  
9 otherwise guaranteed by the United States Gov-  
10 ernment.

11 ~~“(2) MINIMUM CAPITAL LEVELS APPLICABLE~~  
12 ~~TO WHOLESALE FINANCIAL INSTITUTIONS.—~~The  
13 Board shall, by regulation, adopt capital require-  
14 ments for wholesale financial institutions—

15 ~~“(A) to account for the status of wholesale~~  
16 ~~financial institutions as institutions that accept~~  
17 ~~deposits that are not insured under the Federal~~  
18 ~~Deposit Insurance Act; and~~

19 ~~“(B) to provide for the safe and sound op-~~  
20 ~~eration of the wholesale financial institution~~  
21 ~~without undue risk to creditors or other per-~~  
22 ~~sons, including Federal reserve banks, engaged~~  
23 ~~in transactions with the bank.~~

24 ~~“(3) ADDITIONAL REQUIREMENTS APPLICABLE~~  
25 ~~TO WHOLESALE FINANCIAL INSTITUTIONS.—~~In addi-

1       tion to any requirement otherwise applicable to State  
2       member insured banks or applicable, under this sec-  
3       tion, to wholesale financial institutions, the Board  
4       may impose, by regulation or order, upon wholesale  
5       financial institutions—

6               “(A) limitations on transactions, direct or  
7       indirect, with affiliates to prevent—

8                       “(i) the transfer of risk to the deposit  
9       insurance funds; or

10                      “(ii) an affiliate from gaining access  
11       to, or the benefits of, credit from a Federal  
12       reserve bank, including overdrafts at a  
13       Federal reserve bank;

14               “(B) special clearing balance requirements;  
15       and

16               “(C) any additional requirements that the  
17       Board determines to be appropriate or nec-  
18       essary to—

19                      “(i) promote the safety and soundness  
20       of the wholesale financial institution or any  
21       insured depository institution affiliate of  
22       the wholesale financial institution;

23                      “(ii) prevent the transfer of risk to  
24       the deposit insurance funds; or

1                   “(iii) protect creditors and other per-  
2                   sons, including Federal reserve banks, en-  
3                   gaged in transactions with the wholesale fi-  
4                   nancial institution.

5                   “(4) EXEMPTIONS FOR WHOLESAL FINANCIAL  
6                   INSTITUTIONS.—The Board may, by regulation or  
7                   order, exempt any wholesale financial institution  
8                   from any provision applicable to a member bank  
9                   that is not a wholesale financial institution, if the  
10                  Board finds that such exemption is not inconsistent  
11                  with—

12                  “(A) the promotion of the safety and  
13                  soundness of the wholesale financial institution  
14                  or any insured depository institution affiliate of  
15                  the wholesale financial institution;

16                  “(B) the protection of the deposit insur-  
17                  ance funds; and

18                  “(C) the protection of creditors and other  
19                  persons, including Federal reserve banks, en-  
20                  gaged in transactions with the wholesale finan-  
21                  cial institution.

22                  “(5) LIMITATION ON TRANSACTIONS BETWEEN  
23                  A WHOLESAL FINANCIAL INSTITUTION AND AN IN-  
24                  SURED BANK.—For purposes of section 23A(d)(1) of  
25                  the Federal Reserve Act, a wholesale financial insti-

1       tution that is affiliated with an insured bank shall  
2       not be a bank.

3           ~~“(6) NO EFFECT ON OTHER PROVISIONS.—This~~  
4       section shall not be construed as limiting the  
5       Board’s authority over member banks under any  
6       other provision of law, or to create any obligation for  
7       any Federal reserve bank to make, increase, renew,  
8       or extend any advance or discount under this Act to  
9       any member bank or other depository institution.

10       ~~“(d) CAPITAL AND MANAGERIAL REQUIREMENTS.—~~

11           ~~“(1) IN GENERAL.—A wholesale financial insti-~~  
12       tution shall be well capitalized and well managed.

13           ~~“(2) NOTICE TO COMPANY.—The Board shall~~  
14       promptly provide notice to a company that controls  
15       a wholesale financial institution whenever such  
16       wholesale financial institution is not well capitalized  
17       or well managed.

18           ~~“(3) AGREEMENT TO RESTORE INSTITUTION.—~~

19       Within 45 days of receipt of a notice under para-  
20       graph (2) (or such additional period not to exceed  
21       90 days as the Board may permit), the company  
22       shall execute an agreement acceptable to the Board  
23       to restore the wholesale financial institution to com-  
24       pliance with all of the requirements of paragraph  
25       (1).

1           “(4) LIMITATIONS UNTIL INSTITUTION RE-  
2 STORED.—Until the wholesale financial institution is  
3 restored to compliance with all of the requirements  
4 of paragraph (1), the Board may impose such limi-  
5 tations on the conduct or activities of the company  
6 or any affiliate of the company as the Board deter-  
7 mines to be appropriate under the circumstances.

8           “(5) FAILURE TO RESTORE.—If the company  
9 does not execute and implement an agreement in ac-  
10 cordance with paragraph (3), comply with any limi-  
11 tation imposed under paragraph (4), restore the  
12 wholesale financial institution to well capitalized sta-  
13 tus within 180 days after receipt by the company of  
14 the notice described in paragraph (2), or restore the  
15 wholesale financial institution to well managed sta-  
16 tus within such period as the Board may permit, the  
17 company shall, under such terms and conditions as  
18 may be imposed by the Board and subject to such  
19 extension of time as may be granted in the Board’s  
20 discretion, divest control of its subsidiary depository  
21 institutions.

22           “(6) WELL MANAGED DEFINED.—For purposes  
23 of this subsection, the term ‘well managed’ has the  
24 same meaning as in section 2 of the Bank Holding  
25 Company Act of 1956.

1       “(e) CONSERVATORSHIP AUTHORITY.—

2               “(1) IN GENERAL.—The Board may appoint a  
3       conservator to take possession and control of a  
4       wholesale financial institution to the same extent  
5       and in the same manner as the Comptroller of the  
6       Currency may appoint a conservator for a national  
7       bank under section 203 of the Bank Conservation  
8       Act, and the conservator shall exercise the same  
9       powers, functions, and duties, subject to the same  
10      limitations, as are provided under such Act for con-  
11      servators of national banks.

12              “(2) BOARD AUTHORITY.—The Board shall  
13      have the same authority with respect to any con-  
14      servator appointed under paragraph (1) and the  
15      wholesale financial institution for which such con-  
16      servator has been appointed as the Comptroller of  
17      the Currency has under the Bank Conservation Act  
18      with respect to a conservator appointed under such  
19      Act and a national bank for which the conservator  
20      has been appointed.

21              “(f) EXCLUSIVE JURISDICTION.—Subsections (e) and  
22      (e) of section 43 of the Federal Deposit Insurance Act  
23      shall not apply to any wholesale financial institution.”.

24              “(e) VOLUNTARY TERMINATION OF INSURED STATUS  
25      BY CERTAIN INSTITUTIONS.—

1           (1) SECTION 8 DESIGNATIONS.—Section 8(a) of  
2           the Federal Deposit Insurance Act (12 U.S.C.  
3           1818(a)) is amended—

4                     (A) by striking paragraph (1); and

5                     (B) by redesignating paragraphs (2)  
6           through (10) as paragraphs (1) through (9), re-  
7           spectively.

8           (2) VOLUNTARY TERMINATION OF INSURED  
9           STATUS.—The Federal Deposit Insurance Act (12  
10          U.S.C. 1811 et seq.) is amended by inserting after  
11          section 8 the following new section:

12       **“SEC. 8A. VOLUNTARY TERMINATION OF STATUS AS IN-**  
13                               **SURED DEPOSITORY INSTITUTION.**

14           “(a) IN GENERAL.—Except as provided in subsection  
15       (b), an insured State bank or a national bank may volun-  
16       tarily terminate such bank’s status as an insured depository  
17       institution in accordance with regulations of the Cor-  
18       poration if—

19                     “(1) the bank provides written notice of the  
20       bank’s intent to terminate such insured status—

21                               “(A) to the Corporation and the Board of  
22       Governors of the Federal Reserve System not  
23       less than 6 months before the effective date of  
24       such termination; and

1           “(B) to all depositors at such bank, not  
2           less than 6 months before the effective date of  
3           the termination of such status; and

4           “(2) either—

5           “(A) the deposit insurance fund of which  
6           such bank is a member equals or exceeds the  
7           fund’s designated reserve ratio as of the date  
8           the bank provides a written notice under para-  
9           graph (1) and the Corporation determines that  
10          the fund will equal or exceed the applicable des-  
11          ignated reserve ratio for the 2 semiannual as-  
12          sessment periods immediately following such  
13          date; or

14          “(B) the Corporation and the Board of  
15          Governors of the Federal Reserve System ap-  
16          proved the termination of the bank’s insured  
17          status and the bank pays an exit fee in accord-  
18          ance with subsection (e).

19          “(b) EXCEPTION.—Subsection (a) shall not apply  
20          with respect to—

21                 “(1) an insured savings association; or

22                 “(2) an insured branch that is required to be  
23                 insured under subsection (a) or (b) of section 6 of  
24                 the International Banking Act of 1978.

1       ~~“(c) ELIGIBILITY FOR INSURANCE TERMINATED.—~~

2     ~~Any bank that voluntarily elects to terminate the bank’s~~  
3     ~~insured status under subsection (a) shall not be eligible~~  
4     ~~for insurance on any deposits or any assistance authorized~~  
5     ~~under this Act after the period specified in subsection~~  
6     ~~(f)(1).~~

7       ~~“(d) INSTITUTION MUST BECOME WHOLESALE FI-~~

8     ~~NANCIAL INSTITUTION OR TERMINATE DEPOSIT-TAKING~~  
9     ~~ACTIVITIES.—Any depository institution which voluntarily~~  
10    ~~terminates such institution’s status as an insured depository~~  
11    ~~institution under this section may not, upon termination of insurance,~~  
12    ~~accept any deposits unless the institution is a wholesale financial~~  
13    ~~institution subject to section 9B of the Federal Reserve Act.~~

15       ~~“(e) EXIT FEES.—~~

16       ~~“(1) IN GENERAL.—Any bank that voluntarily~~  
17    ~~terminates such bank’s status as an insured depository~~  
18    ~~institution under this section shall pay an exit~~  
19    ~~fee in an amount that the Corporation determines is~~  
20    ~~sufficient to account for the institution’s pro rata~~  
21    ~~share of the amount (if any) which would be required to restore~~  
22    ~~the relevant deposit insurance fund to the fund’s designated reserve~~  
23    ~~ratio as of the date the bank provides a written notice under subsection~~  
24    ~~(a)(1).~~

1           “(2) PROCEDURES.—The Corporation shall pre-  
2       scribe, by regulation, procedures for assessing any  
3       exit fee under this subsection.

4           “(f) TEMPORARY INSURANCE OF DEPOSITS INSURED  
5 AS OF TERMINATION.—

6           “(1) TRANSITION PERIOD.—The insured depos-  
7       its of each depositor in a State bank or a national  
8       bank on the effective date of the voluntary termi-  
9       nation of the bank’s insured status, less all subse-  
10      quent withdrawals from any deposits of such deposi-  
11      tor, shall continue to be insured for a period of not  
12      less than 6 months and not more than 2 years, as  
13      determined by the Corporation. During such period,  
14      no additions to any such deposits, and no new de-  
15      posits in the depository institution made after the ef-  
16      fective date of such termination shall be insured by  
17      the Corporation.

18           “(2) TEMPORARY ASSESSMENTS; OBLIGATIONS  
19      AND DUTIES.—During the period specified in para-  
20      graph (1) with respect to any bank, the bank shall  
21      continue to pay assessments under section 7 as if  
22      the bank were an insured depository institution. The  
23      bank shall, in all other respects, be subject to the  
24      authority of the Corporation and the duties and obli-  
25      gations of an insured depository institution under

1 this Act during such period, and in the event that  
2 the bank is closed due to an inability to meet the de-  
3 mands of the bank's depositors during such period,  
4 the Corporation shall have the same powers and  
5 rights with respect to such bank as in the case of  
6 an insured depository institution.

7 ~~“(g) ADVERTISEMENTS.—~~

8 ~~“(1) IN GENERAL.—A bank that voluntarily~~  
9 ~~terminates the bank's insured status under this sec-~~  
10 ~~tion shall not advertise or hold itself out as having~~  
11 ~~insured deposits, except that the bank may advertise~~  
12 ~~the temporary insurance of deposits under sub-~~  
13 ~~section (f) if, in connection with any such advertise-~~  
14 ~~ment, the advertisement also states with equal prom-~~  
15 ~~inence that additions to deposits and new deposits~~  
16 ~~made after the effective date of the termination are~~  
17 ~~not insured.~~

18 ~~“(2) CERTIFICATES OF DEPOSIT, OBLIGATIONS,~~  
19 ~~AND SECURITIES.—Any certificate of deposit or~~  
20 ~~other obligation or security issued by a State bank~~  
21 ~~or a national bank after the effective date of the vol-~~  
22 ~~untary termination of the bank's insured status~~  
23 ~~under this section shall be accompanied by a con-~~  
24 ~~spicuous, prominently displayed notice that such cer-~~

1       tificate of deposit or other obligation or security is  
2       not insured under this Act.

3       “(h) NOTICE REQUIREMENTS.—

4               “(1) NOTICE TO THE CORPORATION.—The no-  
5       tice required under subsection (a)(1)(A) shall be in  
6       such form as the Corporation may require.

7               “(2) NOTICE TO DEPOSITORS.—The notice re-  
8       quired under subsection (a)(1)(B) shall be—

9                       “(A) sent to each depositor’s last address  
10       of record with the bank; and

11                      “(B) in such manner and form as the Cor-  
12       poration finds to be necessary and appropriate  
13       for the protection of depositors.”.

14               “(3) DEFINITION.—Section 19(b)(1)(A)(i) of the  
15       Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i)) is  
16       amended by inserting “, or any wholesale financial  
17       institution subject to section 9B of this Act” after  
18       “such Act”.

1     **Subtitle E—Preservation of FTC**  
2                     **Authority**

3     **SEC. 141. AMENDMENT TO THE BANK HOLDING COMPANY**  
4                     **ACT OF 1956 TO MODIFY NOTIFICATION AND**  
5                     **POST-APPROVAL WAITING PERIOD FOR SEC-**  
6                     **TION 3 TRANSACTIONS.**

7             Section 11(b)(1) of the Bank Holding Company Act  
8 of 1956 (12 U.S.C. 1849(b)(1)) is amended by inserting  
9 “and, if the transaction also involves an acquisition under  
10 section 4 or section 6, the Board shall also notify the Fed-  
11 eral Trade Commission of such approval” before the pe-  
12 riod at the end of the first sentence.

13     **SEC. 142. INTERAGENCY DATA SHARING.**

14             To the extent not prohibited by other law, the Comp-  
15 troller of the Currency, the Director of the Office of Thrift  
16 Supervision, the Federal Deposit Insurance Corporation,  
17 and the Board of Governors of the Federal Reserve Sys-  
18 tem shall make available to the Attorney General and the  
19 Federal Trade Commission any data in the possession of  
20 any such banking agency that the antitrust agency deems  
21 necessary for antitrust review of any transaction requiring  
22 notice to any such antitrust agency or the approval of such  
23 agency under section 3, 4, or 6 of the Bank Holding Com-  
24 pany Act of 1956, section 18(e) of the Federal Deposit  
25 Insurance Act, the National Bank Consolidation and

1 Merger Act, section 10 of the Home Owners' Loan Act,  
2 or the antitrust laws.

3 **SEC. 143. CLARIFICATION OF STATUS OF SUBSIDIARIES**  
4 **AND AFFILIATES.**

5 (a) CLARIFICATION OF FEDERAL TRADE COMMIS-  
6 SION JURISDICTION.—Any person which directly or indi-  
7 rectly controls, is controlled directly or indirectly by, or  
8 is directly or indirectly under common control with, any  
9 bank or savings association (as such terms are defined in  
10 section 3 of the Federal Deposit Insurance Act) and is  
11 not itself a bank or savings association shall not be  
12 deemed to be a bank or savings association for purposes  
13 of the Federal Trade Commission Act or any other law  
14 enforced by the Federal Trade Commission.

15 (b) SAVINGS PROVISION.—No provision of this sec-  
16 tion shall be construed as restricting the authority of any  
17 Federal banking agency (as defined in section 3 of the  
18 Federal Deposit Insurance Act) under any Federal bank-  
19 ing law, including section 8 of the Federal Deposit Insur-  
20 ance Act.

21 (c) HART-SCOTT-RODINO AMENDMENT.—Section  
22 7A(e)(7) of the Clayton Act (15 U.S.C. 18a(e)(7)) is  
23 amended by inserting before the semicolon at the end  
24 thereof the following: “, except that a portion of a trans-  
25 action is not exempt under this paragraph if such portion

1 of the transaction (A) requires notice under section 6 of  
2 the Bank Holding Company Act of 1956; and (B) does  
3 not require approval under section 3 or 4 of the Bank  
4 Holding Company Act of 1956”.

5 **SEC. 144. ANNUAL GAO REPORT.**

6 (a) IN GENERAL.—By the end of the 1-year period  
7 beginning on the date of the enactment of this Act and  
8 annually thereafter, the Comptroller General of the United  
9 States shall submit a report to the Congress on market  
10 concentration in the financial services industry and its im-  
11 pact on consumers.

12 (b) ANALYSIS.—Each report submitted under sub-  
13 section (a) shall contain an analysis of—

14 (1) the positive and negative effects of affili-  
15 ations between various types of financial companies,  
16 and of acquisitions pursuant to this Act and the  
17 amendments made by this Act to other provisions of  
18 law, including any positive or negative effects on  
19 consumers, area markets, and submarkets thereof or  
20 on registered securities brokers and dealers which  
21 have been purchased by depository institutions or  
22 depository institution holding companies;

23 (2) the changes in business practices and the  
24 effects of any such changes on the availability of  
25 venture capital, consumer credit, and other financial

1 services or products and the availability of capital  
2 and credit for small businesses; and

3 ~~(3)~~ the acquisition patterns among depository  
4 institutions, depository institution holding compa-  
5 nies, securities firms, and insurance companies in-  
6 cluding acquisitions among the largest 20 percent of  
7 firms and acquisitions within regions or other lim-  
8 ited geographical areas.

9 **Subtitle F—Applying the Principles**  
10 **of National Treatment and**  
11 **Equality of Competitive Oppor-**  
12 **tunity to Foreign Banks and**  
13 **Foreign Financial Institutions**

14 **SEC. 151. APPLYING THE PRINCIPLES OF NATIONAL TREAT-**  
15 **MENT AND EQUALITY OF COMPETITIVE OP-**  
16 **PORTUNITY TO FOREIGN BANKS THAT ARE**  
17 **FINANCIAL HOLDING COMPANIES.**

18 Section 8(e) of the International Banking Act of  
19 1978 (12 U.S.C. 3106(e)) is amended by adding at the  
20 end the following new paragraph:

21 ~~“(3) TERMINATION OF GRANDFATHERED~~  
22 ~~RIGHTS.—~~

23 ~~“(A) IN GENERAL.—If any foreign bank or~~  
24 ~~foreign company files a declaration under sec-~~  
25 ~~tion 6(b)(1)(E) or which receives a determina-~~

1           tion under section 10(d)(1) of the Bank Hold-  
2           ing Company Act of 1956, any authority con-  
3           ferred by this subsection on any foreign bank or  
4           company to engage in any activity which the  
5           Board has determined to be permissible for fi-  
6           nancial holding companies under section 6 of  
7           such Act shall terminate immediately.

8           “(B) RESTRICTIONS AND REQUIREMENTS  
9           AUTHORIZED.—If a foreign bank or company  
10          that engages, directly or through an affiliate  
11          pursuant to paragraph (1), in an activity which  
12          the Board has determined to be permissible for  
13          financial holding companies under section 6 of  
14          the Bank Holding Company Act of 1956 has  
15          not filed a declaration with the Board of its sta-  
16          tus as a financial holding company under such  
17          section or received a determination under sec-  
18          tion 10(d)(1) by the end of the 2-year period  
19          beginning on the date of enactment of the Fi-  
20          nancial Services Act of 1998, the Board, giving  
21          due regard to the principle of national treat-  
22          ment and equality of competitive opportunity,  
23          may impose such restrictions and requirements  
24          on the conduct of such activities by such foreign  
25          bank or company as are comparable to those

1 imposed on a financial holding company orga-  
 2 nized under the laws of the United States, in-  
 3 cluding a requirement to conduct such activities  
 4 in compliance with any prudential safeguards  
 5 established under section 5(h) of the Bank  
 6 Holding Company Act of 1956.”.

7 **SEC. 152. APPLYING THE PRINCIPLES OF NATIONAL TREAT-**  
 8 **MENT AND EQUALITY OF COMPETITIVE OP-**  
 9 **PORTUNITY TO FOREIGN BANKS AND FOR-**  
 10 **EIGN FINANCIAL INSTITUTIONS THAT ARE**  
 11 **WHOLESALE FINANCIAL INSTITUTIONS.**

12 Section 8A of the Federal Deposit Insurance Act (as  
 13 added by section 136(c)(2) of this Act) is amended by add-  
 14 ing at the end the following new subsection:

15 “(i) **VOLUNTARY TERMINATION OF DEPOSIT INSUR-**  
 16 **ANCE.**—The provisions on voluntary termination of insur-  
 17 ance in this section shall apply to an insured branch of  
 18 a foreign bank (including a Federal branch) in the same  
 19 manner and to the same extent as they apply to an insured  
 20 State bank or a national bank.”.

21 **Subtitle G—Federal Home Loan**  
 22 **Bank System**

23 **SEC. 161. FEDERAL HOME LOAN BANKS.**

24 The first sentence of section 3 of the Federal Home  
 25 Loan Bank Act (12 U.S.C. 1423) is amended—

1           (1) by striking “the continental United States”  
2           and all that follows through the “eight”; and

3           (2) by inserting “the States into not less than  
4           1” before “nor”.

5 **SEC. 162. MEMBERSHIP AND COLLATERAL.**

6           (a) Subsection (f) of section 5 of the Home Owners’  
7           Loan Act (12 U.S.C. 1464) is amended to read as follows:

8           “(f) FEDERAL HOME LOAN BANK MEMBERSHIP.—  
9           A Federal savings association may become a member, of  
10           the Federal Home Loan Bank System, and shall qualify  
11           for such membership in the manner provided by the Fed-  
12           eral Home Loan Bank Act, beginning January 1, 1999.”.

13           (b) Section 10(a)(5) of the Federal Home Loan Bank  
14           Act (12 U.S.C. 1430(a)(5)) is amended—

15           (1) in the second sentence, by striking “and the  
16           Board”; and

17           (2) in the third sentence, by striking “Board”  
18           and inserting “Bank”.

19           (c) Section 10(a) of the Federal Home Loan Bank  
20           Act (12 U.S.C. 1430(a)) is amended—

21           (1) in the second sentence, by striking “All  
22           long-term advances” and inserting “Except as pro-  
23           vided in the succeeding sentence, all long-term ad-  
24           vances”;

1           (2) by inserting after the second sentence, the  
2 following sentence: “Notwithstanding the preceding  
3 sentence, long-term advances may be made to mem-  
4 bers insured by the Federal Deposit Insurance Cor-  
5 poration which have less than \$500,000,000 in total  
6 assets for the purpose of funding small businesses,  
7 agriculture, rural development, or low-income com-  
8 munity development (as defined by the Board).”;  
9 and

10           (3) by redesignating paragraph (5) as para-  
11 graph (6) and inserting after paragraph (4) the fol-  
12 lowing new paragraph:

13           “(5) In the case of any member insured by the  
14 Federal Deposit Insurance Corporation which has  
15 total assets of less than \$500,000,000, secured loans  
16 for small business, agriculture, rural development, or  
17 low-income community development, or securities  
18 representing a whole interest in such secured  
19 loans.”.

20           (d) Section 4(a) of the Federal Home Loan Bank Act  
21 (12 U.S.C. 1424(a)) is amended by adding at the end the  
22 following new paragraph:

23           “(3) ELIGIBILITY REQUIREMENTS FOR COMMU-  
24 NITY FINANCIAL INSTITUTIONS.—The requirements  
25 of paragraph (2) (other than subparagraph (B)) of

1 such paragraph) shall not apply to any insured de-  
2 pository institution which has total assets of less  
3 than \$500,000,000.

4 (e) Section 10 of the Federal Home Loan Bank Act  
5 (12 U.S.C. 1430) is amended by striking the first of the  
6 2 subsections designated as subsection (e) (relating to  
7 qualified thrift lender status).

8 **SEC. 163. THE OFFICE OF FINANCE.**

9 The Federal Home Loan Bank Act (12 U.S.C. 1421)  
10 is amended by inserting after section 4 the following new  
11 section:

12 **“SEC. 5. THE OFFICE OF FINANCE.**

13 “(a) OPERATION.—The Federal home loan banks  
14 shall operate jointly an office of finance (hereafter in this  
15 section referred to as the ‘Office’) to issue the notes,  
16 bonds, and debentures of the Federal home loan banks  
17 in accordance with this Act.

18 “(b) POWERS.—Subject to the other provisions of  
19 this Act and such safety and soundness regulations as the  
20 Finance Board may prescribe, the Office shall be author-  
21 ized by the Federal home loan banks to act as the agent  
22 of such banks to issue Federal home loan bank notes,  
23 bonds and debentures pursuant to section 11 of this Act  
24 on behalf of the banks.

25 “(c) CENTRAL BOARD OF DIRECTORS.—

1           “(1) ESTABLISHMENT.—The Federal home  
2 loan banks shall establish a central board of direc-  
3 tors of the Office to administer the affairs of the Of-  
4 fice in accordance with the provisions of this Act.

5           “(2) COMPOSITION OF BOARD.—Each Federal  
6 home loan bank shall annually select one individual  
7 who, as of the time of the election, is an officer or  
8 director of such bank to serve as a member of the  
9 central board of directors of the Office.

10          “(d) STATUS.—Except to the extent expressly pro-  
11 vided in this Act, the Office shall be treated as a Federal  
12 home loan bank for purposes of any law.”.

13 **SEC. 164. MANAGEMENT OF BANKS.**

14          (a) Subsections (a) and (b) of section 7 of the Federal  
15 Home Loan Bank Act (12 U.S.C. 1427(a) and (b)) are  
16 amended to read as follows:

17          “(a) The management of each Federal home loan  
18 bank shall be vested in a board of 15 directors, nine of  
19 whom shall be elected by the members in accordance with  
20 this section, six of whom shall be appointed by the Board  
21 referred to in section 2A, and all of whom shall be citizens  
22 of the United States and bona fide residents of the district  
23 in which such bank is located. At least two of the Federal  
24 home loan bank directors who are appointed by the Board  
25 shall be representatives chosen from organizations with

1 more than a 2-year history of representing consumer or  
2 community interests on banking services, credit needs,  
3 housing, or financial consumer protections. No Federal  
4 home loan bank director who is appointed pursuant to this  
5 subsection may, during such bank director's term of office,  
6 serve as an officer of any Federal home loan bank or a  
7 director or officer of any member of a bank, or hold  
8 shares, or any other financial interest in, any member of  
9 a bank.

10       “(b) The elective directors shall be divided into three  
11 classes, designated as classes A, B, and C, as nearly equal  
12 in number as possible. Each directorship shall be filled by  
13 a person who is an officer or director of a member located  
14 in that bank's district. Each class shall represent members  
15 of similar asset size, and the Board shall, to the maximum  
16 extent possible, seek to achieve geographic diversity. The  
17 Finance Board shall establish the minimum and maximum  
18 asset size for each class. Any member shall be entitled to  
19 nominate and elect eligible persons for its class of director-  
20 ship; such offices shall be filled from such nominees by  
21 a plurality of the votes which members of each class may  
22 cast for nominees in their corresponding class of directors  
23 in an election held for the purpose of filling such offices.  
24 Each member shall be permitted to cast one vote for each  
25 share of Federal home loan bank stock owned by that

1 member. No person who is an officer or director of a mem-  
2 ber that fails to meet any applicable capital requirement  
3 is eligible to hold the office of Federal Home Loan Bank  
4 director. As used in this subsection, the term “member”  
5 means a member of a Federal home loan bank which was  
6 a member of such Bank as of a record date established  
7 by the Bank.”.

8 (b) Section 7 of the Federal Home Loan Bank Act  
9 (12 U.S.C. 1427) is amended—

10 (1) by striking subsections (e) and (h); and  
11 (2) by redesignating subsections (d), (e), (f),  
12 (g), (i), (j), and (k) as subsections (e), (d), (e), (f),  
13 (g), (h), and (i), respectively.

14 (c) Subsection (e) of section 7 of the Federal Home  
15 Loan Bank Act (12 U.S.C. 1427(d)) (as so redesignated  
16 by subsection (b) of this section) is amended by striking  
17 the first and second sentences and inserting the following  
18 two new sentences: “The term of each position of director  
19 shall be 3 years. No director serving for three consecutive  
20 terms, nor any other officer, director or that member or  
21 any affiliated depository institution, shall be eligible for  
22 another term earlier than 3 years after the expiration of  
23 the last expiring of said 3-year terms. Three elected direc-  
24 tors of different classes as specified by the Finance Board  
25 shall be elected by ballot annually.”.

1       (d) Subsection (d) of section 7 of the Federal Home  
 2 Loan Bank Act (12 U.S.C. 1427(e)) (as so redesignated  
 3 by subsection (b) of this section) is amended to read as  
 4 follows:

5       “(d) **TRANSITION PROVISION.**—In the first election  
 6 after the date of the enactment of the Financial Services  
 7 Act of 1998, three directors shall be elected in each of  
 8 the 3 classes of elective directorship. The Finance Board  
 9 may, in the first election after such date of enactment,  
 10 designate the terms of each elected director in each class,  
 11 not to exceed 3 years, to assure that, in each subsequent  
 12 election, 3 directors from different classes of elective direc-  
 13 torships are elected each year.”

14       (e) Subsection (g) of section 7 of the Federal Home  
 15 Loan Bank Act (12 U.S.C. 1427(i)) (as so redesignated  
 16 by subsection (b) of this section) is amended by striking  
 17 “subject to the approval of the board”.

18 **SEC. 165. ADVANCES TO NONMEMBER BORROWERS.**

19       Section 10b of the Federal Home Loan Bank Act (12  
 20 U.S.C. 1430b) is amended—

21           (1) in subsection (a), by striking “(a) **IN GEN-**  
 22       **ERAL.**—”;

23           (2) by striking the fourth sentence of subsection  
 24       (a), and inserting “Notwithstanding the preceding  
 25       sentence, if an advance is made for the purpose of

1 facilitating mortgage lending that benefits individ-  
 2 uals and families that meet the income requirements  
 3 set forth in section 142(d) or 143(f) of the Internal  
 4 Revenue Code of 1986; the advance may be  
 5 collateralized as provided in section 10(a) of this  
 6 Act.”; and

7 (3) by striking subsection (b).

8 **SEC. 166. POWERS AND DUTIES OF BANKS.**

9 (a) Subsection (a) of section 11 of the Federal Home  
 10 Loan Bank Act (12 U.S.C. 1431(a)) is amended—

11 (1) by inserting “through the Office of Fi-  
 12 nance” after “to issue”; and

13 (2) by striking “Board” after “upon such terms  
 14 and conditions as the” and inserting “board of di-  
 15 rectors of the bank”.

16 (b) Subsection (b) of section 11 of the Federal Home  
 17 Loan Bank Act (12 U.S.C. 1431(b)) is amended to read  
 18 as follows:

19 “(b) **ISSUANCE OF FEDERAL HOME LOAN BANK**  
 20 **CONSOLIDATED BONDS.—**

21 “(1) **IN GENERAL.—** The Office of Finance may  
 22 issue consolidated Federal home loan bank bonds  
 23 and other consolidated obligations on behalf of the  
 24 banks.

1           “(2) JOINT AND SEVERAL OBLIGATION; TERMS  
2           AND CONDITIONS.—Consolidated obligations issued  
3           by the Office of Finance under paragraph (1)  
4           shall—

5                   “(A) be the joint and several obligations of  
6                   all the Federal home loan banks; and

7                   “(B) shall be issued upon such terms and  
8                   conditions as shall be established by the Office  
9                   of Finance subject to such rules and regulations  
10                  as the Finance Board may prescribe.”.

11          (e) Section 11(f) of the Federal Home Loan Bank  
12          Act (~~12 U.S.C. 1430(f)~~ (as designated before the redesignig-  
13          nation by subsection (e) of this section) is amended by  
14          striking both commas immediately following “permit” and  
15          inserting “or”.

16          (d) Subsection (i) of section 11 of the Federal Home  
17          Loan Bank Act (~~12 U.S.C. 1431(i)~~) is amended by strik-  
18          ing the second undesignated paragraph.

19          (e) Section 11 of the Federal Home Loan Bank Act  
20          (~~12 U.S.C. 1431~~) is amended—

21                  (1) by striking subsection (e); and

22                  (2) by redesignating subsections (d) through (k)  
23                  as subsections (e) through (j), respectively.

1 **SEC. 167. MERGERS AND CONSOLIDATIONS OF FEDERAL**  
2 **HOME LOAN BANKS.**

3 Section 26 of the Federal Home Loan Bank Act (12  
4 U.S.C. 1446) is amended by designating the current para-  
5 graph as “(a)” and adding the following new sections:

6 “(b) Nothing in this section shall preclude voluntary  
7 mergers, combinations or consolidation by or among the  
8 Federal home loan banks pursuant to such regulations as  
9 the Finance Board may prescribe.

10 “(c) NUMBER OF ELECTED DIRECTORS OF RESULT-  
11 ING BANK.— Subject to section 7 of this Act, any bank  
12 resulting from a merger, combination, or consolidation  
13 pursuant to this section may have a number of elected di-  
14 rectors equal to or less than the total number of elected  
15 directors of all the banks which participated in such trans-  
16 action (as determined immediately before such trans-  
17 action).

18 “(d) NUMBER OF APPOINTED DIRECTORS OF RE-  
19 SULTING BANK.—The number of appointed directors of  
20 any bank resulting from a merger, combination, or consoli-  
21 dation pursuant to this section shall be a number that is  
22 three less than the number of elected directors.

23 “(e) ADJUSTMENT OF DISTRICT BOUNDARIES.—  
24 After consummation of any merger, combination, or con-  
25 solidation of two or more Federal home loan banks, the  
26 Finance Board shall adjust the districts established in sec-

1 tion 3 of this Act to reflect such merger, combination, or  
2 consolidation.”.

3 **SEC. 168. TECHNICAL AMENDMENTS.**

4 (a) REPEAL OF SECTIONS 22A AND 27.—The Fed-  
5 eral Home Loan Bank Act (12 U.S.C. 1421 et seq.) is  
6 amended by striking sections 22A (12 U.S.C. 1442a) and  
7 27 (12 U.S.C. 1447).

8 (b) SECTION 12.—

9 (1) Section 12(a) of the Federal Home Loan  
10 Bank Act (12 U.S.C. 1432(a)) is amended—

11 (A) by striking “subject to the approval of  
12 the Board” immediately following “transaction  
13 of its business”; and

14 (B) by striking “and, by its Board of di-  
15 rectors, to prescribe, amend, and repeal by-  
16 laws, rules, and regulations governing the man-  
17 ner in which its affairs may be administered;  
18 and the powers granted to it by law may be ex-  
19 ercised and enjoyed subject to the approval of  
20 the Board. The president of a Federal Home  
21 Loan Bank may also be a member of the Board  
22 of directors thereof, but no other officer, em-  
23 ployee, attorney, or agent of such bank,” and  
24 inserting “and, by the board of directors of the  
25 bank, to prescribe, amend, and repeal by-laws

1 governing the manner in which its affairs may  
2 be administered, consistent with applicable stat-  
3 ute and regulation, as administered by the Fi-  
4 nance Board. No officer, employee, attorney, or  
5 agent of a Federal home loan bank”.

6 (2) Section 12 of the Federal Home Loan Bank  
7 Act (12 U.S.C. 1432) is amended by inserting after  
8 subsection (b) the following new subsection:

9 “(c) PROHIBITION ON EXCESSIVE COMPENSATION.—

10 “(1) IN GENERAL.—The Finance Board shall  
11 prohibit the Federal home loan banks from provid-  
12 ing compensation to any officer, director, or em-  
13 ployee that is not reasonable and comparable with  
14 the compensation for employment in other similar  
15 businesses involving similar duties and responsibil-  
16 ities. However, the Finance Board may not prescribe  
17 or set a specific level or range of compensation for  
18 any officer, director, or employee.

19 “(2) REGULATIONS.—The Finance Board, by  
20 regulation, may provide for the requirements of  
21 paragraph (1) to be phased-in over a period not to  
22 exceed 3 years.

23 “(3) EXCEPTION FOR EXISTING CONTRACTS.—  
24 Paragraph (1) shall not apply to any contract en-  
25 tered into before June 1, 1997.”.

1       (c) POWERS AND DUTIES OF FEDERAL HOUSING FI-  
2       NANCE BOARD.—

3           (1) Subsection (a)(1) of section 2B of the Fed-  
4       eral Home Loan Bank Act (12 U.S.C. 1422b(a)(1))  
5       is amended by striking the period at the end of the  
6       sentence and inserting “; and to have the same pow-  
7       ers, rights, and duties to enforce this Act with re-  
8       spect to the Federal home loan banks and the senior  
9       officers and directors of such banks as the Office of  
10      Federal Housing Enterprise Oversight has over the  
11      Federal housing enterprises and the senior officers  
12      and directors of such enterprises under the Federal  
13      Housing Enterprises Financial Safety and Sound-  
14      ness Act of 1992.”.

15          (2) Subsection (b) of section 2B of the Federal  
16      Home Loan Bank Act (12 U.S.C. 1422b(b)) is  
17      amended—

18           (A) by striking “(1) BOARD STAFF.—”;

19           (B) by striking “function to any employee,  
20      administrative unit” and inserting “function to  
21      any employee or administrative unit”;

22           (C) by striking the second sentence in  
23      paragraph (1); and

24           (D) by striking paragraph (2).

1           (3) Section 111 of Public Law 93-495 (12  
2 U.S.C. 250) is amended by striking “Federal Home  
3 Loan Bank Board” and inserting “Federal Housing  
4 Finance Board”.

5 (d) ELIGIBILITY TO SECURE ADVANCES.—

6           (1) SECTION 9.—Section 9 of the Federal  
7 Home Loan Bank Act (12 U.S.C. 1429) is amend-  
8 ed—

9           (A) in the second sentence, by striking  
10 “with the approval of the Board”; and

11           (B) in the third sentence, by striking “,  
12 subject to the approval of the Board,”.

13 (2) SECTION 10.—

14           (A) Subsection (a) of section 10 of the  
15 Federal Home Loan Bank Act (12 U.S.C.  
16 1430(a)) is amended in paragraph (3), by strik-  
17 ing “Deposits” and inserting “Cash or depos-  
18 its”.

19           (B) Subsection (e) of section 10 of the  
20 Federal Home Loan Bank Act (12 U.S.C.  
21 1430(e)) is amended—

22           (i) in the first sentence by striking  
23 “Board” and inserting “Federal home loan  
24 bank”; and

25           (ii) by striking the second sentence.

1           (C) Subsection (d) of section 10 of the  
2 Federal Home Loan Bank Act (12 U.S.C.  
3 1430(d)) is amended—

4           (i) in the first sentence, by striking  
5 “and the approval of the Board”; and

6           (ii) in the last sentence, by striking  
7 “Subject to the approval of the Board,  
8 any” and inserting “Any”.

9           (D) Section 10(j) of the Federal Home  
10 Loan Bank Act (12 U.S.C. 1430(j)) is amend-  
11 ed—

12           (i) in the first sentence of paragraph  
13 (1) by striking “to subsidize the interest  
14 rate on advances” and inserting “to pro-  
15 vide subsidies, including subsidized interest  
16 rates on advances”;

17           (ii) in paragraphs (2), (3), (4), (5),  
18 (9), (11), and (12) by striking “advances”  
19 and “subsidized advances” each place such  
20 terms appear and inserting “subsidies, in-  
21 cluding subsidized advances”;

22           (iii) in paragraph (1), by inserting  
23 “(A)” before the first sentence, and insert-  
24 ing the following at the end of the para-  
25 graph:

1           “(B) Subject to such regulations as the Fi-  
2           nance Board may prescribe, the board of direc-  
3           tors of each Federal home loan bank may ap-  
4           prove or disapprove requests from members for  
5           Affordable Housing Program subsidies, and  
6           may not delegate such authority.”;

7                     (iv) in paragraph (2), by striking sub-  
8                     paragraph (B) and inserting the following  
9                     new subparagraph:

10           “(B) finance the purchase, construction or  
11           rehabilitation of rental housing if, for a period  
12           of at least 15 years, either 20 percent or more  
13           of the units in such housing are occupied by  
14           and affordable for households whose income is  
15           50 percent or less of area median income (as  
16           determined by the Secretary of Housing and  
17           Urban Development, and as adjusted for family  
18           size); or 40 percent or more of the units in such  
19           housing are occupied by and affordable for  
20           households whose income is 60 percent or less  
21           of area median income (as determined by the  
22           Secretary of Housing and Urban Development,  
23           and as adjusted for family size).”;

24                     (v) in paragraph (5)—

1 (I) by striking the colon after  
2 “Affordable Housing Program”;

3 (II) by striking subparagraphs  
4 (A) and (B); and

5 (III) by striking “(C) In 1995,  
6 and subsequent years,”;

7 (vi) in paragraph (11)—

8 (I) by inserting “, pursuant to a  
9 nomination process that is as broad  
10 and as participatory as possible, and  
11 giving consideration to the size of the  
12 District and the diversity of low- and  
13 moderate-income housing needs and  
14 activities within the District,” after  
15 “Advisory Council of 7 to 15 per-  
16 sons”;

17 (II) by inserting “a diverse range  
18 of” before “community and nonprofit  
19 organizations”; and

20 (III) by inserting after the first  
21 sentence, the following new sentence:  
22 “Representatives of no one group  
23 shall constitute an undue proportion  
24 of the membership of the Advisory  
25 Council.”; and

1                   (vii) in paragraph (13), by striking  
2                   subparagraph (D) and inserting the follow-  
3                   ing new subparagraph:

4                   “(D) AFFORDABLE.—For purposes of  
5                   paragraph (2)(B), the term “affordable” means  
6                   that the rent with respect to a unit shall not ex-  
7                   ceed 30 percent of the income limitation under  
8                   paragraph (2)(B) applicable to occupants of  
9                   such unit.”.

10           (e) SECTION 16.—Subsection (a) of section 16 of the  
11 Federal Home Loan Bank Act (12 U.S.C. 1436) is  
12 amended in the third sentence by striking “net earnings”  
13 and inserting “previously retained earnings or current net  
14 earnings”; by striking “, and then only with the approval  
15 of the Federal Housing Finance Board”; and by striking  
16 the fourth sentence.

17           (f) SECTION 18.—Subsection (b) of section 18 of the  
18 Federal Home Loan Bank Act (12 U.S.C. 1438) is  
19 amended by striking paragraph (4).

20           (g) SECTION 11.—Section 11 of the Federal Home  
21 Loan Bank Act (12 U.S.C. 1431) is amended by inserting  
22 after subsection (j) (as so redesignated by section 166(e)  
23 of this subtitle) the following subsection:

24           “(k) PROHIBITION ON OTHER ACTIVITIES.—

1           “(1) A Federal home loan bank may not engage  
2           in any activity other than the activities authorized  
3           under this Act and activities incidental to such au-  
4           thorized activities.

5           “(2) All activities specified in paragraph (1) are  
6           subject to Finance Board approval.”.

7 **SEC. 169. DEFINITIONS.**

8           Paragraph (3) of section 2 of the Federal Home Loan  
9 Bank Act (12 U.S.C. 1422(3)) is amended to read as fol-  
10 lows:

11           “(3) The term “State” in addition to the states  
12           of the United States, includes the District of Colum-  
13           bia, Guam, Puerto Rico, the United States Virgin  
14           Islands, American Samoa, and the Commonwealth of  
15           the Northern Mariana Islands.”.

16 **SEC. 170. RESOLUTION FUNDING CORPORATION.**

17           (a) IN GENERAL.—Section 21B(f)(2)(C) of the Fed-  
18 eral Home Loan Bank Act (12 U.S.C. 1441b(f)(2)(C)) is  
19 amended to read as follows:

20           “(C) PAYMENTS BY FEDERAL HOME LOAN  
21           BANKS.—To the extent the amounts available  
22           pursuant to subparagraphs (A) and (B) are in-  
23           sufficient to cover the amount of interest pay-  
24           ments, each Federal home loan bank shall pay  
25           to the Funding Corporation each calendar year

1           20.75 percent of the net earnings of such bank  
2           (after deducting expenses relating to subsection  
3           (j) of section 10 and operating expenses).”

4           (b) **EFFECTIVE DATE.**—The amendment made by  
5 subsection (a) shall take effect on January 1, 1999.

6 **SEC. 171. CAPITAL STRUCTURE OF THE FEDERAL HOME**  
7           **LOAN BANKS.**

8           (a) **IN GENERAL.**—Section 6 of the Federal Home  
9 Loan Bank Act (12 U.S.C. 1426) is amended to read as  
10 follows:

11 **“SEC. 6. CAPITAL STRUCTURE OF FEDERAL HOME LOAN**  
12           **BANKS.**

13           “(a) **CAPITAL STRUCTURE PLAN.**—On or before Jan-  
14 uary 1, 1999, the board of directors of each Federal home  
15 loan bank shall submit for Finance Board approval a plan  
16 establishing and implementing a capital structure for such  
17 bank which—

18           “(1) the board of directors determines is the  
19 best suited for the condition and operation of the  
20 bank and the interests of the shareholders of the  
21 bank;

22           “(2) meets the requirements of subsection (b);  
23 and

24           “(3) meets the minimum capital standards and  
25 requirements established under subsection (c) and

1 any regulations prescribed by the Finance Board  
2 pursuant to such subsection.

3 “(b) CONTENTS OF PLAN.—The capital structure  
4 plan of each Federal home loan bank shall meet the follow-  
5 ing requirements:

6 “(1) STOCK PURCHASE REQUIREMENTS.—

7 “(A) IN GENERAL.—Each capital structure  
8 plan of a Federal home loan bank shall require  
9 the shareholders of the bank to maintain an in-  
10 vestment in the stock of the bank in amount  
11 not less than—

12 “(i) a minimum percentage of the  
13 total assets of the shareholder; and

14 “(ii) a minimum percentage of the  
15 outstanding advances from the bank to the  
16 shareholder.

17 “(B) MINIMUM PERCENTAGE LEVELS.—

18 The minimum percentages established pursuant  
19 to subparagraph (A) shall be set at levels suffi-  
20 cient to meet the bank’s minimum capital re-  
21 quirements established by the Finance Board  
22 under subsection (c).

23 “(C) MAXIMUM ASSET BASED CAPITAL RE-  
24 QUIREMENT.—The asset-based capital require-  
25 ment applicable to any shareholder of a Federal

1 home loan bank in any year shall not exceed the  
2 lesser of—

3 “(i) 0.6 percent of a shareholder’s  
4 total assets at the close of the preceding  
5 year; or

6 “(ii) \$300,000,000.

7 “(D) ~~MAXIMUM ADVANCE-BASED REQUIRE-~~  
8 ~~MENT.~~—The advance-based capital requirement  
9 applicable to any shareholder of a Federal home  
10 loan bank shall not exceed 6 percent of the  
11 total outstanding advances from the bank to the  
12 shareholder.

13 “(E) ~~MINIMUM STOCK PURCHASE RE-~~  
14 ~~QUIREMENT AUTHORIZED.~~—A capital structure  
15 plan may establish a minimum dollar amount of  
16 stock of a Federal home loan bank in which a  
17 shareholder shall be required to invest.

18 “(2) ~~ADJUSTMENTS TO STOCK PURCHASE RE-~~  
19 ~~QUIREMENTS.~~—The capital structure plan adopted  
20 by each Federal home loan bank shall impose a con-  
21 tinuing obligation on the board of directors of the  
22 bank to review and adjust as necessary member  
23 stock purchase requirements in order to ensure that  
24 the bank remains in compliance with applicable min-

1       imum capital levels established by the Finance  
2       Board.

3           ~~“(3) TRANSITION RULE FOR STOCK PURCHASE~~  
4       ~~REQUIREMENTS.—~~

5           ~~“(A) IN GENERAL.—A capital structure~~  
6       ~~plan may allow shareholders who were members~~  
7       ~~of a Federal home loan bank on the date of the~~  
8       ~~enactment of the Financial Services Act of~~  
9       ~~1998 to come into compliance with the asset-~~  
10      ~~based stock purchase requirement established~~  
11      ~~under paragraph (1) during a transition period~~  
12      ~~established under the plan of not more than 3~~  
13      ~~years, if such requirement exceeds the asset-~~  
14      ~~based stock purchase requirement in effect on~~  
15      ~~such date of enactment.~~

16          ~~“(B) INTERIM PURCHASE REQUIRE-~~  
17      ~~MENTS.—A capital structure plan may establish~~  
18      ~~interim asset-based stock purchase require-~~  
19      ~~ments applicable to members referred to in sub-~~  
20      ~~paragraph (A) during a transition period estab-~~  
21      ~~lished under subparagraph (A).~~

22          ~~“(4) CLASSES OF STOCK.—~~

23          ~~“(A) IN GENERAL.—Each capital structure~~  
24      ~~plan shall afford each shareholder of a Federal~~  
25      ~~home loan bank the option of meeting the~~

1 shareholder's stock purchase requirements  
2 through the purchase of any combination of  
3 Class A or Class B stock.

4 “(B) CLASS A STOCK.—Class A stock shall  
5 be stock of a Federal home loan bank that shall  
6 be redeemed in cash and at par by the bank no  
7 later than 12 months following submission of a  
8 written notice by a shareholder of the share-  
9 holder's intention to divest all shares of stock in  
10 the bank.

11 “(C) CLASS B STOCK.—Class B stock shall  
12 be stock of a Federal home loan bank that shall  
13 be redeemed in cash and at par by the bank no  
14 later than 5 years following submission of a  
15 written notice by a shareholder of the share-  
16 holder's intention to divest all shares of stock in  
17 the bank.

18 “(D) RIGHTS REQUIREMENT.—The Class  
19 B stock of a Federal home loan bank may re-  
20 ceive a dividend premium over that paid on  
21 Class A stock, and may have preferential voting  
22 rights in the election of Federal home loan bank  
23 directors.

24 “(E) LOWER STOCK PURCHASE REQUIRE-  
25 MENTS FOR CLASS B STOCK.—A capital struc-

1           ture plan may provide for lower stock purchase  
2           requirements with respect to those sharehold-  
3           er's that elect to purchase Class B stock in a  
4           manner that is consistent with meeting the  
5           bank's own minimum capital requirements as  
6           established by the Finance Board.

7           ~~“(F) NO OTHER CLASSES OF STOCK PER-~~  
8           ~~MITTED.—No class of stock other than the~~  
9           ~~Class A and Class B stock described in sub-~~  
10          ~~paragraphs (B) and (C) may be issued by a~~  
11          ~~Federal home loan bank.~~

12          ~~“(5) LIMITED TRANSFERABILITY OF STOCK.—~~  
13          ~~Each capital structure plan shall provide that any~~  
14          ~~equity securities issued by the bank shall be avail-~~  
15          ~~able only to, held only by, and tradable only among~~  
16          ~~shareholders of the bank.~~

17          ~~“(e) CAPITAL STANDARDS.—~~

18          ~~“(1) IN GENERAL.—The Finance Board shall~~  
19          ~~prescribe, by regulation, uniform capital standards~~  
20          ~~applicable to each Federal home loan bank which~~  
21          ~~shall include—~~

22                  ~~“(A) a leverage limit in accordance with~~  
23                  ~~paragraph (2); and~~

24                  ~~“(B) a risk-based capital requirement in~~  
25                  ~~accordance with paragraph (3).~~

1           “(2) ~~MINIMUM LEVERAGE LIMIT.~~—The leverage  
2 limit established by the Finance Board shall require  
3 each Federal home loan bank to maintain total cap-  
4 ital in an amount not less than 5 percent of the total  
5 assets of the bank. In determining compliance with  
6 the minimum leverage ratio, the amount of retained  
7 earnings and the paid-in value of Class B stock, if  
8 any, shall be multiplied by 1.5 and such higher  
9 amount shall be deemed to be capital for purposes  
10 of meeting the 5 percent minimum leverage ratio.

11           “(3) ~~RISK-BASED CAPITAL STANDARD.~~—The  
12 risk-based capital requirement shall be composed of  
13 the following components:

14           “(A) Capital sufficient to meet the credit  
15 risk to which a Federal home loan bank is sub-  
16 ject, based on an amount which is not less than  
17 the amount of tier 1, risk-based capital required  
18 by regulations prescribed, or guidelines issued  
19 under section 38 of the Federal Deposit Insur-  
20 ance Act for a well capitalized insured deposi-  
21 tory institution.

22           “(B) Capital sufficient to meet the interest  
23 rate risk to which a Federal home loan bank is  
24 subject, based on an interest rate stress test ap-  
25 plied by the Finance Board that rigorously tests

1           for changes in interest rates, rate volatility, and  
2           changes in the shape of the yield curve.

3           “(d) REDEMPTION OF CAPITAL.—

4           “(1) IN GENERAL.—Any shareholder of a Fed-  
5           eral home loan bank shall have the right to withdraw  
6           the shareholder’s membership from a Federal home  
7           loan bank and to redeem the shareholder’s stock in  
8           accordance with the redemption rights associated  
9           with the class of stock the shareholder holds, if—

10                   “(A) such shareholder has filed a written  
11                   notice of an intention to redeem all such shares;  
12                   and

13                   “(B) the shareholder has no outstanding  
14                   advances from any Federal home loan bank at  
15                   the time of such redemption.

16           “(2) PARTIAL REDEMPTION.—A shareholder  
17           who files notice of intention to redeem all shares of  
18           stock in a Federal home loan bank may redeem not  
19           more than  $\frac{1}{2}$  of all such shares, in cash and at par,  
20           6 months before the date by which the bank is re-  
21           quired to redeem such stock pursuant to subpara-  
22           graph (B) or (C) of subsection (b)(4).

23           “(3) DIVESTITURE.—The board of directors of  
24           any Federal home loan bank may, after a hearing,

1 order the divestiture by any shareholder of all own-  
2 ership interests of such shareholder in the bank, if—

3 “(A) in the opinion of the board of direc-  
4 tors, such shareholder has failed to comply with  
5 a provision of this Act or any regulation pre-  
6 scribed under this Act; or

7 “(B) the shareholder has been determined  
8 to be insolvent, or otherwise subject to the ap-  
9 pointment of a conservator, receiver, or other  
10 legal custodian, by a State or Federal authority  
11 with regulatory and supervisory responsibility  
12 for such shareholder.

13 “(4) RETIREMENT OF EXCESS STOCK.—Any  
14 shareholder may—

15 “(A) retire shares of Class A stock or, at  
16 the option of the shareholder, shares of Class B  
17 stock, or any combination of Class A and Class  
18 B stock, that are excess to the minimum stock  
19 purchase requirements applicable to the share-  
20 holder; and

21 “(B) receive from the Federal home loan  
22 bank a prompt payment in cash equal to the  
23 par value of such stock.

24 “(5) IMPAIRMENT OF CAPITAL.—If the Finance  
25 Board or the board of directors of a Federal home

1 loan bank determines that the paid-in capital of the  
2 bank is, or is likely to be, impaired as a result of  
3 losses in or depreciation of the assets of the bank,  
4 the Federal home loan bank shall withhold that por-  
5 tion of the amount due any shareholder with respect  
6 to any redemption or retirement of any class of  
7 stock which bears the same ratio to the total of such  
8 amount as the amount of the impaired capital bears  
9 to the total amount of capital allocable to such class  
10 of stock.

11 “(6) POLICIES.—Subject to the requirements of  
12 this section, the board of directors of each Federal  
13 home loan bank shall promptly establish policies,  
14 consistent with this Act, governing the capital stock  
15 of such bank and other provisions of this section.”.

16 **SEC. 172. INVESTMENTS.**

17 Subsection (j) of section 11 of the Federal Home  
18 Loan Bank Act (12 U.S.C. 1431) (as so redesignated by  
19 section 166(e) of this subtitle) is amended to read as fol-  
20 lows:

21 “(j) INVESTMENTS.—Each bank shall reduce its in-  
22 vestments to those necessary for liquidity purposes, for  
23 safe and sound operation of the banks, or for housing fi-  
24 nance, as administered by the Finance Board.”.

1 **SEC. 173. FEDERAL HOUSING FINANCE BOARD.**

2 Section 2A(b)(1) of the Federal Home Loan Bank  
3 Act (12 U.S.C. 1422(b)(1)) is amended—

4 (1) by redesignating subparagraphs (A) and  
5 (B) as subparagraphs (B) and (C), respectively;

6 (2) by inserting before subparagraph (B) (as so  
7 redesignated by paragraph (1) of this section) the  
8 following new subparagraph:

9 “(A) The Secretary of the Treasury (or the  
10 Secretary of the Treasury’s designee), who shall  
11 serve without additional compensation.”; and

12 (3) in subparagraph (C) (as so redesignated by  
13 paragraph (1) of this section) by striking “Four”  
14 and inserting “3”.

15 **Subtitle H—Direct Activities of**  
16 **Banks**

17 **SEC. 181. AUTHORITY OF NATIONAL BANKS TO UNDER-**  
18 **WRITE CERTAIN MUNICIPAL BONDS.**

19 The paragraph designated the Seventh of section  
20 5136 of the Revised Statutes of the United States (12  
21 U.S.C. 24(7)) is amended by adding at the end the follow-  
22 ing new sentence: “In addition to the provisions in this  
23 paragraph for dealing in, underwriting or purchasing secu-  
24 rities, the limitations and restrictions contained in this  
25 paragraph as to dealing in, underwriting, and purchasing  
26 investment securities for the national bank’s own account

1 shall not apply to obligations (including limited obligation  
 2 bonds, revenue bonds, and obligations that satisfy the re-  
 3 quirements of section 142(b)(1) of the Internal Revenue  
 4 Code of 1986) issued by or on behalf of any state or politi-  
 5 cal subdivision of a state, including any municipal cor-  
 6 porate instrumentality of 1 or more states, or any public  
 7 agency or authority of any state or political subdivision  
 8 of a state, if the national banking association is well cap-  
 9 italized (as defined in section 38 of the Federal Deposit  
 10 Insurance Act).”.

## 11 **Subtitle I—Deposit Insurance** 12 **Funds**

### 13 **SEC. 186. STUDY OF SAFETY AND SOUNDNESS OF FUNDS.**

14 (a) **STUDY REQUIRED.**—The Board of Directors of  
 15 the Federal Deposit Insurance Corporation shall conduct  
 16 a study of the following issues with regard to the Bank  
 17 Insurance Fund and the Savings Association Insurance  
 18 Fund:

19 (1) The safety and soundness of the funds and  
 20 the adequacy of the reserve requirements applicable  
 21 to the funds in light of—

22 (A) the size of the insured depository insti-  
 23 tutions which are resulting from mergers and  
 24 consolidations since the effective date of the

1 Riegle-Neal Interstate Banking and Branching  
2 Efficiency Act of 1994; and

3 ~~(B) the affiliation of insured depository in-~~  
4 ~~stitutions with other financial institutions pur-~~  
5 ~~suant to this Act and the amendments made by~~  
6 ~~this Act.~~

7 ~~(2) The concentration levels of the funds, tak-~~  
8 ~~ing into account the number of members of each~~  
9 ~~fund and the geographic distribution of such mem-~~  
10 ~~bers, and the extent to which either fund is exposed~~  
11 ~~to higher risks due to a regional concentration of~~  
12 ~~members or an insufficient membership base relative~~  
13 ~~to the size of member institutions.~~

14 ~~(3) Issues relating to the planned merger of the~~  
15 ~~funds, including the cost of merging the funds and~~  
16 ~~the manner in which such costs will be distributed~~  
17 ~~among the members of the respective funds.~~

18 ~~(b) REPORT REQUIRED.—~~

19 ~~(1) IN GENERAL.—~~Before the end of the 9-  
20 ~~month period beginning on the date of the enact-~~  
21 ~~ment of this Act, the Board of Directors of the Fed-~~  
22 ~~eral Deposit Insurance Corporation shall submit a~~  
23 ~~report to the Congress on the study conducted pur-~~  
24 ~~suant to subsection (a).~~

1           (2) CONTENTS OF REPORT.—The report shall  
2 include—

3           (A) detailed findings of the Board of Di-  
4 rectors with regard to the issues described in  
5 subsection (a);

6           (B) a description of the plans developed by  
7 the Board of Directors for merging the Bank  
8 Insurance Fund and the Savings Association  
9 Insurance Fund, including an estimate of the  
10 amount of the cost of such merger which would  
11 be borne by Savings Association Insurance  
12 Fund members; and

13           (C) such recommendations for legislative  
14 and administrative action as the Board of Di-  
15 rectors determines to be necessary or appro-  
16 priate to preserve the safety and soundness of  
17 the deposit insurance funds; reduce the risks to  
18 such funds; provide for an efficient merger of  
19 such funds; and for other purposes.

20           (e) DEFINITIONS.—For purposes of this section, the  
21 following definitions shall apply:

22           (1) INSURED DEPOSITORY INSTITUTION.—The  
23 term “insured depository institution” has the mean-  
24 ing given to such term in section 3(e) of the Federal  
25 Deposit Insurance Act.

1           (2) BIF AND SAIF MEMBERS.—The terms  
 2           “Bank Insurance Fund member” and “Savings As-  
 3           sociation Insurance Fund member” have the mean-  
 4           ing given to such terms in section 7(l) of the Federal  
 5           Deposit Insurance Act.

## 6       **Subtitle J—Effective Date of Title**

### 7       **SEC. 191. EFFECTIVE DATE.**

8           Except with regard to any subtitle or other provision  
 9           of this title for which a specific effective date is provided,  
 10          this title and the amendments made by this title shall take  
 11          effect at the end of the 270-day period beginning on the  
 12          date of the enactment of this Act.

## 13                   **TITLE II—FUNCTIONAL** 14                   **REGULATION**

### 15          **Subtitle A—Brokers and Dealers**

#### 16          **SEC. 201. DEFINITION OF BROKER.**

17          Section 3(a)(4) of the Securities Exchange Act of  
 18          1934 (15 U.S.C. 78c(a)(4)) is amended to read as follows:

19                   “(4) BROKER.—

20                           “(A) IN GENERAL.—The term ‘broker’  
 21                           means any person engaged in the business of  
 22                           effecting transactions in securities for the ac-  
 23                           count of others:

24                           “(B) EXCEPTION FOR CERTAIN BANK AC-  
 25                           TIVITIES.—A bank shall not be considered to be

1 a broker because the bank engages in any of  
2 the following activities under the conditions de-  
3 scribed:

4 “(i) ~~THIRD PARTY BROKERAGE AR-~~  
5 ~~RANGEMENTS.~~—The bank enters into a  
6 contractual or other arrangement with a  
7 broker or dealer registered under this title  
8 under which the broker or dealer offers  
9 brokerage services on or off the premises  
10 of the bank if—

11 “(I) such broker or dealer is  
12 clearly identified as the person per-  
13 forming the brokerage services;

14 “(II) the broker or dealer per-  
15 forms brokerage services in an area  
16 that is clearly marked and, to the ex-  
17 tent practicable, physically separate  
18 from the routine deposit-taking activi-  
19 ties of the bank;

20 “(III) any materials used by the  
21 bank to advertise or promote generally  
22 the availability of brokerage services  
23 under the contractual or other ar-  
24 rangement clearly indicate that the  
25 brokerage services are being provided

1 by the broker or dealer and not by the  
2 bank;

3 “(IV) any materials used by the  
4 bank to advertise or promote generally  
5 the availability of brokerage services  
6 under the contractual or other ar-  
7 rangement are in compliance with the  
8 Federal securities laws before dis-  
9 tribution;

10 “(V) bank employees (other than  
11 associated persons of a broker or deal-  
12 er who are qualified pursuant to the  
13 rules of a self-regulatory organization)  
14 perform only clerical or ministerial  
15 functions in connection with broker-  
16 age transactions including scheduling  
17 appointments with the associated per-  
18 sons of a broker or dealer, except that  
19 bank employees may forward cus-  
20 tomer funds or securities and may de-  
21 scribe in general terms the range of  
22 investment vehicles available from the  
23 bank and the broker or dealer under  
24 the contractual or other arrangement;

1           “(VI) bank employees do not di-  
2           rectly receive incentive compensation  
3           for any brokerage transaction unless  
4           such employees are associated persons  
5           of a broker or dealer and are qualified  
6           pursuant to the rules of a self-regu-  
7           latory organization, except that the  
8           bank employees may receive com-  
9           pensation for the referral of any cus-  
10          tomer if the compensation is a nomi-  
11          nal one-time cash fee of a fixed dollar  
12          amount and the payment of the fee is  
13          not contingent on whether the referral  
14          results in a transaction;

15           “(VII) such services are provided  
16          by the broker or dealer on a basis in  
17          which all customers which receive any  
18          services are fully disclosed to the  
19          broker or dealer;

20           “(VIII) the bank does not carry  
21          a securities account of the customer  
22          except in a customary custodian or  
23          trustee capacity; and

24           “(IX) the bank, broker, or dealer  
25          informs each customer that the bro-

1                   kerage services are provided by the  
2                   broker or dealer and not by the bank  
3                   and that the securities are not depos-  
4                   its or other obligations of the bank,  
5                   are not guaranteed by the bank, and  
6                   are not insured by the Federal De-  
7                   posit Insurance Corporation.

8                   “(ii) TRUST ACTIVITIES.—The bank  
9                   effects transactions in a trustee capacity,  
10                  or effects transactions in a fiduciary capac-  
11                  ity in its trust department or other depart-  
12                  ment that is regularly examined by bank  
13                  examiners for compliance with fiduciary  
14                  principles and standards, and (in either  
15                  ease)—

16                  “(I) is primarily compensated on  
17                  the basis of an administration or an-  
18                  nual fee (payable on a monthly, quar-  
19                  terly, or other basis), a percentage of  
20                  assets under management, or a flat or  
21                  capped per order processing fee, or  
22                  any combination of such fees, but  
23                  does not otherwise receive brokerage  
24                  commissions, or other similar remu-  
25                  neration based on effecting trans-

1 actions in securities, that exceed the  
2 cost incurred by the bank in connec-  
3 tion with executing securities trans-  
4 actions for trustee or fiduciary cus-  
5 tomers; and

6 “(II) does not publicly solicit bro-  
7 kerage business, other than by adver-  
8 tising that it effects transactions in  
9 securities in conjunction with advertis-  
10 ing its other trust activities.

11 “(iii) PERMISSIBLE SECURITIES  
12 TRANSACTIONS.—The bank effects trans-  
13 actions in—

14 “(I) commercial paper, bankers  
15 acceptances, or commercial bills;

16 “(II) exempted securities;

17 “(III) qualified Canadian govern-  
18 ment obligations as defined in section  
19 5136 of the Revised Statutes, in con-  
20 formity with section 15C of this title  
21 and the rules and regulations there-  
22 under, or obligations of the North  
23 American Development Bank; or

24 “(IV) any standardized, credit  
25 enhanced debt security issued by a

1 foreign government pursuant to the  
2 March 1989 plan of then Secretary of  
3 the Treasury Brady, used by such for-  
4 eign government to retire outstanding  
5 commercial bank loans.

6 “(iv) CERTAIN STOCK PURCHASE  
7 PLANS.—

8 “(I) EMPLOYEE BENEFIT  
9 PLANS.—The bank effects trans-  
10 actions, as part of its transfer agency  
11 activities, in the securities of an issuer  
12 as part of any pension, retirement,  
13 profit-sharing, bonus, thrift, savings,  
14 incentive, or other similar benefit plan  
15 for the employees of that issuer or its  
16 subsidiaries, if—

17 (aa) the bank does not so-  
18 licit transactions or provide in-  
19 vestment advice with respect to  
20 the purchase or sale of securities  
21 in connection with the plan; and

22 “(bb) the bank’s compensa-  
23 tion for such plan or program  
24 consists of administration fees, or  
25 flat or capped per order process-

1 ing fees, or both, but the bank  
2 does not otherwise receive broker-  
3 age commissions, or other similar  
4 remuneration based on effecting  
5 transactions in securities, that  
6 exceed the cost incurred by the  
7 bank in connection with execut-  
8 ing securities transactions under  
9 this subclause (I).

10 “(II) DIVIDEND REINVESTMENT  
11 PLANS.—The bank effects trans-  
12 actions, as part of its transfer agency  
13 activities, in the securities of an issuer  
14 as part of that issuer’s dividend rein-  
15 vestment plan, if—

16 “(aa) the bank does not so-  
17 licit transactions or provide in-  
18 vestment advice with respect to  
19 the purchase or sale of securities  
20 in connection with the plan;

21 “(bb) the bank does not net  
22 shareholders’ buy and sell orders,  
23 other than for programs for odd-  
24 lot holders or plans registered  
25 with the Commission; and

1           “(cc) the bank’s compensa-  
2           tion for such plan or program  
3           consists of administration fees, or  
4           flat or capped per order process-  
5           ing fees, or both, but the bank  
6           does not otherwise receive broker-  
7           age commissions, or other similar  
8           remuneration based on effecting  
9           transactions in securities, that  
10          exceed the cost incurred by the  
11          bank in connection with execut-  
12          ing securities transactions under  
13          this subclause (H).

14          “(III) ISSUER PLANS.—The bank  
15          effects transactions, as part of its  
16          transfer agency activities, in the secu-  
17          rities of an issuer as part of a plan or  
18          program for the purchase or sale of  
19          that issuer’s shares, if—

20                 “(aa) the bank does not so-  
21                 licit transactions or provide in-  
22                 vestment advice with respect to  
23                 the purchase or sale of securities  
24                 in connection with the plan or  
25                 program;

1           “(bb) the bank does not net  
2           shareholders’ buy and sell orders;  
3           other than for programs for odd-  
4           lot holders or plans registered  
5           with the Commission; and

6           “(cc) the bank’s compensa-  
7           tion for such plan or program  
8           consists of administration fees, or  
9           flat or capped per order process-  
10          ing fees, or both, but the bank  
11          does not otherwise receive broker-  
12          age commissions, or other similar  
13          remuneration based on effecting  
14          transactions in securities, that  
15          exceed the cost incurred by the  
16          bank in connection with execut-  
17          ing securities transactions under  
18          this subclause (III).

19          “(IV) PERMISSIBLE DELIVERY  
20          OF MATERIALS.—The exception to  
21          being considered a broker for a bank  
22          engaged in activities described in sub-  
23          clauses (I), (II), and (III) will not be  
24          affected by a bank’s delivery of writ-  
25          ten or electronic plan materials to em-

1 employees of the issuer, shareholders of  
2 the issuer, or members of affinity  
3 groups of the issuer, so long as such  
4 materials are—

5 “(aa) comparable in scope or  
6 nature to that permitted by the  
7 Commission as of the date of the  
8 enactment of the Financial Serv-  
9 ices Act of 1998; or

10 “(bb) otherwise permitted by  
11 the Commission.

12 “(v) SWEEP ACCOUNTS.—The bank  
13 effects transactions as part of a program  
14 for the investment or reinvestment of bank  
15 deposit funds into any no-load, open-end  
16 management investment company reg-  
17 istered under the Investment Company Act  
18 of 1940 that holds itself out as a money  
19 market fund.

20 “(vi) AFFILIATE TRANSACTIONS.—  
21 The bank effects transactions for the ac-  
22 count of any affiliate of the bank (as de-  
23 fined in section 2 of the Bank Holding  
24 Company Act of 1956) other than—

1           ~~“(I) a registered broker or deal-~~  
2           ~~er; or~~

3           ~~“(II) an affiliate that is engaged~~  
4           ~~in merchant banking, as described in~~  
5           ~~section 6(e)(3)(H) of the Bank Hold-~~  
6           ~~ing company Act of 1956.~~

7           ~~“(vii) PRIVATE SECURITIES OFFER-~~  
8           ~~INGS.—The bank—~~

9           ~~“(I) effects sales as part of a pri-~~  
10           ~~mary offering of securities not involv-~~  
11           ~~ing a public offering, pursuant to sec-~~  
12           ~~tion 3(b), 4(2), or 4(6) of the Securi-~~  
13           ~~ties Act of 1933 or the rules and reg-~~  
14           ~~ulations issued thereunder;~~

15           ~~“(II) at any time after one year~~  
16           ~~after the date of enactment of the Fi-~~  
17           ~~nancial Services Act of 1998, is not~~  
18           ~~affiliated with a broker or dealer that~~  
19           ~~has been registered for more than one~~  
20           ~~year; and~~

21           ~~“(III) effects transactions exclu-~~  
22           ~~sively with qualified investors.~~

23           ~~“(viii) SAFEKEEPING AND CUSTODY~~  
24           ~~ACTIVITIES.—~~

1           “(I) IN GENERAL.—The bank, as  
2 part of customary banking activities—

3           “(aa) provides safekeeping  
4 or custody services with respect  
5 to securities, including the exer-  
6 cise of warrants and other rights  
7 on behalf of customers;

8           “(bb) facilitates the transfer  
9 of funds or securities, as a custo-  
10 dian or a clearing agency, in con-  
11 nection with the clearance and  
12 settlement of its customers’  
13 transactions in securities;

14           “(cc) effects securities lend-  
15 ing or borrowing transactions  
16 with or on behalf of customers as  
17 part of services provided to cus-  
18 tomers pursuant to division (aa)  
19 or (bb) or invests cash collateral  
20 pledged in connection with such  
21 transactions; or

22           “(dd) holds securities  
23 pledged by a customer to another  
24 person or securities subject to  
25 purchase or resale agreements in-

1           volving a customer, or facilitates  
2           the pledging or transfer of such  
3           securities by book entry or as  
4           otherwise provided under applica-  
5           ble law.

6           ~~“(H) EXCEPTION FOR CARRYING~~  
7           ~~BROKER ACTIVITIES.—~~The exception  
8           to being considered a broker for a  
9           bank engaged in activities described in  
10          subclause (I) shall not apply if the  
11          bank, in connection with such activi-  
12          ties, acts in the United States as a  
13          carrying broker (as such term, and  
14          different formulations thereof, are  
15          used in section 15(c)(3) and the rules  
16          and regulations thereunder) for any  
17          broker or dealer, unless such carrying  
18          broker activities are engaged in with  
19          respect to government securities (as  
20          defined in paragraph (42) of this sub-  
21          section).

22          ~~“(ix) BANKING PRODUCTS.—~~The bank  
23          effects transactions in traditional banking  
24          products, as defined in section 206(a) of  
25          the Financial Services Act of 1998.

1           “(x) DE MINIMIS EXCEPTION.—The  
2           bank effects, other than in transactions re-  
3           ferred to in clauses (i) through (ix), not  
4           more than 500 transactions in securities in  
5           any calendar year, and such transactions  
6           are not effected by an employee of the  
7           bank who is also an employee of a broker  
8           or dealer.

9           “(C) BROKER DEALER EXECUTION.—The  
10          exception to being considered a broker for a  
11          bank engaged in activities described in clauses  
12          (ii), (iv), and (viii) of subparagraph (B) shall  
13          not apply if the activities described in such pro-  
14          visions result in the trade in the United States  
15          of any security that is a publicly traded security  
16          in the United States, unless—

17                 “(i) the bank directs such trade to a  
18                 registered or broker dealer for execution;

19                 “(ii) the trade is a cross trade or  
20                 other substantially similar trade of a secu-  
21                 rity that—

22                         “(I) is made by the bank or be-  
23                         tween the bank and an affiliated fidu-  
24                         ciary; and

1                   “(H) is not in contravention of  
2                   fiduciary principles established under  
3                   applicable Federal or State law; or

4                   “(iii) the trade is conducted in some  
5                   other manner permitted under rules, regu-  
6                   lations, or orders as the Commission may  
7                   prescribe or issue.

8                   “(D) NO EFFECT OF BANK EXEMPTIONS  
9                   ON OTHER COMMISSION AUTHORITY.—The ex-  
10                  ception to being considered a broker for a bank  
11                  engaged in activities described in subpara-  
12                  graphs (B) and (C) shall not affect the commis-  
13                  sion’s authority under any other provision of  
14                  this Act or any other securities law.

15                  “(E) FIDUCIARY CAPACITY.—For purposes  
16                  of subparagraph (B)(ii), the term ‘fiduciary ca-  
17                  pacity’ means—

18                  “(i) in the capacity as trustee, execu-  
19                  tor, administrator, registrar of stocks and  
20                  bonds, transfer agent, guardian, assignee,  
21                  receiver, or custodian under a uniform gift  
22                  to minor act, or as an investment adviser  
23                  if the bank receives a fee for its investment  
24                  advice;

1           “(ii) in any capacity in which the  
2           bank possesses investment discretion on  
3           behalf of another; or

4           “(iii) in any other similar capacity.

5           “(F) EXCEPTION FOR ENTITIES SUBJECT  
6           TO SECTION 15(e).—The term ‘broker’ does not  
7           include a bank that—

8           “(i) was, immediately prior to the en-  
9           actment of the Financial Services Act of  
10          1998, subject to section 15(e); and

11          “(ii) is subject to such restrictions  
12          and requirements as the Commission con-  
13          siders appropriate.”.

14   **SEC. 202. DEFINITION OF DEALER.**

15          Section 3(a)(5) of the Securities Exchange Act of  
16   1934 (15 U.S.C. 78c(a)(5)) is amended to read as follows:

17          “(5) DEALER.—

18          “(A) IN GENERAL.—The term ‘dealer’  
19          means any person engaged in the business of  
20          buying and selling securities for such person’s  
21          own account through a broker or otherwise.

22          “(B) EXCEPTION FOR PERSON NOT EN-  
23          GAGED IN THE BUSINESS OF DEALING.—The  
24          term ‘dealer’ does not include a person that  
25          buys or sells securities for such person’s own

1 account, either individually or in a fiduciary ca-  
2 pacity, but not as a part of a regular business.

3 ~~“(C) EXCEPTION FOR CERTAIN BANK AC-~~  
4 ~~TIVITIES.—A bank shall not be considered to be~~  
5 ~~a dealer because the bank engages in any of the~~  
6 ~~following activities under the conditions de-~~  
7 ~~scribed:~~

8 ~~“(i) PERMISSIBLE SECURITIES TRANS-~~  
9 ~~ACTIONS.—The bank buys or sells—~~

10 ~~“(I) commercial paper, bankers~~  
11 ~~acceptances, or commercial bills;~~

12 ~~“(II) exempted securities;~~

13 ~~“(III) qualified Canadian govern-~~  
14 ~~ment obligations as defined in section~~  
15 ~~5136 of the Revised Statutes of the~~  
16 ~~United States, in conformity with sec-~~  
17 ~~tion 15C of this title and the rules~~  
18 ~~and regulations thereunder, or obliga-~~  
19 ~~tions of the North American Develop-~~  
20 ~~ment Bank; or~~

21 ~~“(IV) any standardized, credit~~  
22 ~~enhanced debt security issued by a~~  
23 ~~foreign government pursuant to the~~  
24 ~~March 1989 plan of then Secretary of~~  
25 ~~the Treasury Brady, used by such for-~~

1           eign government to retire outstanding  
2           commercial bank loans.

3           “(ii) INVESTMENT, TRUSTEE, AND FI-  
4           DUCIARY TRANSACTIONS.—The bank buys  
5           or sells securities for investment pur-  
6           poses—

7                   “(I) for the bank; or

8                   “(II) for accounts for which the  
9           bank acts as a trustee or fiduciary.

10           “(iii) ASSET-BACKED TRANS-  
11           ACTIONS.—The bank engages in the  
12           issuance or sale to qualified investors,  
13           through a grantor trust or otherwise, of se-  
14           curities backed by or representing an inter-  
15           est in notes, drafts, acceptances, loans,  
16           leases, receivables, other obligations, or  
17           pools of any such obligations predomi-  
18           nantly originated by the bank, or a syn-  
19           dicate of banks of which the bank is a  
20           member, or an affiliate of any such bank  
21           other than a broker or dealer.

22           “(iv) BANKING PRODUCTS.—The bank  
23           buys or sells traditional banking products,  
24           as defined in section 206(a) of the Finan-  
25           cial Services Act of 1998.

1           “(v) DERIVATIVE INSTRUMENTS.—

2           The bank issues, buys, or sells any deriva-  
3           tive instrument to which the bank is a  
4           party—

5                   “(I) to or from a corporation,  
6                   limited liability company, or partner-  
7                   ship that owns and invests on a dis-  
8                   cretionary basis, not less than  
9                   \$10,000,000 in investments, or to or  
10                  from a qualified investor, except that  
11                  if the instrument provides for the de-  
12                  livery of one or more securities (other  
13                  than a derivative instrument or gov-  
14                  ernment security), the transaction  
15                  shall be effected with or through a  
16                  registered broker or dealer; or

17                   “(II) to or from other persons,  
18                   except that if the derivative instru-  
19                   ment provides for the delivery of one  
20                   or more securities (other than a deriv-  
21                   ative instrument or government secu-  
22                   rity), or is a security (other than a  
23                   government security), the transaction  
24                   shall be effected with or through a  
25                   registered broker or dealer; or

1                   “~~(III)~~ to or from any person if  
2                   the instrument is neither a security  
3                   nor provides for the delivery of one or  
4                   more securities (other than a deriva-  
5                   tive instrument).”.

6 **SEC. 203. REGISTRATION FOR SALES OF PRIVATE SECURI-**  
7                   **TIES OFFERINGS.**

8           Section 15A of the Securities Exchange Act of 1934  
9 (~~15 U.S.C. 78o-3~~) is amended by inserting after sub-  
10 section (i) the following new subsection:

11           “~~(j)~~ **REGISTRATION FOR SALES OF PRIVATE SECURI-**  
12 **TIES OFFERINGS.**—A registered securities association  
13 shall create a limited qualification category for any associ-  
14 ated person of a member who effects sales as part of a  
15 primary offering of securities not involving a public offer-  
16 ing, pursuant to section ~~3(b)~~, ~~4(2)~~, or ~~4(6)~~ of the Securi-  
17 ties Act of 1933 and the rules and regulations thereunder,  
18 and shall deem qualified in such limited qualification cat-  
19 egory, without testing, any bank employee who, in the six  
20 month period preceding the date of enactment of this Act,  
21 engaged in effecting such sales.”.

1 **SEC. 204. SALES PRACTICES AND COMPLAINT PROCE-**  
2 **DURES.**

3 Section 18 of the Federal Deposit Insurance Act is  
4 amended by adding at the end the following new sub-  
5 section:

6 “(s) SALES PRACTICES AND COMPLAINT PROCE-  
7 DURES WITH RESPECT TO BANK SECURITIES ACTIVI-  
8 TIES.—

9 “(1) REGULATIONS REQUIRED.—Each Federal  
10 banking agency shall prescribe and publish in final  
11 form, not later than 6 months after the date of en-  
12 actment of the Financial Services Act of 1998, regu-  
13 lations which apply to retail transactions, sollicita-  
14 tions, advertising, or offers of any security by any  
15 insured depository institution or any affiliate thereof  
16 other than a registered broker or dealer or an indi-  
17 vidual acting on behalf of such a broker or dealer  
18 who is an associated person of such broker or dealer.  
19 Such regulations shall include—

20 “(A) requirements that sales practices  
21 comply with just and equitable principles of  
22 trade that are substantially similar to the Rules  
23 of Fair Practice of the National Association of  
24 Securities Dealers; and

25 “(B) requirements prohibiting (i) condi-  
26 tioning an extension of credit on the purchase

1 or sale of a security; and (ii) any conduct lead-  
2 ing a customer to believe that an extension of  
3 credit is conditioned upon the purchase or sale  
4 of a security.

5 “(2) PROCEDURES REQUIRED.—The appro-  
6 priate Federal banking agencies shall jointly estab-  
7 lish procedures and facilities for receiving and expedi-  
8 tiously processing complaints against any bank or  
9 employee of a bank arising in connection with the  
10 purchase or sale of a security by a customer, includ-  
11 ing a complaint alleging a violation of the regula-  
12 tions prescribed under paragraph (1); but excluding  
13 a complaint involving an individual acting on behalf  
14 of such a broker or dealer who is an associated per-  
15 son of such broker or dealer. The use of any such  
16 procedures and facilities by such a customer shall be  
17 at the election of the customer. Such procedures  
18 shall include provisions to refer a complaint alleging  
19 fraud to the Securities and Exchange Commission  
20 and appropriate State securities commissions.

21 “(3) REQUIRED ACTIONS.—The actions re-  
22 quired by the Federal banking agencies under para-  
23 graph (2) shall include the following:

1           “(A) establishing a group, unit, or bureau  
2 within each such agency to receive such com-  
3 plaints;

4           “(B) developing and establishing proce-  
5 dures for investigating, and permitting cus-  
6 tomers to investigate, such complaints;

7           “(C) developing and establishing proce-  
8 dures for informing customers of the rights  
9 they may have in connection with such com-  
10 plaints;

11           “(D) developing and establishing proce-  
12 dures that allow customers a period of at least  
13 6 years to make complaints and that do not re-  
14 quire customers to pay the costs of the proceed-  
15 ing; and

16           “(E) developing and establishing proce-  
17 dures for resolving such complaints, including  
18 procedures for the recovery of losses to the ex-  
19 tent appropriate.

20           “(4) CONSULTATION AND JOINT REGULA-  
21 TIONS.—The Federal banking agencies shall consult  
22 with each other and prescribe joint regulations pur-  
23 suant to paragraphs (1) and (2), after consultation  
24 with the Securities and Exchange Commission.

1           “(5) PROCEDURES IN ADDITION TO OTHER  
2           REMEDIES.—The procedures and remedies provided  
3           under this subsection shall be in addition to, and not  
4           in lieu of, any other remedies available under law.

5           “(6) DEFINITION.—As used in this sub-  
6           section—

7                   “(A) the term ‘security’ has the meaning  
8                   provided in section 3(a)(10) of the Securities  
9                   Exchange Act of 1934;

10                   “(B) the term ‘registered broker or dealer’  
11                   has the meaning provided in section 3(a)(48) of  
12                   such Act; and

13                   “(C) the term ‘associated person’ has the  
14                   meaning provided in section 3(a)(18) of such  
15                   Act.”.

16 **SEC. 205. INFORMATION SHARING.**

17           Section 18 of the Federal Deposit Insurance Act is  
18           amended by adding at the end the following new sub-  
19           section:

20           “(t) RECORDKEEPING REQUIREMENTS.—

21                   “(1) REQUIREMENTS.—Each appropriate Fed-  
22                   eral banking agency, after consultation with and  
23                   consideration of the views of the Commission, shall  
24                   establish recordkeeping requirements for banks rely-  
25                   ing on exceptions contained in paragraphs (4) and

1 (5) of section 3(a) of the Securities Exchange Act of  
 2 1934. Such recordkeeping requirements shall be suf-  
 3 ficient to demonstrate compliance with the terms of  
 4 such exceptions and be designed to facilitate compli-  
 5 ance with such exceptions. Each appropriate Federal  
 6 banking agency shall make any such information  
 7 available to the Commission upon request.

8 “(2) DEFINITIONS.—As used in this subsection  
 9 the term ‘Commission’ means the Securities and Ex-  
 10 change Commission.”

11 **SEC. 206. DEFINITION AND TREATMENT OF BANKING PROD-**  
 12 **UCTS.**

13 (a) DEFINITION OF TRADITIONAL BANKING PROD-  
 14 UCT.—

15 (1) IN GENERAL.—For purposes of paragraphs  
 16 (4) and (5) of section 3(a) of the Securities Ex-  
 17 change Act of 1934 (15 U.S.C. 78e(a)(4), (5)), the  
 18 term ‘traditional banking product’ means—

19 (A) a deposit account, savings account,  
 20 certificate of deposit, or other deposit instru-  
 21 ment issued by a bank;

22 (B) a banker’s acceptance;

23 (C) a letter of credit issued or loan made  
 24 by a bank;

1           ~~(D)~~ a debit account at a bank arising from  
2 a credit card or similar arrangement;

3           ~~(E)~~ a participation in a loan which the  
4 bank or an affiliate of the bank (other than a  
5 broker or dealer) funds, participates in, or owns  
6 that is sold—

7           (i) to qualified investors; or

8           (ii) to other persons that—

9           “~~(I)~~ have the opportunity to re-  
10 view and assess any material informa-  
11 tion, including information regarding  
12 the borrower’s creditworthiness; and

13           “~~(II)~~ based on such factors as fi-  
14 nancial sophistication, net worth, and  
15 knowledge and experience in financial  
16 matters, have the capability to evalu-  
17 ate the information available, as de-  
18 termined under generally applicable  
19 banking standards or guidelines; or

20           ~~(F)~~ any derivative instrument, whether or  
21 not individually negotiated, involving or relating  
22 to—

23           (i) foreign currencies, except options  
24 on foreign currencies that trade on a na-  
25 tional securities exchange;

1           (ii) interest rates, except interest rate  
2           derivative instruments: (I) that are based  
3           on a security or a group or index of securi-  
4           ties (other than government securities or a  
5           group or index of government securities);  
6           (II) that provide for the delivery of one or  
7           more securities (other than government se-  
8           curities); or (III) that trade on a national  
9           securities exchange; or

10          (iii) commodities, other rates, indices,  
11          or other assets, except derivative instru-  
12          ments: (I) that are securities or that are  
13          based on a group or index of securities  
14          (other than government securities or a  
15          group or index of government securities);  
16          (II) that provide for the delivery of one or  
17          more securities (other than government se-  
18          curities); or (III) that trade on a national  
19          securities exchange.

20          (2) CLASSIFICATION LIMITED.—Classification  
21          of a particular product as a traditional banking  
22          product pursuant to this subsection shall not be con-  
23          strued as finding or implying that such product is  
24          or is not a security for any purpose under the secu-  
25          rities laws, or is or is not an account, agreement,

1 contract, or transaction for any purpose under the  
2 Commodity Exchange Act.

3 ~~(3) DEFINITIONS.—For purposes of this sub-~~  
4 ~~section—~~

5 (A) the term “bank” has the meaning pro-  
6 vided in section 3(a)(6) of the Securities Ex-  
7 change Act of 1934 (15 U.S.C. 78e(a)(6));

8 (B) the term “qualified investor” has the  
9 meaning provided in section 3(a)(55) of such  
10 Act;

11 (C) the term “government securities” has  
12 the meaning provided in section 3(a)(42) of  
13 such Act, and, for purposes of this subsection,  
14 commercial paper, bankers acceptances, and  
15 commercial bills shall be treated in the same  
16 manner as government securities; and

17 (D) the term “Federal banking agency”  
18 has the meaning provided in section 3(z) of the  
19 Federal Deposit Insurance Act (12 U.S.C.  
20 1813(z)).

21 (b) TREATMENT OF NEW BANKING PRODUCTS FOR  
22 PURPOSES OF BROKER/DEALER REQUIREMENTS.—Sec-  
23 tion 15 of the Securities Exchange Act of 1934 (15 U.S.C.  
24 78o) is amended by adding at the end the following new  
25 subsection:

1       “(i) RULEMAKING TO EXTEND REQUIREMENTS TO  
2 NEW BANKING PRODUCTS.—

3           “(1) LIMITATION.—The Commission shall  
4 not—

5               “(A) require a bank to register as a broker  
6 or dealer under this section because the bank  
7 engages in any transaction in, or buys or sells,  
8 a new banking product; or

9               “(B) bring an action against a bank for a  
10 failure to comply with a requirement described  
11 in subparagraph (A);

12 unless the Commission has imposed such require-  
13 ment by rule or regulation issued in accordance with  
14 this section.

15           “(2) CRITERIA FOR RULEMAKING.—The Com-  
16 mission shall not impose a requirement under para-  
17 graph (1) of this subsection with respect to any new  
18 banking product unless the Commission determines  
19 that—

20               “(A) the new banking product is a secu-  
21 rity; and

22               “(B) imposing such requirement is nec-  
23 essary or appropriate in the public interest and  
24 for the protection of investors, consistent with  
25 the requirements of section 3(f).

1           “(3) NEW BANKING PRODUCT.—For purposes  
2 of this subsection, the term ‘new banking product’  
3 means a product that—

4           “(A) was not subjected to regulation by  
5 the Commission as a security prior to the date  
6 of enactment of this subsection; and

7           “(B) is not a traditional banking product,  
8 as such term is defined in section 206(a) of the  
9 Financial Services Act of 1998.

10          “(4) CONSULTATION.—In promulgating rules  
11 under this subsection, the Commission shall consult  
12 with and consider the views of the appropriate regu-  
13 latory agencies concerning the proposed rule and the  
14 impact on the banking industry.”.

15 **SEC. 207. DERIVATIVE INSTRUMENT AND QUALIFIED IN-**  
16 **VESTOR DEFINED.**

17          Section 3(a) of the Securities Exchange Act of 1934  
18 is amended by adding at the end the following new para-  
19 graphs:

20          “(54) DERIVATIVE INSTRUMENT.—

21           “(A) DEFINITION.—The term ‘derivative  
22 instrument’ means any individually negotiated  
23 contract, agreement, warrant, note, or option  
24 that is based, in whole or in part, on the value  
25 of, any interest in, or any quantitative measure

1 or the occurrence of any event relating to, one  
2 or more commodities, securities, currencies, in-  
3 terest or other rates, indices, or other assets,  
4 but does not include a traditional banking prod-  
5 uct, as defined in section 206(a) of the Finan-  
6 cial Services Act of 1998.

7 “(B) CLASSIFICATION LIMITED.— Classi-  
8 fication of a particular contract as a derivative  
9 instrument pursuant to this paragraph shall not  
10 be construed as finding or implying that such  
11 instrument is or is not a security for any pur-  
12 pose under the securities laws, or is or is not  
13 an account, agreement, contract, or transaction  
14 for any purpose under the Commodity Ex-  
15 change Act.

16 “(55) QUALIFIED INVESTOR.—

17 “(A) DEFINITION.—For purposes of this  
18 title and section 206(a)(1)(E) of the Financial  
19 Services Act of 1998, the term ‘qualified inves-  
20 tor’ means—

21 “(i) any investment company reg-  
22 istered with the Commission under section  
23 8 of the Investment Company Act of 1940;

24 “(ii) any issuer eligible for an exclu-  
25 sion from the definition of investment com-

1           pany pursuant to section 3(c)(7) of the In-  
2           vestment Company Act of 1940;

3           “~~(iii)~~ any bank (as defined in para-  
4           graph (6) of this subsection), savings and  
5           loan association (as defined in section 3(b)  
6           of the Federal Deposit Insurance Act),  
7           broker, dealer, insurance company (as de-  
8           fined in section 2(a)(13) of the Securities  
9           Act of 1933), or business development  
10          company (as defined in section 2(a)(48) of  
11          the Investment Company Act of 1940);

12          “~~(iv)~~ any small business investment  
13          company licensed by the United States  
14          Small Business Administration under sec-  
15          tion 301(c) or (d) of the Small Business  
16          Investment Act of 1958;

17          “~~(v)~~ any State sponsored employee  
18          benefit plan, or any other employee benefit  
19          plan, within the meaning of the Employee  
20          Retirement Income Security Act of 1974,  
21          other than an individual retirement ac-  
22          count, if the investment decisions are made  
23          by a plan fiduciary, as defined in section  
24          3(21) of that Act, which is either a bank,

1 savings and loan association, insurance  
2 company, or registered investment adviser;

3 “(vi) any trust whose purchases of se-  
4 curities are directed by a person described  
5 in clauses (i) through (v) of this subpara-  
6 graph;

7 “(vii) any market intermediary ex-  
8 empt under section 3(e)(2) of the Invest-  
9 ment Company Act of 1940;

10 “(viii) any associated person of a  
11 broker or dealer other than a natural per-  
12 son;

13 “(ix) any foreign bank (as defined in  
14 section 1(b)(7) of the International Bank-  
15 ing Act of 1978); or

16 “(x) the government of any foreign  
17 country.

18 “(B) ADDITIONAL QUALIFICATIONS DE-  
19 FINED.—For purposes of paragraphs  
20 (4)(B)(vii) and (5)(C)(iii) of this subsection,  
21 and section 206(a)(1)(E) of the Financial Serv-  
22 ices Act of 1998, the term ‘qualified investor’  
23 also means—

24 “(i) any corporation, company, or  
25 partnership that owns and invests on a dis-

1           cretionary basis, not less than \$10,000,000  
2           in investments;

3           “(ii) any natural person who owns  
4           and invests on a discretionary basis, not  
5           less than \$10,000,000 in investments;

6           “(iii) any government or political sub-  
7           division, agency, or instrumentality of a  
8           government who owns and invests on a dis-  
9           cretionary basis not less than \$50,000,000  
10          in investments; or

11          “(iv) any multinational or supra-  
12          national entity or any agency or instru-  
13          mentality thereof.

14          “(C) ADDITIONAL AUTHORITY.—The Com-  
15          mission may, by rule or order, define a ‘quali-  
16          fied investor’ as any other person, other than a  
17          natural person, taking into consideration such  
18          factors as the person’s financial sophistication,  
19          net worth, and knowledge and experience in fi-  
20          nancial matters.”.

21 **SEC. 208. GOVERNMENT SECURITIES DEFINED.**

22          Section 3(a)(42) of the Securities Exchange Act of  
23 1934 (15 U.S.C. 78e(a)(42)) is amended—

24           (1) by striking “or” at the end of subparagraph

25           (C);

1           (2) by striking the period at the end of sub-  
2 paragraph (D) and inserting “; or”; and

3           (3) by adding at the end the following new sub-  
4 paragraph:

5                   “(E) for purposes of section 15C as ap-  
6 plied to a bank, a qualified Canadian govern-  
7 ment obligation as defined in section 5136 of  
8 the Revised Statutes.”.

9 **SEC. 209. EFFECTIVE DATE.**

10           This subtitle shall take effect at the end of the 270-  
11 day period beginning on the date of the enactment of this  
12 Act.

13 **SEC. 210. RULE OF CONSTRUCTION.**

14           Nothing in this Act shall supersede, affect, or other-  
15 wise limit the scope and applicability of the Commodity  
16 Exchange Act (7 U.S.C. 1 et seq.).

17                   **Subtitle B—Bank Investment**  
18                   **Company Activities**

19 **SEC. 211. CUSTODY OF INVESTMENT COMPANY ASSETS BY**  
20 **AFFILIATED BANK.**

21           (a) **MANAGEMENT COMPANIES.**—Section 17(f) of the  
22 Investment Company Act of 1940 (15 U.S.C. 80a-17(f))  
23 is amended—

24                   (1) by redesignating paragraphs (1), (2), and  
25                   (3) as subparagraphs (A), (B), and (C), respectively;

1           (2) by striking “(f) Every registered” and in-  
2           serting the following:

3           “~~(f) CUSTODY OF SECURITIES.—~~

4           “~~(1) Every registered~~”;

5           (3) by redesignating the second, third, fourth,  
6           and fifth sentences of such subsection as paragraphs  
7           (2) through (5), respectively, and indenting the left  
8           margin of such paragraphs appropriately; and

9           (4) by adding at the end the following new  
10          paragraph:

11          “~~(6) The Commission may adopt rules and reg-  
12          ulations, and issue orders, consistent with the pro-  
13          tection of investors, prescribing the conditions under  
14          which a bank, or an affiliated person of a bank, ei-  
15          ther of which is an affiliated person, promoter, orga-  
16          nizer, or sponsor of, or principal underwriter for, a  
17          registered management company may serve as custo-  
18          dian of that registered management company.”.~~

19          (b) UNIT INVESTMENT TRUSTS.—Section 26 of the  
20          Investment Company Act of 1940 (15 U.S.C. 80a-26) is  
21          amended—

22          (1) by redesignating subsections (b) through (e)  
23          as subsections (e) through (f), respectively; and

24          (2) by inserting after subsection (a) the follow-  
25          ing new subsection:

1       “(b) The Commission may adopt rules and regula-  
 2 tions, and issue orders, consistent with the protection of  
 3 investors, prescribing the conditions under which a bank,  
 4 or an affiliated person of a bank, either of which is an  
 5 affiliated person of a principal underwriter for, or deposi-  
 6 tor of, a registered unit investment trust, may serve as  
 7 trustee or custodian under subsection (a)(1).”.

8       (c) FIDUCIARY DUTY OF CUSTODIAN.—Section 36(a)  
 9 of the Investment Company Act of 1940 (15 U.S.C. 80a-  
 10 35(a)) is amended—

11           (1) in paragraph (1), by striking “or” at the  
 12 end;

13           (2) in paragraph (2), by striking the period at  
 14 the end and inserting “; or”; and

15           (3) by inserting after paragraph (2) the follow-  
 16 ing:

17           “(3) as custodian.”.

18 **SEC. 212. LENDING TO AN AFFILIATED INVESTMENT COM-**  
 19 **PANY.**

20       Section 17(a) of the Investment Company Act of  
 21 1940 (15 U.S.C. 80a-17(a)) is amended—

22           (1) by striking “or” at the end of paragraph  
 23 (2);

24           (2) by striking the period at the end of para-  
 25 graph (3) and inserting “; or”; and

1           (3) by adding at the end the following new  
2 paragraph:

3           “(4) to loan money or other property to such  
4 registered company, or to any company controlled by  
5 such registered company, in contravention of such  
6 rules, regulations, or orders as the Commission may  
7 prescribe or issue consistent with the protection of  
8 investors.”.

9 **SEC. 213. INDEPENDENT DIRECTORS.**

10       (a) IN GENERAL.—Section 2(a)(19)(A) of the Invest-  
11 ment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)(A))  
12 is amended—

13           (1) by striking clause (v) and inserting the fol-  
14 lowing new clause:

15                   “(v) any person or any affiliated per-  
16                   son of a person (other than a registered in-  
17                   vestment company) that, at any time dur-  
18                   ing the 6-month period preceding the date  
19                   of the determination of whether that per-  
20                   son or affiliated person is an interested  
21                   person, has executed any portfolio trans-  
22                   actions for, engaged in any principal trans-  
23                   actions with, or distributed shares for—

24                                   “(I) the investment company;

1           “~~(H)~~ any other investment com-  
 2           pany having the same investment ad-  
 3           viser as such investment company or  
 4           holding itself out to investors as a re-  
 5           lated company for purposes of invest-  
 6           ment or investor services; or

7           “~~(III)~~ any account over which the  
 8           investment company’s investment ad-  
 9           viser has brokerage placement discre-  
 10          tion,”;

11          ~~(2)~~ by redesignating clause (vi) as clause (vii);

12          and

13          ~~(3)~~ by inserting after clause (v) the following  
 14          new clause:

15                 “~~(vi)~~ any person or any affiliated per-  
 16                 son of a person (other than a registered in-  
 17                 vestment company) that, at any time dur-  
 18                 ing the 6-month period preceding the date  
 19                 of the determination of whether that per-  
 20                 son or affiliated person is an interested  
 21                 person; has loaned money or other prop-  
 22                 erty to—

23                         “~~(I)~~ the investment company;

24                         “~~(II)~~ any other investment com-  
 25                         pany having the same investment ad-

1                   viser as such investment company or  
 2                   holding itself out to investors as a re-  
 3                   lated company for purposes of invest-  
 4                   ment or investor services; or

5                   “~~(III)~~ any account for which the  
 6                   investment company’s investment ad-  
 7                   viser has borrowing authority;”

8           (b)           CONFORMING           AMENDMENT.—Section  
 9   2(a)(19)(B) of the Investment Company Act of 1940 (~~15~~  
 10 U.S.C. ~~80a-2(a)(19)(B)~~) is amended—

11                   (1) by striking clause (v) and inserting the fol-  
 12                   lowing new clause:

13                   “~~(v)~~ any person or any affiliated per-  
 14                   son of a person (other than a registered in-  
 15                   vestment company) that, at any time dur-  
 16                   ing the 6-month period preceding the date  
 17                   of the determination of whether that per-  
 18                   son or affiliated person is an interested  
 19                   person, has executed any portfolio trans-  
 20                   actions for, engaged in any principal trans-  
 21                   actions with, or distributed shares for—

22                   “~~(I)~~ any investment company for  
 23                   which the investment adviser or prin-  
 24                   cipal underwriter serves as such;

1           ~~“(II) any investment company~~  
2           ~~holding itself out to investors, for pur-~~  
3           ~~poses of investment or investor serv-~~  
4           ~~ices, as a company related to any in-~~  
5           ~~vestment company for which the in-~~  
6           ~~vestment adviser or principal under-~~  
7           ~~writer serves as such; or~~

8           ~~“(III) any account over which the~~  
9           ~~investment adviser has brokerage~~  
10          ~~placement discretion,”;~~

11          ~~(2) by redesignating clause (vi) as clause (vii);~~

12          and

13          ~~(3) by inserting after clause (v) the following~~  
14          new clause:

15                 ~~“(vi) any person or any affiliated per-~~  
16                 ~~son of a person (other than a registered in-~~  
17                 ~~vestment company) that, at any time dur-~~  
18                 ~~ing the 6-month period preceding the date~~  
19                 ~~of the determination of whether that per-~~  
20                 ~~son or affiliated person is an interested~~  
21                 ~~person; has loaned money or other prop-~~  
22                 ~~erty to—~~

23                 ~~“(I) any investment company for~~  
24                 ~~which the investment adviser or prin-~~  
25                 ~~icipal underwriter serves as such;~~

1           “(II) any investment company  
 2           holding itself out to investors, for pur-  
 3           poses of investment or investor serv-  
 4           ices, as a company related to any in-  
 5           vestment company for which the in-  
 6           vestment adviser or principal under-  
 7           writer serves as such; or

8           “(III) any account for which the  
 9           investment adviser has borrowing au-  
 10          thority.”

11          (e) **AFFILIATION OF DIRECTORS.**—Section 10(e) of  
 12 the Investment Company Act of 1940 (15 U.S.C. 80a-  
 13 10(e)) is amended by striking “bank, except” and insert-  
 14 ing “bank (together with its affiliates and subsidiaries) or  
 15 any one bank holding company (together with its affiliates  
 16 and subsidiaries) (as such terms are defined in section 2  
 17 of the Bank Holding Company Act of 1956), except”.

18          (d) **EFFECTIVE DATE.**—The amendments made by  
 19 this section shall take effect at the end of the 1-year period  
 20 beginning on the date of enactment of this subtitle.

21 **SEC. 214. ADDITIONAL SEC DISCLOSURE AUTHORITY.**

22          Section 35(a) of the Investment Company Act of  
 23 1940 (15 U.S.C. 80a-34(a)) is amended to read as fol-  
 24 lows:

25          “(a) **MISREPRESENTATION OF GUARANTEES.**—

1           “(1) IN GENERAL.—It shall be unlawful for any  
2 person, issuing or selling any security of which a  
3 registered investment company is the issuer, to rep-  
4 resent or imply in any manner whatsoever that such  
5 security or company—

6           “(A) has been guaranteed, sponsored, rec-  
7 ommended, or approved by the United States,  
8 or any agency, instrumentality or officer of the  
9 United States;

10           “(B) has been insured by the Federal De-  
11 posit Insurance Corporation; or

12           “(C) is guaranteed by or is otherwise an  
13 obligation of any bank or insured depository in-  
14 stitution.

15           “(2) DISCLOSURES.—Any person issuing or  
16 selling the securities of a registered investment com-  
17 pany that is advised by, or sold through, a bank  
18 shall prominently disclose that an investment in the  
19 company is not insured by the Federal Deposit In-  
20 surance Corporation or any other government agen-  
21 cy. The Commission may adopt rules and regula-  
22 tions, and issue orders, consistent with the protec-  
23 tion of investors, prescribing the manner in which  
24 the disclosure under this paragraph shall be pro-  
25 vided.

1           “~~(3)~~ DEFINITIONS.—The terms ‘insured deposi-  
2           tory institution’ and ‘appropriate Federal banking  
3           agency’ have the meaning given to such terms in  
4           section ~~3~~ of the Federal Deposit Insurance Act.”.

5 **SEC. 215. DEFINITION OF BROKER UNDER THE INVEST-**  
6 **MENT COMPANY ACT OF 1940.**

7           Section ~~2(a)(6)~~ of the Investment Company Act of  
8 1940 (~~15 U.S.C. 80a-2(a)(6)~~) is amended to read as fol-  
9 lows:

10           “~~(6)~~ The term ‘broker’ has the same meaning  
11           as in the Securities Exchange Act of 1934, except  
12           that such term does not include any person solely by  
13           reason of the fact that such person is an underwriter  
14           for one or more investment companies.”.

15 **SEC. 216. DEFINITION OF DEALER UNDER THE INVEST-**  
16 **MENT COMPANY ACT OF 1940.**

17           Section ~~2(a)(11)~~ of the Investment Company Act of  
18 1940 (~~15 U.S.C. 80a-2(a)(11)~~) is amended to read as fol-  
19 lows:

20           “~~(11)~~ The term ‘dealer’ has the same meaning  
21           as in the Securities Exchange Act of 1934, but does  
22           not include an insurance company or investment  
23           company.”.

1 **SEC. 217. REMOVAL OF THE EXCLUSION FROM THE DEFINI-**  
2 **TION OF INVESTMENT ADVISER FOR BANKS**  
3 **THAT ADVISE INVESTMENT COMPANIES.**

4 (a) **INVESTMENT ADVISER.**—Section 202(a)(11) of  
5 the Investment Advisers Act of 1940 (15 U.S.C. 80b-  
6 2(a)(11)) is amended in subparagraph (A), by striking  
7 “investment company” and inserting “investment com-  
8 pany, except that the term ‘investment adviser’ includes  
9 any bank or bank holding company to the extent that such  
10 bank or bank holding company serves or acts as an invest-  
11 ment adviser to a registered investment company, but if,  
12 in the case of a bank, such services or actions are per-  
13 formed through a separately identifiable department or di-  
14 vision, the department or division, and not the bank itself,  
15 shall be deemed to be the investment adviser”.

16 (b) **SEPARATELY IDENTIFIABLE DEPARTMENT OR**  
17 **DIVISION.**—Section 202(a) of the Investment Advisers Act  
18 of 1940 (15 U.S.C. 80b-2(a)) is amended by adding at  
19 the end the following:

20 “(26) The term ‘separately identifiable depart-  
21 ment or division’ of a bank means a unit—

22 “(A) that is under the direct supervision of  
23 an officer or officers designated by the board of  
24 directors of the bank as responsible for the day-  
25 to-day conduct of the bank’s investment adviser  
26 activities for one or more investment companies;

1 including the supervision of all bank employees  
2 engaged in the performance of such activities;  
3 and

4 “(B) for which all of the records relating  
5 to its investment adviser activities are sepa-  
6 rately maintained in or extractable from such  
7 unit’s own facilities or the facilities of the bank,  
8 and such records are so maintained or other-  
9 wise accessible as to permit independent exam-  
10 ination and enforcement by the Commission of  
11 this Act or the Investment Company Act of  
12 1940 and rules and regulations promulgated  
13 under this Act or the Investment Company Act  
14 of 1940.”.

15 **SEC. 218. DEFINITION OF BROKER UNDER THE INVEST-**  
16 **MENT ADVISERS ACT OF 1940.**

17 Section 202(a)(3) of the Investment Advisers Act of  
18 1940 (15 U.S.C. 80b-2(a)(3)) is amended to read as fol-  
19 lows:

20 “(3) The term ‘broker’ has the same meaning  
21 as in the Securities Exchange Act of 1934.”.

1 **SEC. 219. DEFINITION OF DEALER UNDER THE INVEST-**  
 2 **MENT ADVISERS ACT OF 1940.**

3 Section 202(a)(7) of the Investment Advisers Act of  
 4 1940 (~~15 U.S.C. 80b-2(a)(7)~~) is amended to read as fol-  
 5 lows:

6 “(7) The term ‘dealer’ has the same meaning as  
 7 in the Securities Exchange Act of 1934, but does  
 8 not include an insurance company or investment  
 9 company.”

10 **SEC. 220. INTERAGENCY CONSULTATION.**

11 The Investment Advisers Act of 1940 (~~15 U.S.C.~~  
 12 ~~80b-1 et seq.~~) is amended by inserting after section 210  
 13 the following new section:

14 **“SEC. 210A. CONSULTATION.**

15 **“(a) EXAMINATION RESULTS AND OTHER INFORMA-**  
 16 **TION.—**

17 “(1) The appropriate Federal banking agency  
 18 shall provide the Commission upon request the re-  
 19 sults of any examination, reports, records, or other  
 20 information to which such agency may have access  
 21 with respect to the investment advisory activities—

22 “(A) of any—

23 “(i) bank holding company;

24 “(ii) bank; or

25 “(iii) separately identifiable depart-  
 26 ment or division of a bank;

1           that is registered under section 203 of this title;  
2           and

3           “(B) in the case of a bank holding com-  
4           pany or bank that has a subsidiary or a sepa-  
5           rately identifiable department or division reg-  
6           istered under that section, of such bank or bank  
7           holding company.

8           “(2) The Commission shall provide to the ap-  
9           propriate Federal banking agency upon request the  
10          results of any examination, reports, records, or other  
11          information with respect to the investment advisory  
12          activities of any bank holding company, bank, or  
13          separately identifiable department or division of a  
14          bank, any of which is registered under section 203  
15          of this title.

16          “(b) EFFECT ON OTHER AUTHORITY.—Nothing in  
17          this section shall limit in any respect the authority of the  
18          appropriate Federal banking agency with respect to such  
19          bank holding company, bank, or department or division  
20          under any provision of law.

21          “(c) DEFINITION.—For purposes of this section, the  
22          term ‘appropriate Federal banking agency’ shall have the  
23          same meaning as in section 3 of the Federal Deposit In-  
24          surance Act.”.

1 **SEC. 221. TREATMENT OF BANK COMMON TRUST FUNDS.**

2 (a) ~~SECURITIES ACT OF 1933.~~—Section ~~3(a)(2)~~ of  
 3 the ~~Securities Act of 1933 (15 U.S.C. 77e(a)(2))~~ is  
 4 amended by striking “or any interest or participation in  
 5 any common trust fund or similar fund maintained by a  
 6 bank exclusively for the collective investment and reinvest-  
 7 ment of assets contributed thereto by such bank in its ca-  
 8 pacity as trustee, executor, administrator, or guardian”  
 9 and inserting “or any interest or participation in any com-  
 10 mon trust fund or similar fund that is excluded from the  
 11 definition of the term ‘investment company’ under section  
 12 ~~3(c)(3)~~ of the Investment Company Act of 1940”.

13 (b) ~~SECURITIES EXCHANGE ACT OF 1934.~~—Section  
 14 ~~3(a)(12)(A)(iii)~~ of the Securities Exchange Act of 1934  
 15 ~~(15 U.S.C. 78e(a)(12)(A)(iii))~~ is amended to read as fol-  
 16 lows:

17 “(iii) any interest or participation in any  
 18 common trust fund or similar fund that is ex-  
 19 cluded from the definition of the term ‘invest-  
 20 ment company’ under section ~~3(c)(3)~~ of the In-  
 21 vestment Company Act of 1940;”.

22 (c) ~~INVESTMENT COMPANY ACT OF 1940.~~—Section  
 23 ~~3(c)(3)~~ of the Investment Company Act of 1940 ~~(15~~  
 24 ~~U.S.C. 80a-3(c)(3))~~ is amended by inserting before the  
 25 period the following: “, if—

1           “(A) such fund is employed by the bank  
2 solely as an aid to the administration of trusts,  
3 estates, or other accounts created and main-  
4 tained for a fiduciary purpose;

5           “(B) except in connection with the ordi-  
6 nary advertising of the bank’s fiduciary serv-  
7 ices, interests in such fund are not—

8                   “(i) advertised; or

9                   “(ii) offered for sale to the general  
10 public; and

11           “(C) fees and expenses charged by such  
12 fund are not in contravention of fiduciary prin-  
13 ciples established under applicable Federal or  
14 State law”.

15 **SEC. 222. INVESTMENT ADVISERS PROHIBITED FROM HAV-**  
16 **ING CONTROLLING INTEREST IN REG-**  
17 **ISTERED INVESTMENT COMPANY.**

18           Section 15 of the Investment Company Act of 1940  
19 (15 U.S.C. 80a-15) is amended by adding at the end the  
20 following new subsection:

21           “(g) **CONTROLLING INTEREST IN INVESTMENT COM-**  
22 **PANY PROHIBITED.—**

23                   “(1) **IN GENERAL.—**If an investment adviser to  
24 a registered investment company, or an affiliated  
25 person of that investment adviser, holds a control-

1       ling interest in that registered investment company  
2       in a trustee or fiduciary capacity, such person  
3       shall—

4               “(A) if it holds the shares in a trustee or  
5       fiduciary capacity with respect to any employee  
6       benefit plan subject to the Employee Retirement  
7       Income Security Act of 1974, transfer the  
8       power to vote the shares of the investment com-  
9       pany through to another person acting in a fi-  
10      duciary capacity with respect to the plan who is  
11      not an affiliated person of that investment ad-  
12      viser or any affiliated person thereof; or

13              “(B) if it holds the shares in a trustee or  
14      fiduciary capacity with respect to any person or  
15      entity other than an employee benefit plan sub-  
16      ject to the Employee Retirement Income Secu-  
17      rity Act of 1974—

18                      “(i) transfer the power to vote the  
19                      shares of the investment company through  
20                      to—

21                              “(I) the beneficial owners of the  
22                              shares;

23                              “(II) another person acting in a  
24                              fiduciary capacity who is not an affli-

1           ated person of that investment adviser  
2           or any affiliated person thereof; or

3           ~~“(III)~~ any person authorized to  
4           receive statements and information  
5           with respect to the trust who is not an  
6           affiliated person of that investment  
7           adviser or any affiliated person there-  
8           of;

9           ~~“(ii)~~ vote the shares of the investment  
10          company held by it in the same proportion  
11          as shares held by all other shareholders of  
12          the investment company; or

13          ~~“(iii)~~ vote the shares of the invest-  
14          ment company as otherwise permitted  
15          under such rules, regulations, or orders as  
16          the Commission may prescribe or issue  
17          consistent with the protection of investors.

18          ~~“(2)~~ EXEMPTION.—Paragraph ~~(1)~~ shall not  
19          apply to any investment adviser to a registered in-  
20          vestment company, or any affiliated person of that  
21          investment adviser, that holds shares of the invest-  
22          ment company in a trustee or fiduciary capacity if  
23          that registered investment company consists solely of  
24          assets held in such capacities.

1           “(3) **SAFE HARBOR.**—No investment adviser to  
2           a registered investment company or any affiliated  
3           person of such investment adviser shall be deemed to  
4           have acted unlawfully or to have breached a fidu-  
5           ciary duty under State or Federal law solely by rea-  
6           son of acting in accordance with clause (i), (ii), or  
7           (iii) of paragraph (1)(B).”.

8   **SEC. 223. CONFORMING CHANGE IN DEFINITION.**

9           Section 2(a)(5) of the Investment Company Act of  
10          1940 (15 U.S.C. 80a-2(a)(5)) is amended by striking  
11          “(A) a banking institution organized under the laws of the  
12          United States” and inserting “(A) a depository institution  
13          (as defined in section 3 of the Federal Deposit Insurance  
14          Act) or a branch or agency of a foreign bank (as such  
15          terms are defined in section 1(b) of the International  
16          Banking Act of 1978)”.

17   **SEC. 224. CONFORMING AMENDMENT.**

18          Section 202 of the Investment Advisers Act of 1940  
19          (15 U.S.C. 80b-2) is amended by adding at the end the  
20          following new subsection:

21          “(e) **CONSIDERATION OF PROMOTION OF EFFI-**  
22          **CIENCY, COMPETITION, AND CAPITAL FORMATION.**—  
23          Whenever pursuant to this title the Commission is en-  
24          gaged in rulemaking and is required to consider or deter-  
25          mine whether an action is necessary or appropriate in the

1 public interest, the Commission shall also consider, in ad-  
 2 dition to the protection of investors, whether the action  
 3 will promote efficiency, competition, and capital forma-  
 4 tion.”.

5 **SEC. 225. EFFECTIVE DATE.**

6 This subtitle shall take effect 90 days after the date  
 7 of the enactment of this Act.

8 **Subtitle C—Securities and Ex-**  
 9 **change Commission Supervision**  
 10 **of Investment Bank Holding**  
 11 **Companies**

12 **SEC. 231. SUPERVISION OF INVESTMENT BANK HOLDING**  
 13 **COMPANIES BY THE SECURITIES AND EX-**  
 14 **CHANGE COMMISSION.**

15 (a) **AMENDMENT.**—Section 17 of the Securities Ex-  
 16 change Act of 1934 (15 U.S.C. 78q) is amended—

17 (1) by redesignating subsection (i) as subsection  
 18 (1); and

19 (2) by inserting after subsection (h) the follow-  
 20 ing new subsections:

21 “(i) **INVESTMENT BANK HOLDING COMPANIES.**—

22 “(1) **ELECTIVE SUPERVISION OF AN INVEST-**  
 23 **MENT BANK HOLDING COMPANY NOT HAVING A**  
 24 **BANK OR SAVINGS ASSOCIATION AFFILIATE.**—

1           “(A) IN GENERAL.—An investment bank  
2 holding company that is not—

3           “(i) an affiliate of a wholesale finan-  
4 cial institution; an insured bank (other  
5 than an institution described in subpara-  
6 graph (D), (F), or (G) of section 2(e)(2),  
7 or held under section 4(f), of the Bank  
8 Holding Company Act of 1956); or a sav-  
9 ings association;

10           “(ii) a foreign bank, foreign company,  
11 or company that is described in section  
12 8(a) of the International Banking Act of  
13 1978; or

14           “(iii) a foreign bank that controls, di-  
15 rectly or indirectly, a corporation chartered  
16 under section 25A of the Federal Reserve  
17 Act,

18 may elect to become supervised by filing with  
19 the Commission a notice of intention to become  
20 supervised, pursuant to subparagraph (B) of  
21 this paragraph. Any investment bank holding  
22 company filing such a notice shall be supervised  
23 in accordance with this section and comply with  
24 the rules promulgated by the Commission appli-

1           eable to supervised investment bank holding  
2           companies.

3           “(B) NOTIFICATION OF STATUS AS A SU-  
4           PERVISED INVESTMENT BANK HOLDING COM-  
5           PANY.—An investment bank holding company  
6           that elects under subparagraph (A) to become  
7           supervised by the Commission shall file with the  
8           Commission a written notice of intention to be-  
9           come supervised by the Commission in such  
10          form and containing such information and doc-  
11          uments concerning such investment bank hold-  
12          ing company as the Commission, by rule, may  
13          prescribe as necessary or appropriate in fur-  
14          therance of the purposes of this section. Unless  
15          the Commission finds that such supervision is  
16          not necessary or appropriate in furtherance of  
17          the purposes of this section, such supervision  
18          shall become effective 45 days after receipt of  
19          such written notice by the Commission or with-  
20          in such shorter time period as the Commission,  
21          by rule or order, may determine.

22          “(2) ELECTION NOT TO BE SUPERVISED BY  
23          THE COMMISSION AS AN INVESTMENT BANK HOLD-  
24          ING COMPANY.—

1           “(A) VOLUNTARY WITHDRAWAL.—A su-  
2           pervised investment bank holding company that  
3           is supervised pursuant to paragraph (1) may,  
4           upon such terms and conditions as the Commis-  
5           sion deems necessary or appropriate, elect not  
6           to be supervised by the Commission by filing a  
7           written notice of withdrawal from Commission  
8           supervision. Such notice shall not become effec-  
9           tive until one year after receipt by the Commis-  
10          sion, or such shorter or longer period as the  
11          Commission deems necessary or appropriate to  
12          ensure effective supervision of the material  
13          risks to the supervised investment bank holding  
14          company and to the affiliated broker or dealer,  
15          or to prevent evasion of the purposes of this  
16          section.

17          “(B) DISCONTINUATION OF COMMISSION  
18          SUPERVISION.—If the Commission finds that  
19          any supervised investment bank holding com-  
20          pany that is supervised pursuant to paragraph  
21          (1) is no longer in existence or has ceased to be  
22          an investment bank holding company, or if the  
23          Commission finds that continued supervision of  
24          such a supervised investment bank holding com-  
25          pany is not consistent with the purposes of this

1 section, the Commission may discontinue the  
2 supervision pursuant to a rule or order, if any,  
3 promulgated by the Commission under this sec-  
4 tion.

5 “(3) SUPERVISION OF INVESTMENT BANK  
6 HOLDING COMPANIES.—

7 “(A) RECORDKEEPING AND REPORTING.—

8 “(i) IN GENERAL.—Every supervised  
9 investment bank holding company and  
10 each affiliate thereof shall make and keep  
11 for prescribed periods such records, furnish  
12 copies thereof, and make such reports, as  
13 the Commission may require by rule, in  
14 order to keep the Commission informed as  
15 to—

16 “(I) the company’s or affiliate’s  
17 activities, financial condition, policies,  
18 systems for monitoring and control-  
19 ling financial and operational risks,  
20 and transactions and relationships be-  
21 tween any broker or dealer affiliate of  
22 the supervised investment bank hold-  
23 ing company; and

24 “(II) the extent to which the  
25 company or affiliate has complied with

1 the provisions of this Act and regula-  
2 tions prescribed and orders issued  
3 under this Act.

4 “(ii) FORM AND CONTENTS.—Such  
5 records and reports shall be prepared in  
6 such form and according to such specifica-  
7 tions (including certification by an inde-  
8 pendent public accountant), as the Com-  
9 mission may require and shall be provided  
10 promptly at any time upon request by the  
11 Commission. Such records and reports may  
12 include—

13 “(I) a balance sheet and income  
14 statement;

15 “(II) an assessment of the con-  
16 solidated capital of the supervised in-  
17 vestment bank holding company;

18 “(III) an independent auditor’s  
19 report attesting to the supervised in-  
20 vestment bank holding company’s  
21 compliance with its internal risk man-  
22 agement and internal control objec-  
23 tives; and

24 “(IV) reports concerning the ex-  
25 tent to which the company or affiliate

1           has complied with the provisions of  
2           this title and any regulations pre-  
3           scribed and orders issued under this  
4           title.

5           “(B) USE OF EXISTING REPORTS.—

6           “(i) IN GENERAL.—The Commission  
7           shall, to the fullest extent possible, accept  
8           reports in fulfillment of the requirements  
9           under this paragraph that the supervised  
10          investment bank holding company or its af-  
11          filiates have been required to provide to  
12          another appropriate regulatory agency or  
13          self-regulatory organization.

14          “(ii) AVAILABILITY.—A supervised in-  
15          vestment bank holding company or an af-  
16          filiate of such company shall provide to the  
17          Commission, at the request of the Commis-  
18          sion, any report referred to in clause (i).

19          “(C) EXAMINATION AUTHORITY.—

20          “(i) FOCUS OF EXAMINATION AU-  
21          THORITY.—The Commission may make ex-  
22          aminations of any supervised investment  
23          bank holding company and any affiliate of  
24          such company in order to—

1           “(I) inform the Commission re-  
2           garding—

3                   “(aa) the nature of the oper-  
4                   ations and financial condition of  
5                   the supervised investment bank  
6                   holding company and its affili-  
7                   ates;

8                   “(bb) the financial and oper-  
9                   ational risks within the super-  
10                  vised investment bank holding  
11                  company that may affect any  
12                  broker or dealer controlled by  
13                  such supervised investment bank  
14                  holding company; and

15                  “(cc) the systems of the su-  
16                  pervised investment bank holding  
17                  company and its affiliates for  
18                  monitoring and controlling those  
19                  risks; and

20           “(II) monitor compliance with  
21           the provisions of this subsection, pro-  
22           visions governing transactions and re-  
23           lationships between any broker or  
24           dealer affiliated with the supervised  
25           investment bank holding company and

1 any of the company's other affiliates,  
2 and applicable provisions of sub-  
3 chapter H of chapter 53, title 31,  
4 United States Code (commonly re-  
5 ferred to as the 'Bank Secrecy Act')  
6 and regulations thereunder.

7 “(ii) RESTRICTED FOCUS OF EXAMI-  
8 NATIONS.—The Commission shall limit the  
9 focus and scope of any examination of a  
10 supervised investment bank holding com-  
11 pany to—

12 “(I) the company; and

13 “(II) any affiliate of the company  
14 that, because of its size, condition, or  
15 activities, the nature or size of the  
16 transactions between such affiliate  
17 and any affiliated broker or dealer, or  
18 the centralization of functions within  
19 the holding company system, could, in  
20 the discretion of the Commission,  
21 have a materially adverse effect on the  
22 operational or financial condition of  
23 the broker or dealer.

24 “(iii) DEFERENCE TO OTHER EXAMI-  
25 NATIONS.—For purposes of this subpara-

1 graph, the Commission shall, to the fullest  
2 extent possible, use the reports of examina-  
3 tion of an institution described in subpara-  
4 graph (D), (F), or (G) of section 2(e)(2),  
5 or held under section 4(f), of the Bank  
6 Holding Company Act of 1956 made by  
7 the appropriate regulatory agency, or of a  
8 licensed insurance company made by the  
9 appropriate State insurance regulator.

10 “(4) HOLDING COMPANY CAPITAL.—

11 “(A) AUTHORITY.—If the Commission  
12 finds that it is necessary to adequately super-  
13 vise investment bank holding companies and  
14 their broker or dealer affiliates consistent with  
15 the purposes of this subsection, the Commission  
16 may adopt capital adequacy rules for supervised  
17 investment bank holding companies.

18 “(B) METHOD OF CALCULATION.—In de-  
19 veloping rules under this paragraph:

20 “(i) DOUBLE LEVERAGE.—The Com-  
21 mission shall consider the use by the su-  
22 pervised investment bank holding company  
23 of debt and other liabilities to fund capital  
24 investments in affiliates.

1           “(ii) NO UNWEIGHTED CAPITAL  
2 RATIO.—The Commission shall not impose  
3 under this section a capital ratio that is  
4 not based on appropriate risk-weighting  
5 considerations.

6           “(iii) NO CAPITAL REQUIREMENT ON  
7 REGULATED ENTITIES.—The Commission  
8 shall not, by rule, regulation, guideline,  
9 order or otherwise, impose any capital ade-  
10 quacy provision on a nonbanking affiliate  
11 (other than a broker or dealer) that is in  
12 compliance with applicable capital require-  
13 ments of another Federal regulatory au-  
14 thority or State insurance authority.

15           “(iv) APPROPRIATE EXCLUSIONS.—  
16 The Commission shall take full account of  
17 the applicable capital requirements of an-  
18 other Federal regulatory authority or State  
19 insurance regulator.

20           “(C) INTERNAL RISK MANAGEMENT MOD-  
21 ELS.—The Commission may incorporate inter-  
22 nal risk management models into its capital  
23 adequacy rules for supervised investment bank  
24 holding companies.

1           “(5) FUNCTIONAL REGULATION OF BANKING  
2           AND INSURANCE ACTIVITIES OF SUPERVISED IN-  
3           VESTMENT BANK HOLDING COMPANIES.—The Com-  
4           mission shall defer to—

5                   “(A) the appropriate regulatory agency  
6                   with regard to all interpretations of, and the  
7                   enforcement of, applicable banking laws relating  
8                   to the activities, conduct, ownership, and oper-  
9                   ations of banks, and institutions described in  
10                  subparagraph (D), (F), and (G) of section  
11                  2(e)(2), or held under section 4(f), of the Bank  
12                  Holding Company Act of 1956; and

13                  “(B) the appropriate State insurance regu-  
14                  lators with regard to all interpretations of, and  
15                  the enforcement of, applicable State insurance  
16                  laws relating to the activities, conduct, and op-  
17                  erations of insurance companies and insurance  
18                  agents.

19           “(6) DEFINITIONS.—For purposes of this sub-  
20           section and subsection (j)—

21                   “(A) The term ‘investment bank holding  
22                   company’ means—

23                           “(i) any person other than a natural  
24                           person that owns or controls one or more  
25                           brokers or dealers; and

1           “(ii) the associated persons of the in-  
2           vestment bank holding company.

3           “(B) The term ‘supervised investment  
4           bank holding company’ means any investment  
5           bank holding company that is supervised by the  
6           Commission pursuant to this subsection.

7           “(C) The terms ‘affiliate’, ‘bank’, ‘bank  
8           holding company’, ‘company’, ‘control’, and  
9           ‘savings association’ have the meanings given to  
10          those terms in section 2 of the Bank Holding  
11          Company Act of 1956 (12 U.S.C. 1841).

12          “(D) The term ‘insured bank’ has the  
13          meaning given to that term in section 3 of the  
14          Federal Deposit Insurance Act.

15          “(E) The term ‘foreign bank’ has the  
16          meaning given to that term in section 1(b)(7)  
17          of the International Banking Act of 1978.

18          “(F) The terms “person associated with an  
19          investment bank holding company’ and “associ-  
20          ated person of an investment bank holding com-  
21          pany’ means any person directly or indirectly  
22          controlling, controlled by, or under common  
23          control with, an investment bank holding com-  
24          pany.

25          “(j) COMMISSION BACKUP AUTHORITY.—

1           “(1) **AUTHORITY.**—The Commission may make  
2 inspections of any wholesale financial holding com-  
3 pany that—

4           “(A) controls a wholesale financial institu-  
5 tion;

6           “(B) is not a foreign bank; and

7           “(C) does not control an insured bank  
8 (other than an institution permitted under sub-  
9 paragraph (D), (F), or (G) of section 2(e)(2),  
10 or held under section 4(f), of the Bank Holding  
11 Company Act of 1956) or a savings association,  
12 and any affiliate of such company, for the purpose  
13 of monitoring and enforcing compliance by the  
14 wholesale financial holding company with the Fed-  
15 eral securities laws.

16           “(2) **LIMITATION.**—The Commission shall limit  
17 the focus and scope of any inspection under para-  
18 graph (1) to those transactions, policies, procedures,  
19 or records that are reasonably necessary to monitor  
20 and enforce compliance by the wholesale financial  
21 holding company or any affiliate with the Federal  
22 securities laws.

23           “(3) **DEFERENCE TO EXAMINATIONS.**—To the  
24 fullest extent possible, the Commission shall use, for

1 the purposes of this subsection, the reports of exami-  
2 nations—

3 “(A) made by the Board of Governors of  
4 the Federal Reserve System of any wholesale fi-  
5 nancial holding company that is supervised by  
6 the Board;

7 “(B) made by or on behalf of any State  
8 regulatory agency responsible for the super-  
9 vision of an insurance company of any licensed  
10 insurance company; and

11 “(C) made by any Federal or State bank-  
12 ing agency of any bank or institution described  
13 in subparagraph (D), (F), or (G) of section  
14 2(e)(2), or held under section 4(f), of the Bank  
15 Holding Company Act of 1956.

16 “(4) NOTICE.—To the fullest extent possible,  
17 the Commission shall notify the appropriate regu-  
18 latory agency prior to conducting an inspection of a  
19 wholesale financial institution or institution de-  
20 scribed in subparagraph (D), (F), or (G) of section  
21 2(e)(2), or held under section 4(f), of the Bank  
22 Holding Company Act of 1956.

23 “(k) AUTHORITY TO LIMIT DISCLOSURE OF INFOR-  
24 MATION.—Notwithstanding any other provision of law, the  
25 Commission shall not be compelled to disclose any infor-

1 mation required to be reported under subsection (h) or  
2 (i) or any information supplied to the Commission by any  
3 domestic or foreign regulatory agency that relates to the  
4 financial or operational condition of any associated person  
5 of a broker or dealer, investment bank holding company,  
6 or any affiliate of an investment bank holding company.  
7 Nothing in this subsection shall authorize the Commission  
8 to withhold information from Congress, or prevent the  
9 Commission from complying with a request for informa-  
10 tion from any other Federal department or agency or any  
11 self-regulatory organization requesting the information for  
12 purposes within the scope of its jurisdiction, or complying  
13 with an order of a court of the United States in an action  
14 brought by the United States or the Commission. For pur-  
15 poses of section 552 of title 5, United States Code, this  
16 subsection shall be considered a statute described in sub-  
17 section (b)(3)(B) of such section 552. In prescribing regu-  
18 lations to carry out the requirements of this subsection,  
19 the Commission shall designate information described in  
20 or obtained pursuant to subparagraphs (A), (B), and (C)  
21 of subsection (i)(5) as confidential information for pur-  
22 poses of section 24(b)(2) of this title.”.

23 (b) CONFORMING AMENDMENTS.—

1           (1) Section 3(a)(34) of the Securities Exchange  
2 Act of 1934 (15 U.S.C. 78c(a)(34)) is amended by  
3 adding at the end the following new subparagraphs:

4           “(H) When used with respect to an institu-  
5 tion described in subparagraph (D), (F), or (G)  
6 of section 2(c)(2), or held under section 4(f), of  
7 the Bank Holding Company Act of 1956—

8           “(i) the Comptroller of the Currency,  
9 in the case of a national bank or a bank  
10 in the District of Columbia examined by  
11 the Comptroller of the Currency;

12           “(ii) the Board of Governors of the  
13 Federal Reserve System, in the case of a  
14 State member bank of the Federal Reserve  
15 System or any corporation chartered under  
16 section 25A of the Federal Reserve Act;

17           “(iii) the Federal Deposit Insurance  
18 Corporation, in the case of any other bank  
19 the deposits of which are insured in ac-  
20 cordance with the Federal Deposit Insur-  
21 ance Act; or

22           “(iv) the Commission in the case of all  
23 other such institutions.”.

1           (2) Section 1112(e) of the Right to Financial  
2           Privacy Act of 1978 (12 U.S.C. 3412(e)) is amend-  
3           ed—

4                   (A) by striking “this title” and inserting  
5                   “law”; and

6                   (B) by inserting “; examination reports”  
7                   after “financial records”.

## 8                                   **Subtitle D—Study**

### 9           **SEC. 241. STUDY OF METHODS TO INFORM INVESTORS AND** 10                                   **CONSUMERS OF UNINSURED PRODUCTS.**

11           Within one year after the date of enactment of this  
12           Act, the Comptroller General of the United States shall  
13           submit a report to the Congress regarding the efficacy,  
14           costs, and benefits of requiring that any depository insti-  
15           tution that accepts federally insured deposits and that, di-  
16           rectly or through a contractual or other arrangement with  
17           a broker, dealer, or agent, buys from, sells to, or effects  
18           transactions for retail investors in securities or consumers  
19           of insurance to inform such investors and consumers  
20           through the use of a logo or seal that the security or insur-  
21           ance is not insured by the Federal Deposit Insurance Cor-  
22           poration.

1 **SEC. 242. STUDY OF LIMITATION ON FEES ASSOCIATED**  
2 **WITH ACQUIRING FINANCIAL PRODUCTS.**

3 Before the end of the 1-year period beginning on the  
4 date of the enactment of this Act, the Comptroller General  
5 of the United States shall submit a report to the Congress  
6 regarding the efficacy and benefits of uniformly limiting  
7 any commissions, fees, markups, or other costs incurred  
8 by customers in the acquisition of financial products.

9 **Subtitle E—Disclosure of Customer**  
10 **Costs of Acquiring Financial**  
11 **Products**

12 **SEC. 251. IMPROVED AND CONSISTENT DISCLOSURE.**

13 (a) **REVISED REGULATIONS REQUIRED.**—Within one  
14 year after the date of enactment of this Act, each Federal  
15 financial regulatory authority shall prescribe rules, or revi-  
16 sions to its rules, to improve the accuracy, simplicity, and  
17 completeness, and to make more consistent, the disclosure  
18 of information by persons subject to the jurisdiction of  
19 such regulatory authority concerning any commissions,  
20 fees, markups, or other costs incurred by customers in the  
21 acquisition of financial products.

22 (b) **CONSULTATION.**—In prescribing rules and revi-  
23 sions under subsection (a), the Federal financial regu-  
24 latory authorities shall consult with each other and with  
25 appropriate State financial regulatory authorities.

1 (c) CONSIDERATION OF EXISTING DISCLOSURES.—

2 In prescribing rules and revisions under subsection (a),  
3 the Federal financial regulatory authorities shall consider  
4 the sufficiency and appropriateness of then existing laws  
5 and rules applicable to persons subject to their jurisdic-  
6 tion, and may prescribe exemptions from the rules and re-  
7 visions required by subsection (a) to the extent appro-  
8 priate in light of the objective of this section to increase  
9 the consistency of disclosure practices.

10 (d) ENFORCEMENT.—Any rule prescribed by a Fed-  
11 eral financial regulatory authority pursuant to this section  
12 shall, for purposes of enforcement, be treated as a rule  
13 prescribed by such regulatory authority pursuant to the  
14 statute establishing such regulatory authority's jurisdic-  
15 tion over the persons to whom such rule applies.

16 (e) DEFINITION.—As used in this section, the term  
17 “Federal financial regulatory authority” means the Board  
18 of Governors of the Federal Reserve System, the Securi-  
19 ties and Exchange Commission, the Comptroller of the  
20 Currency, the Federal Deposit Insurance Corporation, the  
21 Commodity Futures Trading Commission, and any self-  
22 regulatory organization under the supervision of any of  
23 the foregoing.

1                   **TITLE III—INSURANCE**  
2                   **Subtitle A—State Regulation of**  
3                   **Insurance**

4   **SEC. 301. STATE REGULATION OF THE BUSINESS OF INSUR-**  
5                   **ANCE.**

6           The Act entitled “An Act to express the intent of the  
7 Congress with reference to the regulation of the business  
8 of insurance” and approved March 9, 1945 (15 U.S.C.  
9 1011 et seq.); commonly referred to as the “McCarran-  
10 Ferguson Act”) remains the law of the United States.

11   **SEC. 302. MANDATORY INSURANCE LICENSING REQUIRE-**  
12                   **MENTS.**

13           No person or entity shall provide insurance in a State  
14 as principal or agent unless such person or entity is li-  
15 censed as required by the appropriate insurance regulator  
16 of such State in accordance with the relevant State insur-  
17 ance law, subject to section 104 of this Act.

18   **SEC. 303. FUNCTIONAL REGULATION OF INSURANCE.**

19           The insurance sales activity of any person or entity  
20 shall be functionally regulated by the States, subject to  
21 section 104 of this Act.

22   **SEC. 304. INSURANCE UNDERWRITING IN NATIONAL**  
23                   **BANKS.**

24           (a) **IN GENERAL.**—Except as provided in section 306,  
25 a national bank and the subsidiaries of a national bank

1 may not provide insurance in a State as principal except  
2 that this prohibition shall not apply to authorized prod-  
3 ucts.

4 (b) AUTHORIZED PRODUCTS.—For the purposes of  
5 this section, a product is authorized if—

6 (1) as of January 1, 1997, the Comptroller of  
7 the Currency had determined in writing that na-  
8 tional banks may provide such product as principal,  
9 or national banks were in fact lawfully providing  
10 such product as principal;

11 (2) no court of relevant jurisdiction had, by  
12 final judgment, overturned a determination of the  
13 Comptroller of the Currency that national banks  
14 may provide such product as principal; and

15 (3) the product is not title insurance, or an an-  
16 nuity contract the income of which is subject to tax  
17 treatment under section 72 of the Internal Revenue  
18 Code of 1986.

19 (c) DEFINITION.—For purposes of this section, the  
20 term “insurance” means—

21 (1) any product regulated as insurance as of  
22 January 1, 1997, in accordance with the relevant  
23 State insurance law, in the State in which the prod-  
24 uct is provided;

1           (2) any product first offered after January 1,  
2           1997, which—

3                   (A) a State insurance regulator determines  
4           shall be regulated as insurance in the State in  
5           which the product is provided because the prod-  
6           uct insures, guarantees, or indemnifies against  
7           liability, loss of life, loss of health, or loss  
8           through damage to or destruction of property,  
9           including, but not limited to, surety bonds, life  
10          insurance, health insurance, title insurance, and  
11          property and casualty insurance (such as pri-  
12          vate passenger or commercial automobile,  
13          homeowners, mortgage, commercial multiperil,  
14          general liability, professional liability, workers'  
15          compensation, fire and allied lines, farm owners  
16          multiperil, aircraft, fidelity, surety, medical  
17          malpractice, ocean marine, inland marine, and  
18          boiler and machinery insurance); and

19                  (B) is not a product or service of a bank  
20          that is—

21                          (i) a deposit product;

22                          (ii) a loan, discount, letter of credit,  
23                          or other extension of credit;

24                          (iii) a trust or other fiduciary service;

1           (iv) a qualified financial contract (as  
2 defined in or determined pursuant to sec-  
3 tion 11(e)(8)(D)(i) of the Federal Deposit  
4 Insurance Act); or

5           (v) a financial guaranty, except that  
6 this subparagraph (B) shall not apply to a  
7 product that includes an insurance compo-  
8 nent such that if the product is offered or  
9 proposed to be offered by the bank as prin-  
10 cipal—

11           (I) it would be treated as a life  
12 insurance contract under section 7702  
13 of the Internal Revenue Code of 1986,  
14 as amended; or

15           (II) in the event that the product  
16 is not a letter of credit or other simi-  
17 lar extension of credit, a qualified fi-  
18 nancial contract, or a financial guar-  
19 anty, it would qualify for treatment  
20 for losses incurred with respect to  
21 such product under section 832(b)(5)  
22 of the Internal Revenue Code of 1986,  
23 as amended, if the bank were subject  
24 to tax as an insurance company under  
25 section 831 of such Code; or

1           (3) any annuity contract the income on which  
 2           is subject to tax treatment under section 72 of the  
 3           Internal Revenue Code of 1986, as amended.

4 **SEC. 305. NEW BANK AGENCY ACTIVITIES ONLY THROUGH**  
 5                   **ACQUISITION OF EXISTING LICENSED**  
 6                   **AGENTS.**

7           If a national bank or a subsidiary of a national bank  
 8           is not providing insurance as agent in a State as of the  
 9           date of the enactment of this Act, the national bank and  
 10          the subsidiary of the national bank may provide insurance  
 11          (which such bank or subsidiary is otherwise authorized to  
 12          provide) as agent in such State after such date only by  
 13          acquiring a company which has been licensed by the ap-  
 14          propriate State regulator to provide insurance as agent in  
 15          such State for not less than 2 years before such acquisi-  
 16          tion. This section shall cease to have effect 5 years after  
 17          the date of the enactment of this Act.

18 **SEC. 306. TITLE INSURANCE ACTIVITIES OF NATIONAL**  
 19                   **BANKS AND THEIR AFFILIATES.**

20          (a) AUTHORITY.—

21           (1) IN GENERAL.—Notwithstanding any other  
 22          provision of this Act or any other law, no national  
 23          bank, and no subsidiary of a national bank, may en-  
 24          gage in any activity involving the underwriting or  
 25          sale of title insurance other than title insurance ac-

1       tivities in which such national bank or subsidiary  
2       was actively and lawfully engaged before the date of  
3       the enactment of this Act.

4           (2) INSURANCE AFFILIATE.—In the case of a  
5       national bank which has an affiliate which provides  
6       insurance as principal and is not a subsidiary of the  
7       bank, the national bank and any subsidiary of the  
8       national bank may not engage in any activity involv-  
9       ing the underwriting or sale of title insurance pursu-  
10      ant to paragraph (1).

11          (3) INSURANCE SUBSIDIARY.—In the case of a  
12      national bank which has a subsidiary which provides  
13      insurance as principal and has no affiliate which  
14      provides insurance as principal and is not a subsidi-  
15      ary, the national bank may not engage in any activ-  
16      ity involving the underwriting or sale of title insur-  
17      ance pursuant to paragraph (1).

18          (4) AFFILIATE AND SUBSIDIARY DEFINED.—  
19      For purposes of this section, the terms “affiliate”  
20      and “subsidiary” have the meaning given such terms  
21      in section 2 of the Bank Holding Company Act of  
22      1956.

23          (b) PARITY EXCEPTION.—Notwithstanding sub-  
24      section (a), in the case of any State in which banks orga-  
25      nized under the laws of such State were authorized to sell

1 title insurance as agent as of January 1, 1997, a national  
2 bank and a subsidiary of a national bank may sell title  
3 insurance as agent in such State in the same manner and  
4 to the same extent such State banks are authorized to sell  
5 title insurance as agent in such State.

6 **SEC. 307. EXPEDITED AND EQUALIZED DISPUTE RESOLU-**  
7 **TION FOR FINANCIAL REGULATORS.**

8 (a) **FILING IN COURT OF APPEAL.**—In the case of  
9 a regulatory conflict between a State insurance regulator  
10 and a Federal regulator as to whether any product is or  
11 is not insurance as defined in section 304(e) of this Act,  
12 or whether a State statute, regulation, order, or interpre-  
13 tation regarding any insurance sales or solicitation activity  
14 is properly treated as preempted under Federal law, either  
15 regulator may seek expedited judicial review of such deter-  
16 mination by the United States Court of Appeals for the  
17 circuit in which the State is located or in the United  
18 States Court of Appeals for the District of Columbia Cir-  
19 cuit by filing a petition for review in such court.

20 (b) **EXPEDITED REVIEW.**—The United States court  
21 of appeals in which a petition for review is filed in accord-  
22 ance with paragraph (1) shall complete all action on such  
23 petition, including rendering a judgment, before the end  
24 of the 60-day period beginning on the date such petition

1 is filed, unless all parties to such proceeding agree to any  
2 extension of such period.

3 (c) SUPREME COURT REVIEW.—Any request for  
4 certiori to the Supreme Court of the United States of any  
5 judgment of a United States court of appeals with respect  
6 to a petition for review under this section shall be filed  
7 with the United States Supreme Court as soon as prac-  
8 ticable after such judgment is issued.

9 (d) STATUTE OF LIMITATION.—No action may be  
10 filed under this section challenging an order, ruling, deter-  
11 mination, or other action of a Federal financial regulator  
12 or State insurance regulator after the later of—

13 (1) the end of the 12-month period beginning  
14 on the date the first public notice is made of such  
15 order, ruling, or determination in its final form; or

16 (2) the end of the 6-month period beginning on  
17 the date such order, ruling, or determination takes  
18 effect.

19 (e) STANDARD OF REVIEW.—The court shall decide  
20 an action filed under this section based on its review on  
21 the merits of all questions presented under State and Fed-  
22 eral law, including the nature of the product or activity  
23 and the history and purpose of its regulation under State  
24 and Federal law, without unequal deference.

1 **SEC. 308. CONSUMER PROTECTION REGULATIONS.**

2 (a) REGULATIONS REQUIRED.—

3 (1) IN GENERAL.—The Federal Deposit Insur-  
4 ance Act (12 U.S.C. 1811 et seq.) is amended by  
5 adding at the end the following new section:

6 **“SEC. 45. CONSUMER PROTECTION REGULATIONS.**

7 **“(a) REGULATIONS REQUIRED.—**

8 **“(1) IN GENERAL.—**The Federal banking agen-  
9 cies shall prescribe and publish in final form, before  
10 the end of the 1-year period beginning on the date  
11 of the enactment of this Act, consumer protection  
12 regulations (which the agencies jointly determine to  
13 be appropriate) that—

14 **“(A)** apply to retail sales practices, solici-  
15 tations, advertising, or offers of any insurance  
16 product by any insured depository institution or  
17 wholesale financial institution or any person  
18 who is engaged in such activities at an office of  
19 the institution or on behalf of the institution;  
20 and

21 **“(B)** are consistent with the requirements  
22 of this Act and provide such additional protec-  
23 tions for consumers to whom such sales, solici-  
24 tations, advertising, or offers are directed as  
25 the agency determines to be appropriate.

1           “(2) APPLICABILITY TO SUBSIDIARIES.—The  
2 regulations prescribed pursuant to paragraph (1)  
3 shall extend such protections to any subsidiaries of  
4 an insured depository institution, as deemed appro-  
5 priate by the regulators referred to in paragraph (3),  
6 where such extension is determined to be necessary  
7 to ensure the consumer protections provided by this  
8 section.

9           “(3) CONSULTATION AND JOINT REGULA-  
10 TIONS.—The Federal banking agencies shall consult  
11 with each other and prescribe joint regulations pur-  
12 suant to paragraph (1), after consultation with the  
13 State insurance regulators, as appropriate.

14           “(b) SALES PRACTICES.—The regulations prescribed  
15 pursuant to subsection (a) shall include antioercion rules  
16 applicable to the sale of insurance products which prohibit  
17 an insured depository institution from engaging in any  
18 practice that would lead a consumer to believe an exten-  
19 sion of credit, in violation of section 106(b) of the Bank  
20 Holding Company Act Amendments of 1970, is condi-  
21 tional upon—

22           “(1) the purchase of an insurance product from  
23 the institution or any of its affiliates or subsidiaries;  
24 or

1           “(2) an agreement by the consumer not to ob-  
2           tain, or a prohibition on the consumer from obtain-  
3           ing, an insurance product from an unaffiliated en-  
4           tity.

5           “(e) DISCLOSURES AND ADVERTISING.—The regula-  
6           tions prescribed pursuant to subsection (a) shall include  
7           the following provisions relating to disclosures and adver-  
8           tising in connection with the initial purchase of an insur-  
9           ance product:

10           “(1) DISCLOSURES.—

11           “(A) IN GENERAL.—Requirements that the  
12           following disclosures be made orally and in writ-  
13           ing before the completion of the initial sale and,  
14           in the case of clause (iv), at the time of applica-  
15           tion for an extension of credit:

16           “(i) UNINSURED STATUS.—As appro-  
17           priate, the product is not insured by the  
18           Federal Deposit Insurance Corporation,  
19           the United States Government, or the in-  
20           sured depository institution.

21           “(ii) INVESTMENT RISK.—In the case  
22           of a variable annuity or other insurance  
23           product which involves an investment risk,  
24           that there is an investment risk associated

1 with the product, including possible loss of  
2 value.

3 “(iv) COERCION.—The approval of an  
4 extension of credit may not be conditioned  
5 on—

6 “(I) the purchase of an insurance  
7 product from the institution in which  
8 the application for credit is pending or  
9 any of its affiliates or subsidiaries; or

10 “(II) an agreement by the con-  
11 sumer not to obtain, or a prohibition  
12 on the consumer from obtaining, an  
13 insurance product from an unaffili-  
14 ated entity.

15 “(B) MAKING DISCLOSURE READILY UN-  
16 DERSTANDABLE.—Regulations prescribed under  
17 subparagraph (A) shall encourage the use of  
18 disclosure that is conspicuous, simple, direct,  
19 and readily understandable, such as the follow-  
20 ing:

21 “(i) ‘NOT FDIC-INSURED’.

22 “(ii) ‘NOT GUARANTEED BY THE  
23 BANK’.

24 “(iii) ‘MAY GO DOWN IN VALUE’.

1           “(C) ADJUSTMENTS FOR ALTERNATIVE  
2           METHODS OF PURCHASE.—In prescribing the  
3           requirements under subparagraphs (A) and  
4           (D), necessary adjustments shall be made for  
5           purchase in person, by telephone, or by elec-  
6           tronic media to provide for the most appro-  
7           priate and complete form of disclosure and ac-  
8           knowledgments.

9           “(D) CONSUMER ACKNOWLEDGMENT.—A  
10          requirement that an insured depository institu-  
11          tion shall require any person selling an insur-  
12          ance product at any office of, or on behalf of,  
13          the institution to obtain, at the time a con-  
14          sumer receives the disclosures required under  
15          this paragraph or at the time of the initial pur-  
16          chase by the consumer of such product, an ac-  
17          knowledgment by such consumer of the receipt  
18          of the disclosure required under this subsection  
19          with respect to such product.

20          “(2) PROHIBITION ON MISREPRESENTA-  
21          TIONS.—A prohibition on any practice, or any adver-  
22          tising, at any office of, or on behalf of, the insured  
23          depository institution, or any subsidiary as appro-  
24          priate, which could mislead any person or otherwise

1 cause a reasonable person to reach an erroneous be-  
2 lief with respect to—

3 “(A) the uninsured nature of any insur-  
4 ance product sold, or offered for sale, by the in-  
5 stitution or any subsidiary of the institution; or

6 “(B) in the case of a variable annuity or  
7 other insurance product that involves an invest-  
8 ment risk, the investment risk associated with  
9 any such product.

10 “(d) SEPARATION OF BANKING AND NONBANKING  
11 ACTIVITIES.—

12 “(1) REGULATIONS REQUIRED.—The regula-  
13 tions prescribed pursuant to subsection (a) shall in-  
14 clude such provisions as the Federal banking agen-  
15 cies consider appropriate to ensure that the routine  
16 acceptance of deposits and the making of loans is  
17 kept, to the extent practicable, physically segregated  
18 from insurance product activity.

19 “(2) REQUIREMENTS.—Regulations prescribed  
20 pursuant to paragraph (1) shall include the follow-  
21 ing requirements:

22 “(A) SEPARATE SETTING.—A clear delin-  
23 eation of the setting in which, and the cir-  
24 cumstances under which, transactions involving  
25 insurance products should be conducted in a lo-

1 cation physically segregated from an area where  
2 retail deposits are routinely accepted.

3 “(B) REFERRALS.—Standards which per-  
4 mit any person accepting deposits from, or  
5 making loans to, the public in an area where  
6 such transactions are routinely conducted in an  
7 insured depository institution to refer a cus-  
8 tomer who seeks to purchase any insurance  
9 product to a qualified person who sells such  
10 product, only if the person making the referral  
11 receives no more than a one-time nominal fee of  
12 a fixed dollar amount for each referral that  
13 does not depend on whether the referral results  
14 in a transaction.

15 “(C) QUALIFICATION AND LICENSING RE-  
16 QUIREMENTS.—Standards prohibiting any in-  
17 sured depository institution from permitting  
18 any person to sell or offer for sale any insur-  
19 ance product in any part of any office of the in-  
20 stitution, or on behalf of the institution, unless  
21 such person is appropriately qualified and li-  
22 censed.

23 “(e) DOMESTIC VIOLENCE DISCRIMINATION PROHI-  
24 BITION.—

1           “(1) IN GENERAL.—In the case of an applicant  
2           for, or an insured under, any insurance product de-  
3           scribed in paragraph (2), the status of the applicant  
4           or insured as a victim of domestic violence, or as a  
5           provider of services to victims of domestic violence,  
6           shall not be considered as a criterion in any decision  
7           with regard to insurance underwriting, pricing, re-  
8           newal, or scope of coverage of insurance policies, or  
9           payment of insurance claims, except as required or  
10          expressly permitted under State law.

11          “(2) SCOPE OF APPLICATION.—The prohibition  
12          contained in paragraph (1) shall apply to any insur-  
13          ance product which is sold or offered for sale, as  
14          principal, agent, or broker, by any insured deposi-  
15          tory institution or any person who is engaged in  
16          such activities at an office of the institution or on  
17          behalf of the institution.

18          “(3) SENSE OF THE CONGRESS.—It is the sense  
19          of the Congress that, by the end of the 30-month pe-  
20          riod beginning on the date of the enactment of this  
21          Act, the States should enact prohibitions against dis-  
22          crimination with respect to insurance products that  
23          are at least as strict as the prohibitions contained in  
24          paragraph (1).

1           “(4) DOMESTIC VIOLENCE DEFINED.—For pur-  
2           poses of this subsection, the term ‘domestic violence’  
3           means the occurrence of 1 or more of the following  
4           acts by a current or former family member, house-  
5           hold member, intimate partner, or caretaker:

6                   “(A) Attempting to cause or causing or  
7                   threatening another person physical harm, se-  
8                   vere emotional distress, psychological trauma,  
9                   rape, or sexual assault.

10                   “(B) Engaging in a course of conduct or  
11                   repeatedly committing acts toward another per-  
12                   son, including following the person without  
13                   proper authority, under circumstances that  
14                   place the person in reasonable fear of bodily in-  
15                   jury or physical harm.

16                   “(C) Subjecting another person to false  
17                   imprisonment.

18                   “(D) Attempting to cause or cause damage  
19                   to property so as to intimidate or attempt to  
20                   control the behavior of another person.

21           “(f) CONSUMER GRIEVANCE PROCESS.—The Federal  
22           banking agencies shall jointly establish a consumer com-  
23           plaint mechanism, for receiving and expeditiously address-  
24           ing consumer complaints alleging a violation of regulations  
25           issued under the section, which shall—

1           “(1) establish a group within each regulatory  
2 agency to receive such complaints;

3           “(2) develop procedures for investigating such  
4 complaints;

5           “(3) develop procedures for informing consum-  
6 ers of rights they may have in connection with such  
7 complaints; and

8           “(4) develop procedures for addressing concerns  
9 raised by such complaints, as appropriate, including  
10 procedures for the recovery of losses to the extent  
11 appropriate.

12       “(g) EFFECT ON OTHER AUTHORITY.—

13           “(1) IN GENERAL.—No provision of this section  
14 shall be construed as granting, limiting, or otherwise  
15 affecting—

16           “(A) any authority of the Securities and  
17 Exchange Commission, any self-regulatory or-  
18 ganization, the Municipal Securities Rule-  
19 making Board, or the Secretary of the Treasury  
20 under any Federal securities law; or

21           “(B) except as provided in paragraph (2),  
22 any authority of any State insurance commis-  
23 sioner or other State authority under any State  
24 law.

25       “(2) COORDINATION WITH STATE LAW.—

1           “(A) IN GENERAL.—Except as provided in  
2           subparagraph (B), regulations prescribed by a  
3           Federal banking agency under this section shall  
4           not apply to retail sales, solicitations, advertis-  
5           ing, or offers of any insurance product by any  
6           insured depository institution or wholesale fi-  
7           nancial institution or to any person who is en-  
8           gaged in such activities at an office of such in-  
9           stitution or on behalf of the institution, in a  
10          State where the State has in effect statutes,  
11          regulations, orders, or interpretations, that are  
12          inconsistent with or contrary to the regulations  
13          prescribed by the Federal banking agencies.

14          “(B) PREEMPTION.—If, with respect to  
15          any provision of the regulations prescribed  
16          under this section, the Board of Governors of  
17          the Federal Reserve System, the Comptroller of  
18          the Currency, and the Board of Directors of the  
19          Federal Deposit Insurance Corporation deter-  
20          mine jointly that the protection afforded by  
21          such provision for consumers is greater than  
22          the protection provided by a comparable provi-  
23          sion of the statutes, regulations, orders, or in-  
24          terpretations referred to in subparagraph (A) of  
25          any State, such provision of the regulations pre-

1           scribed under this section shall supersede the  
2           comparable provision of such State statute, reg-  
3           ulation, order, or interpretation.

4           “(h) **INSURANCE PRODUCT DEFINED.**—For purposes  
5 of this section, the term ‘insurance product’ includes an  
6 annuity contract the income of which is subject to tax  
7 treatment under section 72 of the Internal Revenue Code  
8 of 1986.”.

9           **SEC. 309. CERTAIN STATE AFFILIATION LAWS PREEMPTED**  
10                           **FOR INSURANCE COMPANIES AND AFFILI-**  
11                           **ATES.**

12           No State may, by law, regulation, order, interpreta-  
13 tion, or otherwise—

14                   (1) prevent or significantly interfere with the  
15           ability of any insurer, or any affiliate of an insurer  
16           (whether such affiliate is organized as a stock com-  
17           pany, mutual holding company, or otherwise), to be-  
18           come a financial holding company or to acquire con-  
19           trol of an insured depository institution;

20                   (2) limit the amount of an insurer’s assets that  
21           may be invested in the voting securities of an in-  
22           sured depository institution (or any company which  
23           controls such institution), except that the laws of an  
24           insurer’s State of domicile may limit the amount of

1 such investment to an amount that is not less than  
2 5 percent of the insurer's admitted assets; or  
3 ~~(3) prevent, significantly interfere with, or have~~  
4 ~~the authority to review, approve, or disapprove a~~  
5 ~~plan of reorganization by which an insurer proposes~~  
6 ~~to reorganize from mutual form to become a stock~~  
7 ~~insurer (whether as a direct or indirect subsidiary of~~  
8 ~~a mutual holding company or otherwise) unless such~~  
9 ~~State is the State of domicile of the insurer.~~

## 10 **Subtitle B—Redomestication of** 11 **Mutual Insurers**

### 12 **SEC. 311. GENERAL APPLICATION.**

13 This subtitle shall only apply to a mutual insurance  
14 company in a State which has not enacted a law which  
15 expressly establishes reasonable terms and conditions for  
16 a mutual insurance company domiciled in such State to  
17 reorganize into a mutual holding company.

### 18 **SEC. 312. REDOMESTICATION OF MUTUAL INSURERS.**

19 ~~(a) REDOMESTICATION.—A mutual insurer organized~~  
20 ~~under the laws of any State may transfer its domicile to~~  
21 ~~a transferee domicile as a step in a reorganization in~~  
22 ~~which, pursuant to the laws of the transferee domicile and~~  
23 ~~consistent with the standards in subsection (f), the mutual~~  
24 ~~insurer becomes a stock insurer that is a direct or indirect~~  
25 ~~subsidiary of a mutual holding company.~~

1       (b) RESULTING DOMICILE.—Upon complying with  
2 the applicable law of the transferee domicile governing  
3 transfers of domicile and completion of a transfer pursu-  
4 ant to this section, the mutual insurer shall cease to be  
5 a domestic insurer in the transferor domicile and, as a  
6 continuation of its corporate existence, shall be a domestic  
7 insurer of the transferee domicile.

8       (c) LICENSES PRESERVED.—The certificate of au-  
9 thority, agents' appointments and licenses, rates, approv-  
10 als and other items that a licensed State allows and that  
11 are in existence immediately prior to the date that a re-  
12 domesticating insurer transfers its domicile pursuant to  
13 this subtitle shall continue in full force and effect upon  
14 transfer, if the insurer remains duly qualified to transact  
15 the business of insurance in such licensed State.

16       (d) EFFECTIVENESS OF OUTSTANDING POLICIES  
17 AND CONTRACTS.—

18           (1) IN GENERAL.—All outstanding insurance  
19 policies and annuities contracts of a redomesticating  
20 insurer shall remain in full force and effect and need  
21 not be endorsed as to the new domicile of the in-  
22 surer, unless so ordered by the State insurance regu-  
23 lator of a licensed State, and then only in the case  
24 of outstanding policies and contracts whose owners  
25 reside in such licensed State.

1           (2) FORMS.—

2                   (A) Applicable State law may require a re-  
3           domesticating insurer to file new policy forms  
4           with the State insurance regulator of a licensed  
5           State on or before the effective date of the  
6           transfer.

7                   (B) Notwithstanding subparagraph (A), a  
8           redomesticating insurer may use existing policy  
9           forms with appropriate endorsements to reflect  
10          the new domicile of the redomesticating insurer  
11          until the new policy forms are approved for use  
12          by the State insurance regulator of such li-  
13          censed State.

14          (e) NOTICE.—A redomesticating insurer shall give  
15          notice of the proposed transfer to the State insurance reg-  
16          ulator of each licensed State and shall file promptly any  
17          resulting amendments to corporate documents required to  
18          be filed by a foreign licensed mutual insurer with the in-  
19          surance regulator of each such licensed State.

20          (f) PROCEDURAL REQUIREMENTS.—No mutual in-  
21          surer may redomesticate to another State and reorganize  
22          into a mutual holding company pursuant to this section  
23          unless the State insurance regulator of the transferee  
24          domicile determines that the plan of reorganization of the  
25          insurer includes the following requirements:

1           (1) APPROVAL BY BOARD OF DIRECTORS AND  
2 POLICYHOLDERS.—The reorganization is approved  
3 by at least a majority of the board of directors of  
4 the mutual insurer and at least a majority of the  
5 policyholders who vote after notice, disclosure of the  
6 reorganization and the effects of the transaction on  
7 policyholder contractual rights, and reasonable op-  
8 portunity to vote, in accordance with such notice,  
9 disclosure, and voting procedures as are approved by  
10 the State insurance regulator of the transferee domi-  
11 cile.

12           (2) CONTINUED VOTING CONTROL BY POLICY-  
13 HOLDERS; REVIEW OF PUBLIC STOCK OFFERING.—  
14 After the consummation of a reorganization, the pol-  
15 icyholders of the reorganized insurer shall have the  
16 same voting rights with respect to the mutual hold-  
17 ing company as they had before the reorganization  
18 with respect to the mutual insurer. With respect to  
19 an initial public offering of stock, the offering shall  
20 be conducted in compliance with applicable securities  
21 laws and in a manner approved by the State insur-  
22 ance regulator of the transferee domicile.

23           (3) AWARD OF STOCK OR GRANT OF OPTIONS  
24 TO OFFICERS AND DIRECTORS.—For a period of 6  
25 months after completion of an initial public offering,

1 neither a stock holding company nor the converted  
2 insurer shall award any stock options or stock  
3 grants to persons who are elected officers or direc-  
4 tors of the mutual holding company, the stock hold-  
5 ing company, or the converted insurer, except with  
6 respect to any such awards or options to which a  
7 person is entitled as a policyholder and as approved  
8 by the State insurance regulator of the transferee  
9 domicile.

10 (4) **CONTRACTUAL RIGHTS.**—Upon reorganiza-  
11 tion into a mutual holding company, the contractual  
12 rights of the policyholders are preserved.

13 (5) **FAIR AND EQUITABLE TREATMENT OF POL-**  
14 **ICYHOLDERS.**—The reorganization is approved as  
15 fair and equitable to the policyholders by the insur-  
16 ance regulator of the transferee domicile.

17 **SEC. 313. EFFECT ON STATE LAWS RESTRICTING REDOMES-**  
18 **TICATION.**

19 (a) **IN GENERAL.**—Unless otherwise permitted by  
20 this subtitle, State laws of any transferor domicile that  
21 conflict with the purposes and intent of this subtitle are  
22 preempted, including but not limited to—

23 (1) any law that has the purpose or effect of  
24 impeding the activities of, taking any action against,  
25 or applying any provision of law or regulation to,

1 any insurer or an affiliate of such insurer because  
2 that insurer or any affiliate plans to redomesticate,  
3 or has redomesticated, pursuant to this subtitle;

4 (2) any law that has the purpose or effect of  
5 impeding the activities of, taking action against, or  
6 applying any provision of law or regulation to, any  
7 insured or any insurance licensee or other inter-  
8 mediary because such person or entity has procured  
9 insurance from or placed insurance with any insurer  
10 or affiliate of such insurer that plans to redomes-  
11 ticate, or has redomesticated, pursuant to this sub-  
12 title, but only to the extent that such law would  
13 treat such insured licensee or other intermediary dif-  
14 ferently than if the person or entity procured insur-  
15 ance from, or placed insurance with, an insured li-  
16 censee or other intermediary which had not redomes-  
17 ticated;

18 (3) any law that has the purpose or effect of  
19 terminating, because of the redomestication of a mu-  
20 tual insurer pursuant to this subtitle, any certificate  
21 of authority, agent appointment or license, rate ap-  
22 proval, or other approval, of any State insurance  
23 regulator or other State authority in existence imme-  
24 diately prior to the redomestication in any State  
25 other than the transferee domicile.

1           (b) DIFFERENTIAL TREATMENT PROHIBITED.—No  
2 State law, regulation, interpretation, or functional equiva-  
3 lent thereof, of a State other than a transferee domicile  
4 may treat a redomesticating or redomesticated insurer or  
5 any affiliate thereof any differently than an insurer oper-  
6 ating in that State that is not a redomesticating or re-  
7 domesticated insurer.

8           (c) LAWS PROHIBITING OPERATIONS.—If any li-  
9 censed State fails to issue, delays the issuance of, or seeks  
10 to revoke an original or renewal certificate of authority  
11 of a redomesticated insurer immediately following re-  
12 domestication, except on grounds and in a manner consist-  
13 ent with its past practices regarding the issuance of cer-  
14 tificates of authority to foreign insurers that are not re-  
15 domesticating, then the redomesticating insurer shall be  
16 exempt from any State law of the licensed State to the  
17 extent that such State law or the operation of such State  
18 law would make unlawful, or regulate, directly or indi-  
19 rectly, the operation of the redomesticated insurer, except  
20 that such licensed State may require the redomesticated  
21 insurer to—

22                   (1) comply with the unfair claim settlement  
23 practices law of the licensed State;

24                   (2) pay, on a nondiscriminatory basis, applica-  
25 ble premium and other taxes which are levied on li-

1        licensed insurers or policyholders under the laws of  
2        the licensed State;

3            ~~(3) register with and designate the State insur-~~  
4            ~~ance regulator as its agent solely for the purpose of~~  
5            ~~receiving service of legal documents or process;~~

6            ~~(4) submit to an examination by the State in-~~  
7            ~~surance regulator in any licensed state in which the~~  
8            ~~redomesticated insurer is doing business to deter-~~  
9            ~~mine the insurer's financial condition, if—~~

10            ~~(A) the State insurance regulator of the~~  
11            ~~transferee domicile has not begun an examina-~~  
12            ~~tion of the redomesticated insurer and has not~~  
13            ~~scheduled such an examination to begin before~~  
14            ~~the end of the 1-year period beginning on the~~  
15            ~~date of the redomestication; and~~

16            ~~(B) any such examination is coordinated to~~  
17            ~~avoid unjustified duplication and repetition;~~

18            ~~(5) comply with a lawful order issued in—~~

19            ~~(A) a delinquency proceeding commenced~~  
20            ~~by the State insurance regulator of any licensed~~  
21            ~~State if there has been a judicial finding of fi-~~  
22            ~~nancial impairment under paragraph (7); or~~

23            ~~(B) a voluntary dissolution proceeding;~~

24            ~~(6) comply with any State law regarding decep-~~  
25            ~~tive, false, or fraudulent acts or practices, except~~

1 that if the licensed State seeks an injunction regard-  
2 ing the conduct described in this paragraph, such in-  
3 junction must be obtained from a court of competent  
4 jurisdiction as provided in section 314(a);

5 (7) comply with an injunction issued by a court  
6 of competent jurisdiction, upon a petition by the  
7 State insurance regulator alleging that the redomes-  
8 ticating insurer is in hazardous financial condition  
9 or is financially impaired;

10 (8) participate in any insurance insolvency  
11 guaranty association on the same basis as any other  
12 insurer licensed in the licensed State; and

13 (9) require a person acting, or offering to act,  
14 as an insurance licensee for a redomesticated insurer  
15 in the licensed State to obtain a license from that  
16 State, except that such State may not impose any  
17 qualification or requirement that discriminates  
18 against a nonresident insurance licensee.

19 **SEC. 314. OTHER PROVISIONS.**

20 (a) **JUDICIAL REVIEW.**—The appropriate United  
21 States district court shall have exclusive jurisdiction over  
22 litigation arising under this section involving any redomes-  
23 ticating or redomesticated insurer.

24 (b) **SEVERABILITY.**—If any provision of this section,  
25 or the application thereof to any person or circumstances,

1 is held invalid, the remainder of the section, and the appli-  
2 cation of such provision to other persons or circumstances,  
3 shall not be affected thereby.

4 **SEC. 315. DEFINITIONS.**

5 For purposes of this subtitle, the following definitions  
6 shall apply:

7 (1) COURT OF COMPETENT JURISDICTION.—

8 The term “court of competent jurisdiction” means a  
9 court authorized pursuant to section 314(a) to adju-  
10 dicate litigation arising under this subtitle.

11 (2) DOMICILE.—The term “domicile” means  
12 the State in which an insurer is incorporated, char-  
13 tered, or organized.

14 (3) INSURANCE LICENSEE.—The term “insur-  
15 ance licensee” means any person holding a license  
16 under State law to act as insurance agent, subagent,  
17 broker, or consultant.

18 (4) INSTITUTION.—The term “institution”  
19 means a corporation, joint stock company, limited li-  
20 ability company, limited liability partnership, asso-  
21 ciation, trust, partnership, or any similar entity.

22 (5) LICENSED STATE.—The term “licensed  
23 State” means any State, the District of Columbia,  
24 American Samoa, Guam, Puerto Rico, or the United  
25 States Virgin Islands in which the redomesticating

1 insurer has a certificate of authority in effect imme-  
2 diately prior to the redomestication.

3 (6) MUTUAL INSURER.—The term “mutual in-  
4 surer” means a mutual insurer organized under the  
5 laws of any State.

6 (7) PERSON.—The term “person” means an in-  
7 dividual, institution, government or governmental  
8 agency, State or political subdivision of a State, pub-  
9 lic corporation, board, association, estate, trustee, or  
10 fiduciary, or other similar entity.

11 (8) POLICYHOLDER.—The term “policyholder”  
12 means the owner of a policy issued by a mutual in-  
13 surer, except that, with respect to voting rights, the  
14 term means a member of a mutual insurer or mu-  
15 tual holding company granted the right to vote, as  
16 determined under applicable State law.

17 (9) REDOMESTICATED INSURER.—The term  
18 “redomesticated insurer” means a mutual insurer  
19 that has redomesticated pursuant to this subtitle.

20 (10) REDOMESTICATING INSURER.—The term  
21 “redomesticating insurer” means a mutual insurer  
22 that is redomesticating pursuant to this subtitle.

23 (11) REDOMESTICATION OR TRANSFER.—The  
24 terms “redomestication” and “transfer” mean the

1 transfer of the domicile of a mutual insurer from  
2 one State to another State pursuant to this subtitle.

3 (12) STATE INSURANCE REGULATOR.—The  
4 term “State insurance regulator” means the prin-  
5 cipal insurance regulatory authority of a State, the  
6 District of Columbia, American Samoa, Guam,  
7 Puerto Rico, or the United States Virgin Islands.

8 (13) STATE LAW.—The term “State law”  
9 means the statutes of any State, the District of Co-  
10 lumbia, American Samoa, Guam, Puerto Rico, or the  
11 United States Virgin Islands and any regulation,  
12 order, or requirement prescribed pursuant to any  
13 such statute.

14 (14) TRANSFEREE DOMICILE.—The term  
15 “transferee domicile” means the State to which a  
16 mutual insurer is redomesticating pursuant to this  
17 subtitle.

18 (15) TRANSFEROR DOMICILE.—The term  
19 “transferor domicile” means the State from which a  
20 mutual insurer is redomesticating pursuant to this  
21 subtitle.

22 **SEC. 316. EFFECTIVE DATE.**

23 This subtitle shall take effect on the date of the en-  
24 actment of this Act.

1 **Subtitle C—National Association of**  
2 **Registered Agents and Brokers**

3 **SEC. 321. STATE FLEXIBILITY IN MULTISTATE LICENSING**  
4 **REFORMS.**

5 (a) **IN GENERAL.**—The provisions of this subtitle  
6 shall take effect unless by the end of the 3-year period  
7 beginning on the date of the enactment of this Act at least  
8 a majority of the States—

9 (1) have enacted uniform laws and regulations  
10 governing the licensure of individuals and entities  
11 authorized to sell and solicit the purchase of insur-  
12 ance within the State; or

13 (2) have enacted reciprocity laws and regula-  
14 tions governing the licensure of nonresident individ-  
15 uals and entities authorized to sell and solicit insur-  
16 ance within those States.

17 (b) **UNIFORMITY REQUIRED.**—States shall be deemed  
18 to have established the uniformity necessary to satisfy  
19 subsection (a)(1) if the States—

20 (1) establish uniform criteria regarding the in-  
21 tegrity, personal qualifications, education, training,  
22 and experience of licensed insurance producers, in-  
23 cluding the qualification and training of sales per-  
24 sonnel in ascertaining the appropriateness of a par-  
25 ticular insurance product for a prospective customer;

1           (2) establish uniform continuing education re-  
2           quirements for licensed insurance producers;

3           (3) establish uniform ethics course require-  
4           ments for licensed insurance producers in conjunc-  
5           tion with the continuing education requirements  
6           under paragraph (2);

7           (4) establish uniform criteria to ensure that an  
8           insurance product, including any annuity contract,  
9           sold to a consumer is suitable and appropriate for  
10          the consumer based on financial information dis-  
11          closed by the consumer; and

12          (5) do not impose any requirement upon any in-  
13          surance producer to be licensed or otherwise quali-  
14          fied to do business as a nonresident that has the ef-  
15          fect of limiting or conditioning that producer's ac-  
16          tivities because of its residence or place of oper-  
17          ations; except that counter-signature requirements  
18          imposed on nonresident producers shall not be  
19          deemed to have the effect of limiting or conditioning  
20          a producer's activities because of its residence or  
21          place of operations under this section.

22          (c) RECIPROcity REQUIRED.—States shall be  
23          deemed to have established the reciprocity required to sat-  
24          isfy subsection (a)(2) if the following conditions are met:

1           (1) ADMINISTRATIVE LICENSING PROCE-  
 2           DURES.—At least a majority of the States permit a  
 3           producer that has a resident license for selling or so-  
 4           liciting the purchase of insurance in its home State  
 5           to receive a license to sell or solicit the purchase of  
 6           insurance in such majority of States as a non-  
 7           resident to the same extent such producer is per-  
 8           mitted to sell or solicit the purchase of insurance in  
 9           its State, without satisfying any additional require-  
 10          ments other than submitting—

11                   (A) a request for licensure;

12                   (B) the application for licensure that the  
 13           producer submitted to its home State;

14                   (C) proof that the producer is licensed and  
 15           in good standing in its home State; and

16                   (D) the payment of any requisite fee to the  
 17           appropriate authority,

18           if the producer's home State also awards such li-  
 19           censes on such a reciprocal basis.

20           (2) CONTINUING EDUCATION REQUIRE-  
 21           MENTS.—A majority of the States accept an insur-  
 22           ance producer's satisfaction of its home State's con-  
 23           tinuing education requirements for licensed insur-  
 24           ance producers to satisfy the States' own continuing  
 25           education requirements if the producer's home State

1 also recognizes the satisfaction of continuing edu-  
2 cation requirements on such a reciprocal basis.

3 ~~(3) NO LIMITING NONRESIDENT REQUIRE-~~  
4 ~~MENTS.—~~A majority of the States do not impose  
5 any requirement upon any insurance producer to be  
6 licensed or otherwise qualified to do business as a  
7 nonresident that has the effect of limiting or condi-  
8 tioning that producer's activities because of its resi-  
9 dence or place of operations, except that  
10 countersignature requirements imposed on non-  
11 resident producers shall not be deemed to have the  
12 effect of limiting or conditioning a producer's activi-  
13 ties because of its residence or place of operations  
14 under this section.

15 ~~(4) RECIPROCAL RECIPROCITY.—~~Each of the  
16 States that satisfies paragraphs (1), (2), and (3)  
17 grants reciprocity to residents of all of the other  
18 States that satisfy such paragraphs.

19 ~~(d) DETERMINATION.—~~

20 ~~(1) NAIC DETERMINATION.—~~At the end of the  
21 3-year period beginning on the date of the enact-  
22 ment of this Act, the National Association of Insur-  
23 ance Commissioners shall determine, in consultation  
24 with the insurance commissioners or chief insurance  
25 regulatory officials of the States, whether the uni-

1       formity or reciprocity required by subsections (b)  
2       and (c) has been achieved.

3           (2) JUDICIAL REVIEW.—The appropriate  
4       United States district court shall have exclusive ju-  
5       risdiction over any challenge to the National Asso-  
6       ciation of Insurance Commissioners' determination  
7       under this section and such court shall apply the  
8       standards set forth in section 706 of title 5, United  
9       States Code, when reviewing any such challenge.

10       (c) CONTINUED APPLICATION.—If, at any time, the  
11       uniformity or reciprocity required by subsections (b) and  
12       (c) no longer exists, the provisions of this subtitle shall  
13       take effect within 2 years, unless the uniformity or reci-  
14       procity required by those provisions is satisfied before the  
15       expiration of that 2-year period.

16       (f) SAVINGS PROVISION.—No provision of this sec-  
17       tion shall be construed as requiring that any law, regula-  
18       tion, provision, or action of any State which purports to  
19       regulate insurance producers, including any such law, reg-  
20       ulation, provision, or action which purports to regulate un-  
21       fair trade practices or establish consumer protections, in-  
22       cluding countersignature laws, be altered or amended in  
23       order to satisfy the uniformity or reciprocity required by  
24       subsection (b) and (c), unless any such law, regulation,  
25       provision, or action is inconsistent with a specific require-

1 ment of any such subsection and then only to the extent  
2 of such inconsistency.

3 **SEC. 322. NATIONAL ASSOCIATION OF REGISTERED**  
4 **AGENTS AND BROKERS.**

5 (a) **ESTABLISHMENT.**—There is established the Na-  
6 tional Association of Registered Agents and Brokers  
7 (hereafter in this subtitle referred to as the “Associa-  
8 tion”).

9 (b) **STATUS.**—The Association shall—

10 (1) be a nonprofit corporation;

11 (2) have succession until dissolved by an Act of  
12 Congress;

13 (3) not be an agency or establishment of the  
14 United States Government; and

15 (4) except as otherwise provided in this Act, be  
16 subject to, and have all the powers conferred upon  
17 a nonprofit corporation by the District of Columbia  
18 Nonprofit Corporation Act (D.C. Code, sec. 29y-  
19 1001 et seq.).

20 **SEC. 323. PURPOSE.**

21 The purpose of the Association shall be to provide  
22 a mechanism through which uniform licensing, appoint-  
23 ment, continuing education, and other insurance producer  
24 sales qualification requirements and conditions can be  
25 adopted and applied on a multistate basis, while preserv-

1 ing the right of States to license, supervise, and discipline  
 2 insurance producers and to prescribe and enforce laws and  
 3 regulations with regard to insurance-related consumer  
 4 protection and unfair trade practices.

5 **SEC. 324. RELATIONSHIP TO THE FEDERAL GOVERNMENT.**

6 The Association shall be subject to the supervision  
 7 and oversight of the National Association of Insurance  
 8 Commissioners (hereafter in this subtitle referred to as the  
 9 “NAIC”) and shall not be an agency or an instrumentality  
 10 of the United States Government.

11 **SEC. 325. MEMBERSHIP.**

12 (a) **ELIGIBILITY.**—

13 (1) **IN GENERAL.**—Any State-licensed insurance  
 14 producer shall be eligible to become a member in the  
 15 Association.

16 (2) **INELIGIBILITY FOR SUSPENSION OR REV-**  
 17 **OCATION OF LICENSE.**—Notwithstanding paragraph  
 18 (1), a State-licensed insurance producer shall not be  
 19 eligible to become a member if a State insurance  
 20 regulator has suspended or revoked such producer’s  
 21 license in that State during the 3-year preceding the  
 22 date such producer applies for membership.

23 (3) **RESUMPTION OF ELIGIBILITY.**—Paragraph  
 24 (2) shall cease to apply to any insurance producer  
 25 if—

1           (A) the State insurance regulator renews  
2           the license of such producer in the State in  
3           which the license was suspended or revoked; or

4           (B) the suspension or revocation is subse-  
5           quently overturned.

6           (b) ~~AUTHORITY TO ESTABLISH MEMBERSHIP CRI-~~  
7 ~~TERIA.~~—The Association shall have the authority to estab-  
8 lish membership criteria that—

9           (1) bear a reasonable relationship to the pur-  
10          poses for which the Association was established; and

11          (2) do not unfairly limit the access of smaller  
12          agencies to the Association membership.

13          (c) ~~ESTABLISHMENT OF CLASSES AND CAT-~~  
14 ~~EGORIES.~~—

15          (1) ~~CLASSES OF MEMBERSHIP.~~—The Associa-  
16          tion may establish separate classes of membership;  
17          with separate criteria; if the Association reasonably  
18          determines that performance of different duties re-  
19          quires different levels of education, training, or expe-  
20          rience.

21          (2) ~~CATEGORIES.~~—The Association may estab-  
22          lish separate categories of membership for individ-  
23          uals and for other persons. The establishment of any  
24          such categories of membership shall be based either  
25          on the types of licensing categories that exist under

1 State laws or on the aggregate amount of business  
2 handled by an insurance producer. No special cat-  
3 egories of membership, and no distinct membership  
4 criteria, shall be established for members which are  
5 insured depository institutions or wholesale financial  
6 institutions or for their employees, agents, or affili-  
7 ates.

8 (d) MEMBERSHIP CRITERIA.—

9 (1) IN GENERAL.—The Association may estab-  
10 lish criteria for membership which shall include  
11 standards for integrity, personal qualifications, edu-  
12 cation, training, and experience.

13 (2) MINIMUM STANDARD.—In establishing cri-  
14 teria under paragraph (1), the Association shall con-  
15 sider the highest levels of insurance producer quali-  
16 fications established under the licensing laws of the  
17 States.

18 (e) EFFECT OF MEMBERSHIP.—Membership in the  
19 Association shall entitle the member to licensure in each  
20 State for which the member pays the requisite fees, includ-  
21 ing licensing fees and, where applicable, bonding require-  
22 ments, set by such State.

23 (f) ANNUAL RENEWAL.—Membership in the Associa-  
24 tion shall be renewed on an annual basis.

1       (g) CONTINUING EDUCATION.—The Association shall  
 2 establish, as a condition of membership, continuing edu-  
 3 cation requirements which shall be comparable to or great-  
 4 er than the continuing education requirements under the  
 5 licensing laws of a majority of the States.

6       (h) SUSPENSION AND REVOCATION.—The Associa-  
 7 tion may—

8           (1) inspect and examine the records and offices  
 9 of the members of the Association to determine com-  
 10 pliance with the criteria for membership established  
 11 by the Association; and

12           (2) suspend or revoke the membership of an in-  
 13 surance producer if—

14           (A) the producer fails to meet the applica-  
 15 ble membership criteria of the Association; or

16           (B) the producer has been subject to dis-  
 17 ciplinary action pursuant to a final adjudicatory  
 18 proceeding under the jurisdiction of a State in-  
 19 surance regulator, and the Association con-  
 20 cludes that retention of membership in the As-  
 21 sociation would not be in the public interest.

22       (i) OFFICE OF CONSUMER COMPLAINTS.—

23           (1) IN GENERAL.—The Association shall estab-  
 24 lish an office of consumer complaints that shall—

1           (A) receive and investigate complaints  
2           from both consumers and State insurance regu-  
3           lators related to members of the Association;  
4           and

5           (B) recommend to the Association any dis-  
6           ciplinary actions that the office considers appro-  
7           priate, to the extent that any such rec-  
8           ommendation is not inconsistent with State law.

9           ~~(2) RECORDS AND REFERRALS.—~~The office of  
10          consumer complaints of the Association shall—

11          (A) maintain records of all complaints re-  
12          ceived in accordance with paragraph ~~(1)~~ and  
13          make such records available to the NAIC and  
14          to each State insurance regulator for the State  
15          of residence of the consumer who filed the com-  
16          plaint; and

17          (B) refer, when appropriate, any such com-  
18          plaint to any appropriate State insurance regu-  
19          lator.

20          ~~(3) TELEPHONE AND OTHER ACCESS.—~~The of-  
21          fice of consumer complaints shall maintain a toll-free  
22          telephone number for the purpose of this subsection  
23          and, as practicable, other alternative means of com-  
24          munication with consumers, such as an Internet  
25          home page.

1 **SEC. 326. BOARD OF DIRECTORS.**

2 (a) **ESTABLISHMENT.**—There is established the  
3 board of directors of the Association (hereafter in this sub-  
4 title referred to as the “Board”) for the purpose of govern-  
5 ing and supervising the activities of the Association and  
6 the members of the Association.

7 (b) **POWERS.**—The Board shall have such powers and  
8 authority as may be specified in the bylaws of the Associa-  
9 tion.

10 (c) **COMPOSITION.**—

11 (1) **MEMBERS.**—The Board shall be composed  
12 of 7 members appointed by the NAIC.

13 (2) **REQUIREMENT.**—At least 4 of the members  
14 of the Board shall have significant experience with  
15 the regulation of commercial lines of insurance in at  
16 least 1 of the 20 States in which the greatest total  
17 dollar amount of commercial-lines insurance is  
18 placed in the United States.

19 (3) **INITIAL BOARD MEMBERSHIP.**—

20 (A) **IN GENERAL.**—If, by the end of the 2-  
21 year period beginning on the date of the enact-  
22 ment of this Act, the NAIC has not appointed  
23 the initial 7 members of the Board of the Asso-  
24 ciation, the initial Board shall consist of the 7  
25 State insurance regulators of the 7 States with  
26 the greatest total dollar amount of commercial-

1 lines insurance in place as of the end of such  
2 period.

3 (B) ALTERNATE COMPOSITION.—If any of  
4 the State insurance regulators described in sub-  
5 paragraph (A) declines to serve on the Board,  
6 the State insurance regulator with the next  
7 greatest total dollar amount of commercial-lines  
8 insurance in place, as determined by the NAIC  
9 as of the end of such period, shall serve as a  
10 member of the Board.

11 (C) INOPERABILITY.—If fewer than 7  
12 State insurance regulators accept appointment  
13 to the Board, the Association shall be estab-  
14 lished without NAIC oversight pursuant to sec-  
15 tion 332.

16 (d) TERMS.—The term of each director shall, after  
17 the initial appointment of the members of the Board, be  
18 for 3 years, with  $\frac{1}{3}$  of the directors to be appointed each  
19 year.

20 (e) BOARD VACANCIES.—A vacancy on the Board  
21 shall be filled in the same manner as the original appoint-  
22 ment of the initial Board for the remainder of the term  
23 of the vacating member.

1 (f) MEETINGS.—The Board shall meet at the call of  
2 the chairperson, or as otherwise provided by the bylaws  
3 of the Association.

4 **SEC. 327. OFFICERS.**

5 (a) IN GENERAL.—

6 (1) POSITIONS.—The officers of the Association  
7 shall consist of a chairperson and a vice chairperson  
8 of the Board, a president, secretary, and treasurer  
9 of the Association, and such other officers and as-  
10 sistant officers as may be deemed necessary.

11 (2) MANNER OF SELECTION.—Each officer of  
12 the Board and the Association shall be elected or ap-  
13 pointed at such time and in such manner and for  
14 such terms not exceeding 3 years as may be pre-  
15 scribed in the bylaws of the Association.

16 (b) CRITERIA FOR CHAIRPERSON.— Only individuals  
17 who are members of the National Association of Insurance  
18 Commissioners shall be eligible to serve as the chairperson  
19 of the board of directors.

20 **SEC. 328. BYLAWS, RULES, AND DISCIPLINARY ACTION.**

21 (a) ADOPTION AND AMENDMENT OF BYLAWS.—

22 (1) COPY REQUIRED TO BE FILED WITH THE  
23 NAIC.—The board of directors of the Association  
24 shall file with the NAIC a copy of the proposed by-  
25 laws or any proposed amendment to the bylaws, ac-

1        accompanied by a concise general statement of the  
2        basis and purpose of such proposal.

3            ~~(2) EFFECTIVE DATE.—~~Except as provided in  
4        paragraph ~~(3)~~, any proposed bylaw or proposed  
5        amendment shall take effect—

6            ~~(A)~~ 30 days after the date of the filing of  
7        a copy with the NAIC;

8            ~~(B)~~ upon such later date as the Associa-  
9        tion may designate; or

10          ~~(C)~~ such earlier date as the NAIC may de-  
11        termine.

12          ~~(3) DISAPPROVAL BY THE NAIC.—~~Notwith-  
13        standing paragraph ~~(2)~~, a proposed bylaw or amend-  
14        ment shall not take effect if, after public notice and  
15        opportunity to participate in a public hearing—

16          ~~(A)~~ the NAIC disapproves such proposal as  
17        being contrary to the public interest or contrary  
18        to the purposes of this subtitle and provides no-  
19        tice to the Association setting forth the reasons  
20        for such disapproval; or

21          ~~(B)~~ the NAIC finds that such proposal in-  
22        volves a matter of such significant public inter-  
23        est that public comment should be obtained, in  
24        which case it may, after notifying the Associa-  
25        tion in writing of such finding, require that the

1 procedures set forth in subsection (b) be fol-  
2 lowed with respect to such proposal, in the  
3 same manner as if such proposed bylaw change  
4 were a proposed rule change within the mean-  
5 ing of such paragraph.

6 ~~(b) ADOPTION AND AMENDMENT OF RULES.—~~

7 ~~(1) FILING PROPOSED REGULATIONS WITH THE~~  
8 ~~NAIC.—~~

9 ~~(A) IN GENERAL.—~~The board of directors  
10 of the Association shall file with the NAIC a  
11 copy of any proposed rule or any proposed  
12 amendment to a rule of the Association which  
13 shall be accompanied by a concise general state-  
14 ment of the basis and purpose of such proposal.

15 ~~(B) OTHER RULES AND AMENDMENTS IN-~~  
16 ~~EFFECTIVE.—~~No proposed rule or amendment  
17 shall take effect unless approved by the NAIC  
18 or otherwise permitted in accordance with this  
19 paragraph.

20 ~~(2) INITIAL CONSIDERATION BY THE NAIC.—~~

21 Within 35 days after the date of publication of no-  
22 tice of filing of a proposal, or before the end of such  
23 longer period not to exceed 90 days as the NAIC  
24 may designate after such date if the NAIC finds  
25 such longer period to be appropriate and sets forth

1 its reasons for so finding, or as to which the Asso-  
2 ciation consents, the NAIC shall—

3 ~~(A) by order approve such proposed rule or~~  
4 ~~amendment; or~~

5 ~~(B) institute proceedings to determine~~  
6 ~~whether such proposed rule or amendment~~  
7 ~~should be modified or disapproved.~~

8 ~~(3) NAIC PROCEEDINGS.—~~

9 ~~(A) IN GENERAL.—Proceedings instituted~~  
10 ~~by the NAIC with respect to a proposed rule or~~  
11 ~~amendment pursuant to paragraph (2) shall—~~

12 ~~(i) include notice of the grounds for~~  
13 ~~disapproval under consideration;~~

14 ~~(ii) provide opportunity for hearing;~~  
15 ~~and~~

16 ~~(iii) be concluded within 180 days~~  
17 ~~after the date of the Association's filing of~~  
18 ~~such proposed rule or amendment.~~

19 ~~(B) DISPOSITION OF PROPOSAL.—At the~~  
20 ~~conclusion of any proceeding under subpara-~~  
21 ~~graph (A), the NAIC shall, by order, approve or~~  
22 ~~disapprove the proposed rule or amendment.~~

23 ~~(C) EXTENSION OF TIME FOR CONSIDER-~~  
24 ~~ATION.—The NAIC may extend the time for~~

1 concluding any proceeding under subparagraph

2 (A) for—

3 (i) not more than 60 days if the  
4 NAIC finds good cause for such extension  
5 and sets forth its reasons for so finding; or

6 (ii) for such longer period as to which  
7 the Association consents.

8 (4) STANDARDS FOR REVIEW.—

9 (A) GROUNDS FOR APPROVAL.—The NAIC  
10 shall approve a proposed rule or amendment if  
11 the NAIC finds that the rule or amendment is  
12 in the public interest and is consistent with the  
13 purposes of this Act.

14 (B) APPROVAL BEFORE END OF NOTICE  
15 PERIOD.—The NAIC shall not approve any pro-  
16 posed rule before the end of the 30-day period  
17 beginning on the date the Association files pro-  
18 posed rules or amendments in accordance with  
19 paragraph (1) unless the NAIC finds good  
20 cause for so doing and sets forth the reasons  
21 for so finding.

22 (5) ALTERNATE PROCEDURE.—

23 (A) IN GENERAL.—Notwithstanding any  
24 provision of this subsection other than subpara-  
25 graph (B), a proposed rule or amendment relat-

1 ing to the administration or organization of the  
2 Association may take effect—

3 (i) upon the date of filing with the  
4 NAIC, if such proposed rule or amendment  
5 is designated by the Association as relating  
6 solely to matters which the NAIC, consist-  
7 ent with the public interest and the pur-  
8 poses of this subsection, determines by rule  
9 do not require the procedures set forth in  
10 this paragraph; or

11 (ii) upon such date as the NAIC shall  
12 for good cause determine.

13 ~~(B) ABROGATION BY THE NAIC.—~~

14 ~~(i) IN GENERAL.—At any time within~~  
15 ~~60 days after the date of filing of any pro-~~  
16 ~~posed rule or amendment under subpara-~~  
17 ~~graph (A)(i) or (B)(ii), the NAIC may re-~~  
18 ~~peal such rule or amendment and require~~  
19 ~~that the rule or amendment be refiled and~~  
20 ~~reviewed in accordance with this para-~~  
21 ~~graph, if the NAIC finds that such action~~  
22 ~~is necessary or appropriate in the public~~  
23 ~~interest, for the protection of insurance~~  
24 ~~producers or policyholders, or otherwise in~~  
25 ~~furtherance of the purposes of this subtitle.~~

1                   (ii) EFFECT OF RECONSIDERATION BY  
2                   THE NAIC.—Any action of the NAIC pur-  
3                   suant to clause (i) shall—

4                           (I) not affect the validity or force  
5                           of a rule change during the period  
6                           such rule or amendment was in effect;  
7                           and

8                           (II) not be considered to be final  
9                           action.

10           (e) ACTION REQUIRED BY THE NAIC.—The NAIC  
11 may, in accordance with such rules as the NAIC deter-  
12 mines to be necessary or appropriate to the public interest  
13 or to carry out the purposes of this subtitle, require the  
14 Association to adopt, amend, or repeal any bylaw, rule or  
15 amendment of the Association, whenever adopted.

16           (d) DISCIPLINARY ACTION BY THE ASSOCIATION.—

17                   (1) SPECIFICATION OF CHARGES.—In any pro-  
18 ceeding to determine whether membership shall be  
19 denied, suspended, revoked, and not renewed (here-  
20 after in this section referred to as a “disciplinary ac-  
21 tion”), the Association shall bring specific charges,  
22 notify such member of such charges and give the  
23 member an opportunity to defend against the  
24 charges, and keep a record.

1           (2) SUPPORTING STATEMENT.—A determina-  
2           tion to take disciplinary action shall be supported by  
3           a statement setting forth—

4                   (A) any act or practice in which such  
5                   member has been found to have been engaged;

6                   (B) the specific provision of this subtitle,  
7                   the rules or regulations under this subtitle, or  
8                   the rules of the Association which any such act  
9                   or practice is deemed to violate; and

10                  (C) the sanction imposed and the reason  
11                  for such sanction.

12           (e) NAIC REVIEW OF DISCIPLINARY ACTION.—

13                  (1) NOTICE TO THE NAIC.—If the Association  
14                  orders any disciplinary action, the Association shall  
15                  promptly notify the NAIC of such action.

16                  (2) REVIEW BY THE NAIC.—Any disciplinary  
17                  action taken by the Association shall be subject to  
18                  review by the NAIC—

19                          (A) on the NAIC's own motion; or

20                          (B) upon application by any person ag-  
21                          grieved by such action if such application is  
22                          filed with the NAIC not more than 30 days  
23                          after the later of—

24                                  (i) the date the notice was filed with  
25                                  the NAIC pursuant to paragraph (1); or

1                   (ii) the date the notice of the discipli-  
2                   nary action was received by such aggrieved  
3                   person.

4       (f) EFFECT OF REVIEW.—The filing of an applica-  
5       tion to the NAIC for review of a disciplinary action, or  
6       the institution of review by the NAIC on the NAIC's own  
7       motion, shall not operate as a stay of disciplinary action  
8       unless the NAIC otherwise orders.

9       (g) SCOPE OF REVIEW.—

10           (A) IN GENERAL.—In any proceeding to  
11           review such action, after notice and the oppor-  
12           tunity for hearing, the NAIC shall—

13                   (i) determine whether the action  
14                   should be taken;

15                   (ii) affirm, modify, or rescind the dis-  
16                   ciplinary sanction; or

17                   (iii) remand to the Association for  
18                   further proceedings.

19           (B) DISMISSAL OF REVIEW.—The NAIC  
20           may dismiss a proceeding to review disciplinary  
21           action if the NAIC finds that—

22                   (i) the specific grounds on which the  
23                   action is based exist in fact;

24                   (ii) the action is in accordance with  
25                   applicable rules and regulations; and

1 (iii) such rules and regulations are,  
2 and were, applied in a manner consistent  
3 with the purposes of this Act.

4 **SEC. 329. ASSESSMENTS.**

5 (a) **INSURANCE PRODUCERS SUBJECT TO ASSESS-**  
6 **MENT.**—The Association may establish such application  
7 and membership fees as the Association finds necessary  
8 to cover the costs of its operations, including fees made  
9 reimbursable to the NAIC under subsection (b), except  
10 that, in setting such fees, the Association may not dis-  
11 criminate against smaller insurance producers.

12 (b) **NAIC ASSESSMENTS.**—The NAIC may assess the  
13 Association for any costs it incurs under this subtitle.

14 **SEC. 330. FUNCTIONS OF THE NAIC.**

15 (a) **ADMINISTRATIVE PROCEDURE.**—Determinations  
16 of the NAIC, for purposes of making rules pursuant to  
17 section 328, shall be made after appropriate notice and  
18 opportunity for a hearing and for submission of views of  
19 interested persons.

20 (b) **EXAMINATIONS AND REPORTS.**—

21 (1) The NAIC may make such examinations  
22 and inspections of the Association and require the  
23 Association to furnish it with such reports and  
24 records or copies thereof as the NAIC may consider

1 necessary or appropriate in the public interest or to  
2 effectuate the purposes of this subtitle.

3 ~~(2)~~ As soon as practicable after the close of  
4 each fiscal year, the Association shall submit to the  
5 NAIC a written report regarding the conduct of its  
6 business, and the exercise of the other rights and  
7 powers granted by this subtitle, during such fiscal  
8 year. Such report shall include financial statements  
9 setting forth the financial position of the Association  
10 at the end of such fiscal year and the results of its  
11 operations (including the source and application of  
12 its funds) for such fiscal year. The NAIC shall  
13 transmit such report to the President and the Con-  
14 gress with such comment thereon as the NAIC de-  
15 termines to be appropriate.

16 **SEC. 331. LIABILITY OF THE ASSOCIATION AND THE DIREC-**  
17 **TORS, OFFICERS, AND EMPLOYEES OF THE**  
18 **ASSOCIATION.**

19 (a) IN GENERAL.—The Association shall not be  
20 deemed to be an insurer or insurance producer within the  
21 meaning of any State law, rule, regulation, or order regu-  
22 lating or taxing insurers, insurance producers, or other en-  
23 tities engaged in the business of insurance, including pro-  
24 visions imposing premium taxes, regulating insurer sol-  
25 vency or financial condition, establishing guaranty funds

1 and levying assessments, or requiring claims settlement  
2 practices.

3 (b) **LIABILITY OF THE ASSOCIATION, ITS DIREC-**  
4 **TORS, OFFICERS, AND EMPLOYEES.**—Neither the Associa-  
5 tion nor any of its directors, officers, or employees shall  
6 have any liability to any person for any action taken or  
7 omitted in good faith under or in connection with any mat-  
8 ter subject to this subtitle.

9 **SEC. 332. ELIMINATION OF NAIC OVERSIGHT.**

10 (a) **IN GENERAL.**—The Association shall be estab-  
11 lished without NAIC oversight and the provisions set forth  
12 in section 324, subsections (a), (b), (c), and (e) of section  
13 328, and sections 329(b) and 330 of this subtitle shall  
14 cease to be effective if, at the end of the 2-year period  
15 after the date on which the provisions of this subtitle take  
16 effect pursuant to section 321—

17 (1) at least a majority of the States represent-  
18 ing at least 50 percent of the total United States  
19 commercial-lines insurance premiums have not satis-  
20 fied the uniformity or reciprocity requirements of  
21 subsections (a) and (b) of section 321; and

22 (2) the NAIC has not approved the Associa-  
23 tion's bylaws as required by section 328, the NAIC  
24 is unable to operate or supervise the Association, or

1 the Association is not conducting its activities as re-  
2 quired under this Act.

3 (b) BOARD APPOINTMENTS.—If the repeals required  
4 by subsection (a) are implemented—

5 (1) GENERAL APPOINTMENT POWER.—The  
6 President, with the advice and consent of the United  
7 States Senate, shall appoint the members of the As-  
8 sociation's Board established under section 326 from  
9 lists of candidates recommended to the President by  
10 the National Association of Insurance Commis-  
11 sioners.

12 (2) PROCEDURES FOR OBTAINING NATIONAL  
13 ASSOCIATION OF INSURANCE COMMISSIONERS AP-  
14 POINTMENT RECOMMENDATIONS.—

15 (A) INITIAL DETERMINATION AND REC-  
16 OMMENDATIONS.—After the date on which the  
17 provisions of part a of this section take effect,  
18 then the National Association of Insurance  
19 Commissioners shall have 60 days to provide a  
20 list of recommended candidates to the Presi-  
21 dent. If the National Association of Insurance  
22 Commissioners fails to provide a list by that  
23 date, or if any list that is provided does not in-  
24 clude at least 14 recommended candidates or  
25 comply with the requirements of section 326(e);

1 the President shall, with the advice and consent  
2 of the United States Senate, make the requisite  
3 appointments without considering the views of  
4 the NAIC.

5 (B) ~~SUBSEQUENT APPOINTMENTS.~~—After  
6 the initial appointments, the National Associa-  
7 tion of Insurance Commissioners shall provide a  
8 list of at least 6 recommended candidates for  
9 the Board to the President by January 15 of  
10 each subsequent year. If the National Associa-  
11 tion of Insurance Commissioners fails to pro-  
12 vide a list by that date, or if any list that is  
13 provided does not include at least 6 rec-  
14 ommended candidates or comply with the re-  
15 quirements of section 326(e), the President,  
16 with the advice and consent of the Senate, shall  
17 make the requisite appointments without con-  
18 sidering the views of the NAIC.

19 (C) ~~PRESIDENTIAL OVERSIGHT.~~—

20 (i) ~~REMOVAL.~~—If the President deter-  
21 mines that the Association is not acting in  
22 the interests of the public, the President  
23 may remove the entire existing Board for  
24 the remainder of the term to which the  
25 members of the Board were appointed and

1           appoint, with the advice and consent of the  
2           Senate, new members to fill the vacancies  
3           on the Board for the remainder of such  
4           terms.

5           (ii) **SUSPENSION OF RULES OR AC-**  
6           **TIONS.**—The President, or a person des-  
7           ignated by the President for such purpose,  
8           may suspend the effectiveness of any rule,  
9           or prohibit any action, of the Association  
10          which the President or the designee deter-  
11          mines is contrary to the public interest.

12          (d) **ANNUAL REPORT.**—As soon as practicable after  
13          the close of each fiscal year, the Association shall submit  
14          to the President and to Congress a written report relative  
15          to the conduct of its business, and the exercise of the other  
16          rights and powers granted by this subtitle, during such  
17          fiscal year. Such report shall include financial statements  
18          setting forth the financial position of the Association at  
19          the end of such fiscal year and the results of its operations  
20          (including the source and application of its funds) for such  
21          fiscal year.

22          **SEC. 333. RELATIONSHIP TO STATE LAW.**

23          (a) **PREEMPTION OF STATE LAWS.**—State laws, reg-  
24          ulations, provisions, or actions purporting to regulate in-

1 insurance producers shall be preempted in the following in-  
2 stances:

3           (1) No State shall impede the activities of, take  
4 any action against, or apply any provision of law or  
5 regulation to, any insurance producer because that  
6 insurance producer or any affiliate plans to become,  
7 has applied to become, or is a member of the Asso-  
8 ciation.

9           (2) No State shall impose any requirement  
10 upon a member of the Association that it pay dif-  
11 ferent fees to be licensed or otherwise qualified to do  
12 business in that State, including bonding require-  
13 ments, based on its residency.

14           (3) No State shall impose any licensing, ap-  
15 pointment, integrity, personal or corporate qualifica-  
16 tions, education, training, experience, residency, or  
17 continuing education requirement upon a member of  
18 the Association that is different than the criteria for  
19 membership in the Association or renewal of such  
20 membership, except that counter-signature require-  
21 ments imposed on nonresident producers shall not be  
22 deemed to have the effect of limiting or conditioning  
23 a producer's activities because of its residence or  
24 place of operations under this section.

1           (4) No State shall implement the procedures of  
 2           such State's system of licensing or renewing the li-  
 3           censes of insurance producers in a manner different  
 4           from the authority of the Association under section  
 5           ~~325~~.

6           (b) SAVINGS PROVISION.—Except as provided in sub-  
 7           section (a), no provision of this section shall be construed  
 8           as altering or affecting the continuing effectiveness of any  
 9           law, regulation, provision, or action of any State which  
 10          purports to regulate insurance producers, including any  
 11          such law, regulation, provision, or action which purports  
 12          to regulate unfair trade practices or establish consumer  
 13          protections, including, but not limited to, countersignature  
 14          laws.

15       **SEC. 334. COORDINATION WITH OTHER REGULATORS.**

16          (a) COORDINATION WITH STATE INSURANCE REGU-  
 17          LATORS.—The Association shall have the authority to—

18               (1) issue uniform insurance producer applica-  
 19               tions and renewal applications that may be used to  
 20               apply for the issuance or removal of State licenses,  
 21               while preserving the ability of each State to impose  
 22               such conditions on the issuance or renewal of a li-  
 23               cense as are consistent with section ~~333~~;

24               (2) establish a central clearinghouse through  
 25               which members of the Association may apply for the

1 issuance or renewal of licenses in multiple States;  
2 and

3 ~~(3) establish or utilize a national database for~~  
4 ~~the collection of regulatory information concerning~~  
5 ~~the activities of insurance producers.~~

6 ~~(b) COORDINATION WITH THE NATIONAL ASSOCIA-~~  
7 ~~TION OF SECURITIES DEALERS.—The Association shall~~  
8 ~~coordinate with the National Association of Securities~~  
9 ~~Dealers in order to ease any administrative burdens that~~  
10 ~~fall on persons that are members of both associations; con-~~  
11 ~~sistent with the purposes of this subtitle and the Federal~~  
12 ~~securities laws.~~

13 **SEC. 335. JUDICIAL REVIEW.**

14 (a) JURISDICTION.—The appropriate United States  
15 district court shall have exclusive jurisdiction over litigation  
16 involving the Association, including disputes between  
17 the Association and its members that arise under this sub-  
18 title. Suits brought in State court involving the Associa-  
19 tion shall be deemed to have arisen under Federal law and  
20 therefore be subject to jurisdiction in the appropriate  
21 United States district court.

22 (b) EXHAUSTION OF REMEDIES.—An aggrieved per-  
23 son must exhaust all available administrative remedies be-  
24 fore the Association and the NAIC before it may seek judi-  
25 cial review of an Association decision.

1       (e) **STANDARDS OF REVIEW.**—The standards set  
2 forth in section 553 of title 5, United States Code, shall  
3 be applied whenever a rule or bylaw of the Association is  
4 under judicial review, and the standards set forth in sec-  
5 tion 554 of title 5, United States Code, shall be applied  
6 whenever a disciplinary action of the Association is judi-  
7 cially reviewed.

8 **SEC. 336. DEFINITIONS.**

9       For purposes of this subtitle, the following definitions  
10 shall apply:

11           (1) **INSURANCE.**—The term “insurance” means  
12 any product defined or regulated as insurance by the  
13 appropriate State insurance regulatory authority.

14           (2) **INSURANCE PRODUCER.**—The term “insur-  
15 ance producer” means any insurance agent or  
16 broker, surplus lines broker, insurance consultant,  
17 limited insurance representative, and any other per-  
18 son that solicits, negotiates, effects, procures, deliv-  
19 ers, renews, continues or binds policies of insurance  
20 or offers advice, counsel, opinions or services related  
21 to insurance.

22           (3) **STATE LAW.**—The term “State law” in-  
23 cludes all laws, decisions, rules, regulations, or other  
24 State action having the effect of law, of any State.  
25 A law of the United States applicable only to the

1 District of Columbia shall be treated as a State law  
2 rather than a law of the United States.

3 (4) STATE.—The term “State” includes any  
4 State, the District of Columbia, American Samoa,  
5 Guam, Puerto Rico, and the United States Virgin  
6 Islands.

7 (5) HOME STATE.—The term “home State”  
8 means the State in which the insurance producer  
9 maintains its principal place of residence and is li-  
10 censed to act as an insurance producer.

11 **TITLE IV—UNITARY SAVINGS**  
12 **AND LOAN HOLDING COMPA-**  
13 **NIES**

14 **SEC. 401. TERMINATION OF EXPANDED POWERS FOR NEW**  
15 **UNITARY S&L HOLDING COMPANIES.**

16 (a) IN GENERAL.—Section 10(c) of the Home Own-  
17 ers’ Loan Act (12 U.S.C. 1467a(c)) is amended by adding  
18 at the end the following new paragraph:

19 “(9) TERMINATION OF EXPANDED POWERS FOR  
20 NEW UNITARY S&L HOLDING COMPANY.—

21 “(A) IN GENERAL.—Subject to subpara-  
22 graph (B), paragraph (3) shall not apply with  
23 respect to any company that becomes a savings  
24 and loan holding company pursuant to an appli-  
25 cation filed after March 31, 1998.

1           “(B) EXISTING UNITARY S&L HOLDING  
2 COMPANIES AND THE SUCCESSORS TO SUCH  
3 COMPANIES.—Subparagraph (A) shall not  
4 apply, and paragraph (3) shall continue to  
5 apply, to a company (or any subsidiary of such  
6 company) that—

7           “(i) either—

8                   “(I) acquired 1 or more savings  
9 associations described in paragraph  
10 (3) pursuant to applications at least 1  
11 of which was filed before April 1,  
12 1998; or

13                   “(II) became a savings and loan  
14 holding company by acquiring owner-  
15 ship or control of the company de-  
16 scribed in subclause (I); and

17           “(ii) continues to control the savings  
18 associations referred to in clause (i)(I) or  
19 the successor to any such savings associa-  
20 tion.”.

21           (b) TECHNICAL AND CONFORMING AMENDMENT.—

22 Section 10(e)(3) of the Home Owners' Loan Act (12  
23 U.S.C. 1467a(e)(3)) is amended by striking “Notwith-  
24 standing” and inserting “Except as provided in paragraph  
25 (9) and notwithstanding”.

1 **SEC. 402. RETENTION OF “FEDERAL” IN NAME OF CON-**  
2 **VERTED FEDERAL SAVINGS ASSOCIATION.**

3 Section 2 of the Act entitled “An Act to enable na-  
4 tional banking associations to increase their capital stock  
5 and to change their names or locations.” and approved  
6 May 1, 1886 (12 U.S.C. 30) is amended by adding at the  
7 end the following new subsection:

8 “(d) **RETENTION OF ‘FEDERAL’ IN NAME OF CON-**  
9 **VERTED FEDERAL SAVINGS ASSOCIATION.—**

10 “(1) **IN GENERAL.—**Notwithstanding subsection  
11 (a) or any other provision of law, any depository in-  
12 stitution the charter of which is converted from that  
13 of a Federal savings association to a national bank  
14 or a State bank after the date of the enactment of  
15 the Financial Services Act of 1998 may retain the  
16 term ‘Federal’ in the name of such institution so  
17 long as such depository institution remains an in-  
18 sured depository institution.

19 “(2) **DEFINITIONS.—**For purposes of this sub-  
20 section, the terms ‘depository institution’, ‘insured  
21 depository institution’, ‘national bank’, and ‘State  
22 bank’ have the same meanings given to such terms  
23 in section 3 of the Federal Deposit Insurance Act.”.

1 **SECTION 1. SHORT TITLE; PURPOSES; TABLE OF CON-**  
2 **TENTS.**

3 (a) *SHORT TITLE.*—*This Act may be cited as the “Fi-*  
4 *ancial Services Act of 1998”.*

5 (b) *PURPOSES.*—*The purposes of this Act are as fol-*  
6 *lows:*

7 (1) *To enhance competition in the financial serv-*  
8 *ices industry, in order to foster innovation and effi-*  
9 *ciency.*

10 (2) *To ensure the continued safety and soundness*  
11 *of depository institutions.*

12 (3) *To provide necessary and appropriate protec-*  
13 *tions for investors and ensure fair and honest markets*  
14 *in the delivery of financial services.*

15 (4) *To avoid duplicative, potentially conflicting,*  
16 *and overly burdensome regulatory requirements*  
17 *through the creation of a regulatory framework for fi-*  
18 *nancial holding companies that respects the divergent*  
19 *requirements of each of the component businesses of*  
20 *the holding company, and that is based upon prin-*  
21 *ciples of strong functional regulation and enhanced*  
22 *regulatory coordination.*

23 (5) *To reduce and, to the maximum extent prac-*  
24 *ticable, to eliminate the legal barriers preventing af-*  
25 *filiation among depository institutions, securities*  
26 *firms, insurance companies, and other financial serv-*

1        *ice providers and to provide a prudential framework*  
 2        *for achieving that result.*

3                (6) *To enhance the availability of financial serv-*  
 4        *ices to citizens of all economic circumstances and in*  
 5        *all geographic areas.*

6                (7) *To enhance the competitiveness of United*  
 7        *States financial service providers internationally.*

8                (8) *To ensure compliance by depository institu-*  
 9        *tions with the provisions of the Community Reinvest-*  
 10        *ment Act of 1977 and enhance the ability of deposi-*  
 11        *tory institutions to meet the capital and credit needs*  
 12        *of all citizens and communities, including under-*  
 13        *served communities and populations.*

14        (c) *TABLE OF CONTENTS.—The table of contents for*  
 15        *this Act is as follows:*

*Sec. 1. Short title; purposes; table of contents.*

*TITLE I—FACILITATING AFFILIATION AMONG SECURITIES FIRMS,  
 INSURANCE COMPANIES, AND DEPOSITORY INSTITUTIONS*

*Subtitle A—Affiliations*

*Sec. 101. Glass-Steagall Act reformed.*

*Sec. 102. Activity restrictions applicable to bank holding companies which are  
 not financial holding companies.*

*Sec. 103. Financial holding companies.*

*Sec. 104. Operation of State law.*

*Sec. 105. Mutual bank holding companies authorized.*

*Sec. 106. Prohibition on deposit production offices.*

*Sec. 107. Clarification of branch closure requirements.*

*Sec. 108. Amendments relating to limited purpose banks.*

*Sec. 109. Reports on ongoing FTC study of consumer privacy issues.*

*Sec. 110. GAO study of economic impact on community banks and other small  
 financial institutions.*

*Subtitle B—Streamlining Supervision of Financial Holding Companies*

*Sec. 111. Streamlining financial holding company supervision.*

- Sec. 112. Elimination of application requirement for financial holding companies.*
- Sec. 113. Authority of State insurance regulator and Securities and Exchange Commission.*
- Sec. 114. Prudential safeguards.*
- Sec. 115. Examination of investment companies.*
- Sec. 116. Limitation on rulemaking, prudential, supervisory, and enforcement authority of the Board.*
- Sec. 117. Interagency consultation.*
- Sec. 118. Equivalent regulation and supervision.*
- Sec. 119. Prohibition on FDIC assistance to affiliates and subsidiaries.*

*Subtitle C—Subsidiaries of National Banks*

- Sec. 121. Permissible activities for subsidiaries of national banks.*
- Sec. 122. Misrepresentations regarding depository institution liability for obligations of affiliates.*
- Sec. 123. Repeal of stock loan limit in Federal Reserve Act.*

*Subtitle D—Wholesale Financial Holding Companies; Wholesale Financial Institutions*

*CHAPTER 1—WHOLESALE FINANCIAL HOLDING COMPANIES*

- Sec. 131. Wholesale financial holding companies established.*
- Sec. 132. Authorization to release reports.*
- Sec. 133. Conforming amendments.*

*CHAPTER 2—WHOLESALE FINANCIAL INSTITUTIONS*

- Sec. 136. Wholesale financial institutions.*

*Subtitle E—Preservation of FTC Authority*

- Sec. 141. Amendment to the Bank Holding Company Act of 1956 to modify notification and post-approval waiting period for section 3 transactions.*
- Sec. 142. Interagency data sharing.*
- Sec. 143. Clarification of status of subsidiaries and affiliates.*
- Sec. 144. Annual GAO report.*

*Subtitle F—Applying the Principles of National Treatment and Equality of Competitive Opportunity to Foreign Banks and Foreign Financial Institutions*

- Sec. 151. Applying the principles of national treatment and equality of competitive opportunity to foreign banks that are financial holding companies.*
- Sec. 152. Applying the principles of national treatment and equality of competitive opportunity to foreign banks and foreign financial institutions that are wholesale financial institutions.*
- Sec. 153. Representative offices.*

*Subtitle G—Federal Home Loan Bank System Modernization*

- Sec. 161. Short title.*
- Sec. 162. Definitions.*
- Sec. 163. Savings association membership.*
- Sec. 164. Advances to members; collateral.*

- Sec. 165. Eligibility criteria.*  
*Sec. 166. Management of banks.*  
*Sec. 167. Resolution Funding Corporation.*

*Subtitle H—Direct Activities of Banks*

- Sec. 181. Authority of national banks to underwrite certain municipal bonds.*

*Subtitle I—Deposit Insurance Funds*

- Sec. 186. Study of safety and soundness of funds.*

*Subtitle J—Effective Date of Title*

- Sec. 191. Effective date.*

**TITLE II—FUNCTIONAL REGULATION**

*Subtitle A—Brokers and Dealers*

- Sec. 201. Definition of broker.*  
*Sec. 202. Definition of dealer.*  
*Sec. 203. Registration for sales of private securities offerings.*  
*Sec. 204. Sales practices and complaint procedures.*  
*Sec. 205. Information sharing.*  
*Sec. 206. Definition and treatment of banking products.*  
*Sec. 207. Derivative instrument and qualified investor defined.*  
*Sec. 208. Government securities defined.*  
*Sec. 209. Effective date.*  
*Sec. 210. Rule of construction.*

*Subtitle B—Bank Investment Company Activities*

- Sec. 211. Custody of investment company assets by affiliated bank.*  
*Sec. 212. Lending to an affiliated investment company.*  
*Sec. 213. Independent directors.*  
*Sec. 214. Additional SEC disclosure authority.*  
*Sec. 215. Definition of broker under the Investment Company Act of 1940.*  
*Sec. 216. Definition of dealer under the Investment Company Act of 1940.*  
*Sec. 217. Removal of the exclusion from the definition of investment adviser for banks that advise investment companies.*  
*Sec. 218. Definition of broker under the Investment Advisers Act of 1940.*  
*Sec. 219. Definition of dealer under the Investment Advisers Act of 1940.*  
*Sec. 220. Interagency consultation.*  
*Sec. 221. Treatment of bank common trust funds.*  
*Sec. 222. Investment advisers prohibited from having controlling interest in registered investment company.*  
*Sec. 223. Conforming change in definition.*  
*Sec. 224. Conforming amendment.*  
*Sec. 225. Effective date.*

*Subtitle C—Securities and Exchange Commission Supervision of Investment Bank Holding Companies*

- Sec. 231. Supervision of investment bank holding companies by the Securities and Exchange Commission.*

*Subtitle D—Studies*

- Sec. 241. Study of methods to inform investors and consumers of uninsured products.*
- Sec. 242. Study of limitation on fees associated with acquiring financial products.*

*TITLE III—INSURANCE**Subtitle A—State Regulation of Insurance*

- Sec. 301. State regulation of the business of insurance.*
- Sec. 302. Mandatory insurance licensing requirements.*
- Sec. 303. Functional regulation of insurance.*
- Sec. 304. Insurance underwriting in national banks.*
- Sec. 305. Title insurance activities of national banks and their affiliates.*
- Sec. 306. Expedited and equalized dispute resolution for financial regulators.*
- Sec. 307. Consumer protection regulations.*
- Sec. 308. Certain State affiliation laws preempted for insurance companies and affiliates.*

*Subtitle B—National Association of Registered Agents and Brokers*

- Sec. 321. State flexibility in multistate licensing reforms.*
- Sec. 322. National Association of Registered Agents and Brokers.*
- Sec. 323. Purpose.*
- Sec. 324. Relationship to the Federal Government.*
- Sec. 325. Membership.*
- Sec. 326. Board of Directors.*
- Sec. 327. Officers.*
- Sec. 328. Bylaws, rules, and disciplinary action.*
- Sec. 329. Assessments.*
- Sec. 330. Functions of the NAIC.*
- Sec. 331. Liability of the Association and the directors, officers, and employees of the Association.*
- Sec. 332. Elimination of NAIC oversight.*
- Sec. 333. Relationship to State law.*
- Sec. 334. Coordination with other regulators.*
- Sec. 335. Judicial review.*
- Sec. 336. Definitions.*

*TITLE IV—UNITARY SAVINGS AND LOAN HOLDING COMPANIES*

- Sec. 401. Prevention of creation of new savings and loan holding companies with commercial affiliates.*
- Sec. 402. Optional conversion of Federal savings associations to national banks.*
- Sec. 403. Retention of “Federal” in name of converted Federal savings association.*

*TITLE V—FINANCIAL INFORMATION PRIVACY*

- Sec. 501. Financial information privacy.*
- Sec. 502. Report to Congress on financial privacy.*

*TITLE VI—MISCELLANEOUS*

- Sec. 601. Grand jury proceedings.*

*Sec. 602. Sense of the Committee on Banking, Housing, and Urban Affairs of the Senate.*

*Sec. 603. Investments in Government sponsored enterprises.*

*Sec. 604. Repeal of savings bank provisions in the Bank Holding Company Act of 1956.*

1 **TITLE I—FACILITATING AFFILI-**  
 2 **ATION AMONG SECURITIES**  
 3 **FIRMS, INSURANCE COMPA-**  
 4 **NIES, AND DEPOSITORY IN-**  
 5 **STITUTIONS**

6 **Subtitle A—Affiliations**

7 **SEC. 101. GLASS-STEAGALL ACT REFORMED.**

8 (a) *SECTION 20 REPEALED.*—Section 20 (12 U.S.C.  
 9 377) of the Banking Act of 1933 (commonly referred to as  
 10 the “Glass-Steagall Act”) is repealed.

11 (b) *SECTION 32 REPEALED.*—Section 32 (12 U.S.C.  
 12 78) of the Banking Act of 1933 is repealed.

13 **SEC. 102. ACTIVITY RESTRICTIONS APPLICABLE TO BANK**  
 14 **HOLDING COMPANIES WHICH ARE NOT FI-**  
 15 **NANCIAL HOLDING COMPANIES.**

16 (a) *IN GENERAL.*—Section 4(c)(8) of the Bank Hold-  
 17 ing Company Act of 1956 (12 U.S.C. 1843(c)(8)) is amend-  
 18 ed to read as follows:

19 “(8) shares of any company the activities of  
 20 which had been determined by the Board by regula-  
 21 tion under this paragraph as of the day before the  
 22 date of the enactment of the Financial Services Act of  
 23 1998, to be so closely related to banking as to be a

1     *proper incident thereto (subject to such terms and*  
 2     *conditions contained in such regulation, unless modi-*  
 3     *fied by the Board);”.*

4     **(b) CONFORMING CHANGES TO OTHER STATUTES.—**

5             **(1) AMENDMENT TO THE BANK HOLDING COM-**  
 6     **PANY ACT AMENDMENTS OF 1970.—***Section 105 of the*  
 7     *Bank Holding Company Act Amendments of 1970 (12*  
 8     *U.S.C. 1850) is amended by striking “, to engage di-*  
 9     *rectly or indirectly in a nonbanking activity pursu-*  
 10     *ant to section 4 of such Act,”.*

11            **(2) AMENDMENT TO THE BANK SERVICE COM-**  
 12     **PANY ACT.—***Section 4(f) of the Bank Service Com-*  
 13     *pany Act (12 U.S.C. 1864(f)) is amended by striking*  
 14     *the period and adding at the end the following: “as*  
 15     *of the day before the date of enactment of the Finan-*  
 16     *cial Services Act of 1998.”.*

17     **SEC. 103. FINANCIAL HOLDING COMPANIES.**

18            *The Bank Holding Company Act of 1956 is amended*  
 19     *by inserting after section 5 (12 U.S.C. 1844) the following*  
 20     *new section:*

21     **“SEC. 6. FINANCIAL HOLDING COMPANIES.**

22            **“(a) FINANCIAL HOLDING COMPANY DEFINED.—***For*  
 23     *purposes of this section, the term ‘financial holding com-*  
 24     *pany’ means a bank holding company which meets the re-*  
 25     *quirements of subsection (b).*

1       “(b) *ELIGIBILITY REQUIREMENTS FOR FINANCIAL*  
2 *HOLDING COMPANIES.*—

3               “(1) *IN GENERAL.*—*No bank holding company*  
4 *may engage in any activity or directly or indirectly*  
5 *acquire or retain shares of any company under this*  
6 *section unless the bank holding company meets the*  
7 *following requirements:*

8                       “(A) *All of the subsidiary depository insti-*  
9 *tutions of the bank holding company are well*  
10 *capitalized.*

11                      “(B) *All of the subsidiary depository insti-*  
12 *tutions of the bank holding company are well*  
13 *managed.*

14                      “(C) *All of the subsidiary depository insti-*  
15 *tutions of the bank holding company have*  
16 *achieved a rating of ‘satisfactory record of meet-*  
17 *ing community credit needs’, or better, at the*  
18 *most recent examination of each such institution*  
19 *under the Community Reinvestment Act of 1977.*

20                      “(D) *The company has filed with the Board*  
21 *a declaration that the company elects to be a fi-*  
22 *nancial holding company and certifying that the*  
23 *company meets the requirements of subpara-*  
24 *graphs (A) through (C).*

1           “(2) *FOREIGN BANKS AND COMPANIES.*—*For*  
2           *purposes of paragraph (1), the Board shall establish*  
3           *and apply comparable capital and other operating*  
4           *standards to a foreign bank that operates a branch or*  
5           *agency or owns or controls a bank or commercial*  
6           *lending company in the United States, and any com-*  
7           *pany that owns or controls such foreign bank, giving*  
8           *due regard to the principle of national treatment and*  
9           *equality of competitive opportunity.*

10           “(3) *LIMITED EXCLUSIONS FROM COMMUNITY*  
11           *NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DEPOS-*  
12           *ITORY INSTITUTIONS.*—

13           “(A) *IN GENERAL.*—*If the requirements of*  
14           *subparagraph (B) are met, any depository insti-*  
15           *tution acquired by a bank holding company dur-*  
16           *ing the 24-month period preceding the submis-*  
17           *sion of a declaration under paragraph (1)(E)*  
18           *and any depository institution acquired after the*  
19           *submission of such declaration may be excluded*  
20           *for purposes of paragraph (1)(C) until the later*  
21           *of—*

22           “(i) *the end of the 24-month period be-*  
23           *ginning on the date the acquisition of the*  
24           *depository institution by such company is*  
25           *consummated; or*

1           “(i) the date of completion of the first  
2           examination of such depository institution  
3           under the Community Reinvestment Act of  
4           1977 which is conducted after the date of  
5           the acquisition of the depository institution.

6           “(B) REQUIREMENTS.—The requirements of  
7           this subparagraph are met with respect to any  
8           bank holding company referred to in subpara-  
9           graph (A) if—

10           “(i) the bank holding company has  
11           submitted an affirmative plan to the appro-  
12           priate Federal banking agency to take such  
13           action as may be necessary in order for  
14           such institution to achieve a rating of ‘sat-  
15           isfactory record of meeting community cred-  
16           it needs’, or better, at the next examination  
17           of the institution under the Community Re-  
18           investment Act of 1977; and

19           “(ii) the plan has been approved by  
20           such agency.

21           “(c) ENGAGING IN ACTIVITIES THAT ARE FINANCIAL  
22           IN NATURE.—

23           “(1) FINANCIAL ACTIVITIES.—

24           “(A) IN GENERAL.—Notwithstanding sec-  
25           tion 4(a), a financial holding company and a

1           *wholesale financial holding company may engage*  
2           *in any activity, and acquire and retain the*  
3           *shares of any company engaged in any activity,*  
4           *that the Board has determined (by regulation or*  
5           *order) to be financial in nature or incidental to*  
6           *such financial activities.*

7                   “(B) *COORDINATION BETWEEN THE BOARD*  
8           *AND THE DEPARTMENT OF THE TREASURY.—*

9                           “(i) *PROPOSALS RAISED BEFORE THE*  
10           *BOARD.—*

11                                   “(I) *CONSULTATION.—The Board*  
12           *shall notify the Secretary of the Treas-*  
13           *ury of, and consult with the Secretary*  
14           *of the Treasury concerning, any re-*  
15           *quest, proposal, or application under*  
16           *this subsection for a determination of*  
17           *whether an activity is financial in na-*  
18           *ture or incidental to such a financial*  
19           *activity.*

20                                   “(II) *TREASURY VIEW.—The*  
21           *Board shall not determine that any ac-*  
22           *tivity is financial in nature or inci-*  
23           *dental to a financial activity under*  
24           *this subsection if the Secretary of the*  
25           *Treasury notifies the Board in writing,*

1           *not later than 30 days after the date of*  
2           *receipt of the notice described in sub-*  
3           *clause (I) (or such longer period as the*  
4           *Board determines to be appropriate in*  
5           *light of the circumstances) that the*  
6           *Secretary of the Treasury believes that*  
7           *the activity is not financial in nature*  
8           *or incidental to a financial activity.*

9           “(ii) *PROPOSALS RAISED BY THE*  
10          *TREASURY.—*

11           “(I) *TREASURY RECOMMENDA-*  
12          *TION.—The Secretary of the Treasury*  
13          *may, at any time, recommend in writ-*  
14          *ing that the Board find an activity to*  
15          *be financial in nature or incidental to*  
16          *a financial activity.*

17           “(II) *TIME PERIOD FOR BOARD*  
18          *ACTION.—Not later than 30 days after*  
19          *the date of receipt of a written rec-*  
20          *ommendation from the Secretary of the*  
21          *Treasury under subclause (I) (or such*  
22          *longer period as the Secretary of the*  
23          *Treasury and the Board determine to*  
24          *be appropriate in light of the cir-*  
25          *cumstances), the Board shall determine*

1           *whether to initiate a public rule-*  
2           *making proposing that the subject rec-*  
3           *ommended activity be found to be fi-*  
4           *ancial in nature or incidental to a fi-*  
5           *ancial activity under this subsection,*  
6           *and shall notify the Secretary of the*  
7           *Treasury in writing of the determina-*  
8           *tion of the Board and, in the event*  
9           *that the Board determines not to seek*  
10          *public comment on the proposal, the*  
11          *reasons for that determination.*

12           “(2) *FACTORS TO BE CONSIDERED.—In deter-*  
13          *mining whether an activity is financial in nature or*  
14          *incidental to financial activities, the Board shall take*  
15          *into account—*

16                   “(A) *the purposes of this Act and the Fi-*  
17                   *ancial Services Act of 1998;*

18                   “(B) *changes or reasonably expected changes*  
19                   *in the marketplace in which bank holding com-*  
20                   *panies compete;*

21                   “(C) *changes or reasonably expected changes*  
22                   *in the technology for delivering financial serv-*  
23                   *ices; and*

24                   “(D) *whether such activity is necessary or*  
25                   *appropriate to allow a bank holding company*

1           *and the affiliates of a bank holding company*  
2           *to—*

3                   “(i) *compete effectively with any com-*  
4                   *pany seeking to provide financial services*  
5                   *in the United States;*

6                   “(ii) *use any available or emerging*  
7                   *technological means, including any applica-*  
8                   *tion necessary to protect the security or effi-*  
9                   *cacy of systems for the transmission of data*  
10                   *or financial transactions, in providing fi-*  
11                   *ancial services; and*

12                   “(iii) *offer customers any available or*  
13                   *emerging technological means for using fi-*  
14                   *ancial services.*

15                   “(3) *ACTIVITIES THAT ARE FINANCIAL IN NA-*  
16                   *TURE.—The following activities shall be considered to*  
17                   *be financial in nature:*

18                           “(A) *Lending, exchanging, transferring, in-*  
19                           *vesting for others, or safeguarding money or se-*  
20                           *curities.*

21                           “(B) *Insuring, guaranteeing, or indemnify-*  
22                           *ing against loss, harm, damage, illness, disabil-*  
23                           *ity, or death, or providing and issuing annu-*  
24                           *ities, and acting as principal, agent, or broker*  
25                           *for purposes of the foregoing.*

1           “(C) *Providing financial, investment, or*  
2 *economic advisory services, including advising*  
3 *an investment company (as defined in section 3*  
4 *of the Investment Company Act of 1940).*

5           “(D) *Issuing or selling instruments rep-*  
6 *resenting interests in pools of assets permissible*  
7 *for a bank to hold directly.*

8           “(E) *Underwriting, dealing in, or making a*  
9 *market in securities.*

10          “(F) *Engaging in any activity that the*  
11 *Board has determined, by order or regulation*  
12 *that is in effect on the date of enactment of the*  
13 *Financial Services Act of 1998, to be so closely*  
14 *related to banking or managing or controlling*  
15 *banks as to be a proper incident thereto (subject*  
16 *to the same terms and conditions contained in*  
17 *such order or regulation, unless modified by the*  
18 *Board).*

19          “(G) *Engaging, in the United States, in*  
20 *any activity that—*

21               “(i) *a bank holding company may en-*  
22 *gage in outside the United States; and*

23               “(ii) *the Board has determined, under*  
24 *regulations issued pursuant to section*  
25 *4(c)(13) of this Act (as in effect on the day*

1           *before the date of enactment of the Finan-*  
2           *cial Services Act of 1998) to be usual in*  
3           *connection with the transaction of banking*  
4           *or other financial operations abroad.*

5           *“(H) Directly or indirectly acquiring or*  
6           *controlling, whether as principal, on behalf of 1*  
7           *or more entities (including entities, other than a*  
8           *depository institution or subsidiary of a deposi-*  
9           *tory institution, that the bank holding company*  
10          *controls) or otherwise, shares, assets, or owner-*  
11          *ship interests (including without limitation debt*  
12          *or equity securities, partnership interests, trust*  
13          *certificates or other instruments representing*  
14          *ownership) of a company or other entity, wheth-*  
15          *er or not constituting control of such company or*  
16          *entity, engaged in any activity not authorized*  
17          *pursuant to this section if—*

18                 *“(i) the shares, assets, or ownership in-*  
19                 *terests are not acquired or held by a deposi-*  
20                 *tory institution or subsidiary of a deposi-*  
21                 *tory institution;*

22                 *“(ii) such shares, assets, or ownership*  
23                 *interests are acquired and held by a securi-*  
24                 *ties affiliate or an affiliate thereof as part*  
25                 *of a bona fide underwriting or merchant*

1           *banking activity, including investment ac-*  
2           *tivities engaged in for the purpose of appre-*  
3           *ciation and ultimate resale or disposition of*  
4           *the investment;*

5           *“(iii) such shares, assets, or ownership*  
6           *interests, are held only for such a period of*  
7           *time as will permit the sale or disposition*  
8           *thereof on a reasonable basis consistent with*  
9           *the nature of the activities described in*  
10          *clause (ii); and*

11          *“(iv) during the period such shares, as-*  
12          *sets, or ownership interests are held, the*  
13          *bank holding company does not actively*  
14          *participate in the day to day management*  
15          *or operation of such company or entity, ex-*  
16          *cept insofar as necessary to achieve the ob-*  
17          *jectives of clause (ii).*

18          *“(I) Directly or indirectly acquiring or con-*  
19          *trolling, whether as principal, on behalf of 1 or*  
20          *more entities (including entities, other than a de-*  
21          *pository institution or subsidiary of a depository*  
22          *institution, that the bank holding company con-*  
23          *trols) or otherwise, shares, assets, or ownership*  
24          *interests (including without limitation debt or*  
25          *equity securities, partnership interests, trust cer-*

1           *tificates or other instruments representing own-*  
2           *ership) of a company or other entity, whether or*  
3           *not constituting control of such company or en-*  
4           *tity, engaged in any activity not authorized pur-*  
5           *suant to this section if—*

6                   “(i) *the shares, assets, or ownership in-*  
7                   *terests are not acquired or held by a deposi-*  
8                   *tory institution or a subsidiary of a deposi-*  
9                   *tory institution;*

10                   “(ii) *such shares, assets, or ownership*  
11                   *interests are acquired and held by an insur-*  
12                   *ance company that is predominantly en-*  
13                   *gaged in underwriting life, accident and*  
14                   *health, or property and casualty insurance*  
15                   *(other than credit-related insurance);*

16                   “(iii) *such shares, assets, or ownership*  
17                   *interests represent an investment made in*  
18                   *the ordinary course of business of such in-*  
19                   *surance company in accordance with rel-*  
20                   *evant State law governing such investments;*  
21                   *and*

22                   “(iv) *during the period such shares, as-*  
23                   *sets, or ownership interests are held, the*  
24                   *bank holding company does not directly or*  
25                   *indirectly participate in the day-to-day*

1           *management or operation of the company*  
2           *or entity except insofar as necessary to*  
3           *achieve the objectives of clauses (ii) and*  
4           *(iii).*

5           “(4) *ACTIONS REQUIRED.—The Board shall, by*  
6           *regulation or order, define, consistent with the pur-*  
7           *poses of this Act, the following activities as, and the*  
8           *extent to which such activities are, financial in na-*  
9           *ture or incidental to activities which are financial in*  
10          *nature:*

11           “(A) *Lending, exchanging, transferring, in-*  
12          *vesting for others, or safeguarding financial as-*  
13          *sets other than money or securities.*

14           “(B) *Providing any device or other instru-*  
15          *mentality for transferring money or other finan-*  
16          *cial assets.*

17           “(C) *Arranging, effecting, or facilitating fi-*  
18          *nancial transactions for the account of third*  
19          *parties.*

20          “(5) *POST-CONSUMMATION NOTIFICATION.—*

21           “(A) *IN GENERAL.—A financial holding*  
22          *company and a wholesale financial holding com-*  
23          *pany that acquires any company, or commences*  
24          *any activity, pursuant to this subsection shall*  
25          *provide written notice to the Board describing*

1           *the activity commenced or conducted by the com-*  
2           *pany acquired no later than 30 calendar days*  
3           *after commencing the activity or consummating*  
4           *the acquisition.*

5           “(B) *APPROVAL NOT REQUIRED FOR CER-*  
6           *TAIN FINANCIAL ACTIVITIES.—Except as pro-*  
7           *vided in section 4(j) with regard to the acquisi-*  
8           *tion of a savings association or in paragraph (6)*  
9           *of this subsection, a financial holding company*  
10          *and a wholesale financial holding company may*  
11          *commence any activity, or acquire any com-*  
12          *pany, pursuant to paragraph (3) or any regula-*  
13          *tion prescribed or order issued under paragraph*  
14          *(4), without prior approval of the Board.*

15          “(6) *NOTICE REQUIRED FOR LARGE COMBINA-*  
16          *TIONS.—*

17                 “(A) *IN GENERAL.—No financial holding*  
18                 *company or wholesale financial holding com-*  
19                 *pany shall directly or indirectly acquire, and no*  
20                 *company that becomes a financial holding com-*  
21                 *pany or a wholesale financial holding company*  
22                 *shall directly or indirectly acquire control of,*  
23                 *any company in the United States, including*  
24                 *through merger, consolidation, or other type of*  
25                 *business combination, that—*

1           “(i) is engaged in activities permitted  
2           under this subsection or subsection (g); and

3           “(ii) has consolidated total assets in  
4           excess of \$40,000,000,000,

5           unless such holding company has provided notice  
6           to the Board, not later than 60 days prior to  
7           such proposed acquisition or prior to becoming a  
8           financial holding company or wholesale finan-  
9           cial holding company, and during that time pe-  
10          riod, or such longer time period not exceeding an  
11          additional 60 days, as established by the Board,  
12          the Board has not issued a notice disapproving  
13          the proposed acquisition or retention.

14           “(B) *FACTORS FOR CONSIDERATION.*—In  
15          reviewing any prior notice filed under this para-  
16          graph, the Board shall take into consideration—

17           “(i) whether the company is in compli-  
18          ance with all applicable criteria set forth in  
19          subsection (b) and the provisions of sub-  
20          section (d);

21           “(ii) whether the proposed combination  
22          represents an undue aggregation of re-  
23          sources;

1           “(iii) *whether the proposed combina-*  
2           *tion poses a risk to the deposit insurance*  
3           *system;*

4           “(iv) *whether the proposed combination*  
5           *poses a risk to State insurance guaranty*  
6           *funds;*

7           “(v) *whether the proposed combination*  
8           *can reasonably be expected to be in the best*  
9           *interests of depositors or policyholders of the*  
10          *respective entities; and*

11          “(vi) *whether the proposed transaction*  
12          *can reasonably be expected to produce bene-*  
13          *fits to the public.*

14          “(C) *REQUIRED INFORMATION.—The Board*  
15          *may disapprove any prior notice filed under this*  
16          *paragraph if the company submitting such no-*  
17          *tice neglects, fails, or refuses to furnish to the*  
18          *Board all relevant information required by the*  
19          *Board.*

20          “(D) *SOLICITATION OF VIEWS OF OTHER*  
21          *SUPERVISORY AGENCIES.—*

22          “(i) *IN GENERAL.—Upon receiving a*  
23          *prior notice under this paragraph, in order*  
24          *to provide for the submission of their views*

1                   *and recommendations, the Board shall give*  
2                   *notice of the proposal to—*

3                   “(I) *the appropriate Federal*  
4                   *banking agency of any bank involved;*

5                   “(II) *the appropriate functional*  
6                   *regulator of any functionally regulated*  
7                   *nondepository institution (as defined*  
8                   *in section 5(c)(1)(C)) involved; and*

9                   “(III) *the Secretary of the Treas-*  
10                  *ury, the Department of Justice, and*  
11                  *the Federal Trade Commission.*

12                  “(ii) *TIMING.—The views and rec-*  
13                  *ommendations of any agency provided no-*  
14                  *tice under this paragraph shall be submitted*  
15                  *to the Board not later than 30 calendar*  
16                  *days after the date on which notice to the*  
17                  *agency was given, unless the Board deter-*  
18                  *mines that another shorter time period is*  
19                  *appropriate.*

20                  “(d) *PROVISIONS APPLICABLE TO FINANCIAL HOLDING*  
21                  *COMPANIES THAT FAIL TO MEET REQUIREMENTS.—*

22                  “(1) *IN GENERAL.—If the Board finds that a fi-*  
23                  *nancial holding company is not in compliance with*  
24                  *the requirements of subparagraph (A), (B), (C), or*

1       (D) of subsection (b)(1), the Board shall give notice  
2       of such finding to the company.

3               “(2) AGREEMENT TO CORRECT CONDITIONS RE-  
4       QUIRED.—

5               “(A) IN GENERAL.—Not later than 45 days  
6       after receipt by a financial holding company of  
7       a notice given under paragraph (1) (or such ad-  
8       ditional period as the Board may permit), the  
9       company shall execute an agreement acceptable  
10      to the Board to comply with the requirements  
11      applicable to a financial holding company.

12              “(B) CERTAIN FAILURES TO COMPLY.—A fi-  
13      nancial holding company shall not be required to  
14      divest any company held, or terminate any ac-  
15      tivity conducted pursuant to, subsection (c) sole-  
16      ly because of a failure to comply with subsection  
17      (b)(1)(C).

18              “(3) BOARD MAY IMPOSE LIMITATIONS.—Until  
19      the conditions described in a notice to a financial  
20      holding company under paragraph (1) are corrected,  
21      the Board may impose such limitations on the con-  
22      duct or activities of the company or any affiliate of  
23      the company as the Board determines to be appro-  
24      priate under the circumstances.

1           “(4) *FAILURE TO CORRECT.*—If, after receiving a  
2           notice under paragraph (1), a financial holding com-  
3           pany does not—

4                   “(A) execute and implement an agreement  
5                   in accordance with paragraph (2);

6                   “(B) comply with any limitations imposed  
7                   under paragraph (3);

8                   “(C) in the case of a notice of failure to  
9                   comply with subsection (b)(1)(A), restore each  
10                  depository institution subsidiary to well capital-  
11                  ized status before the end of the 180-day period  
12                  beginning on the date such notice is received by  
13                  the company (or such other period permitted by  
14                  the Board); or

15                  “(D) in the case of a notice of failure to  
16                  comply with subparagraph (B) or (D) of sub-  
17                  section (b)(1), restore compliance with any such  
18                  subparagraph on or before the date on which the  
19                  next examination of the depository institution  
20                  subsidiary is completed or by the end of such  
21                  other period as the Board determines to be ap-  
22                  propriate,

23           the Board may require such company, under such  
24           terms and conditions as may be imposed by the  
25           Board and subject to such extension of time as may

1       *be granted in the Board’s discretion, to divest control*  
2       *of any depository institution subsidiary or, at the*  
3       *election of the financial holding company, instead to*  
4       *cease to engage in any activity conducted by such*  
5       *company or its subsidiaries pursuant to this section.*

6               “(5) *CONSULTATION.—In taking any action*  
7       *under this subsection, the Board shall consult with all*  
8       *relevant Federal and State regulatory agencies.*

9               “(e) *SAFEGUARDS FOR BANK SUBSIDIARIES.—A fi-*  
10       *nancial holding company shall assure that—*

11               “(1) *the procedures of the holding company for*  
12       *identifying and managing financial and operational*  
13       *risks within the company, and the subsidiaries of*  
14       *such company, adequately protect the subsidiaries of*  
15       *such company which are insured depository institu-*  
16       *tions from such risks;*

17               “(2) *the holding company has reasonable policies*  
18       *and procedures to preserve the separate corporate*  
19       *identity and limited liability of such company and*  
20       *the subsidiaries of such company, for the protection of*  
21       *the company’s subsidiary insured depository institu-*  
22       *tions; and*

23               “(3) *the holding company complies with this sec-*  
24       *tion.*

1       “(f) *AUTHORITY TO RETAIN LIMITED NONFINANCIAL*  
2 *ACTIVITIES AND AFFILIATIONS.*—

3               “(1) *IN GENERAL.*—*Notwithstanding section*  
4 *4(a), a company that is not a bank holding company*  
5 *or a foreign bank (as defined in section 1(b)(7) of the*  
6 *International Banking Act of 1978) and becomes a fi-*  
7 *nancial holding company after the date of the enact-*  
8 *ment of the Financial Services Act of 1998 may con-*  
9 *tinue to engage in any activity and retain direct or*  
10 *indirect ownership or control of shares of a company*  
11 *engaged in any activity if—*

12                       “(A) *the holding company lawfully was en-*  
13 *gaged in the activity or held the shares of such*  
14 *company on September 30, 1997;*

15                       “(B) *the holding company is predominantly*  
16 *engaged in financial activities as defined in*  
17 *paragraph (2); and*

18                       “(C) *the company engaged in such activity*  
19 *continues to engage only in the same activities*  
20 *that such company conducted on September 30,*  
21 *1997, and other activities permissible under this*  
22 *Act.*

23               “(2) *PREDOMINANTLY FINANCIAL.*—*For purposes*  
24 *of this subsection, a company is predominantly en-*  
25 *gaged in financial activities if the annual gross reve-*

1 *nuces derived by the holding company and all subsidi-*  
2 *aries of the holding company (excluding revenues de-*  
3 *derived from subsidiary depository institutions), on a*  
4 *consolidated basis, from engaging in activities that*  
5 *are financial in nature or are incidental to activities*  
6 *that are financial in nature under subsection (c) rep-*  
7 *resent at least 85 percent of the consolidated annual*  
8 *gross revenues of the company.*

9           “(3) *NO EXPANSION OF GRANDFATHERED COM-*  
10 *MERCIAL ACTIVITIES THROUGH MERGER OR CONSOLI-*  
11 *DATION.*—*A financial holding company that engages*  
12 *in activities or holds shares pursuant to this sub-*  
13 *section, or a subsidiary of such financial holding*  
14 *company, may not acquire, in any merger, consolida-*  
15 *tion, or other type of business combination, assets of*  
16 *any other company which is engaged in any activity*  
17 *which the Board has not determined to be financial*  
18 *in nature or incidental to activities that are financial*  
19 *in nature under subsection (c).*

20           “(4) *CONTINUING REVENUE LIMITATION ON*  
21 *GRANDFATHERED COMMERCIAL ACTIVITIES.*—*Not-*  
22 *withstanding any other provision of this subsection, a*  
23 *financial holding company may continue to engage in*  
24 *activities or hold shares in companies pursuant to*  
25 *this subsection only to the extent that the aggregate*

1     *annual gross revenues derived from all such activities*  
2     *and all such companies does not exceed 15 percent*  
3     *of the consolidated annual gross revenues of the finan-*  
4     *cial holding company (excluding revenues derived*  
5     *from subsidiary depository institutions).*

6             “(5) *CROSS MARKETING RESTRICTIONS APPLICA-*  
7     *BLE TO COMMERCIAL ACTIVITIES.—A depository in-*  
8     *stitution controlled by a financial holding company*  
9     *shall not—*

10            “(A) *offer or market, directly or through*  
11     *any arrangement, any product or service of a*  
12     *company whose activities are conducted or whose*  
13     *shares are owned or controlled by the financial*  
14     *holding company pursuant to this subsection or*  
15     *subparagraph (H) or (I) of subsection (c)(3); or*

16            “(B) *permit any of its products or services*  
17     *to be offered or marketed, directly or through any*  
18     *arrangement, by or through any company de-*  
19     *scribed in subparagraph (A).*

20            “(6) *TRANSACTIONS WITH NONFINANCIAL AFFILI-*  
21     *ATES.—An insured depository institution controlled*  
22     *by a financial holding company or wholesale finan-*  
23     *cial holding company may not engage in a covered*  
24     *transaction (as defined by section 23A(b)(7) of the*  
25     *Federal Reserve Act) with any affiliate controlled by*

1     *the company pursuant to section 10(c), this sub-*  
2     *section, or subparagraph (H) or (I) of subsection*  
3     *(c)(3).*

4             “(7) *SUNSET OF GRANDFATHER.*—*A financial*  
5     *holding company engaged in any activity, or retain-*  
6     *ing direct or indirect ownership or control of shares*  
7     *of a company, pursuant to this subsection, shall ter-*  
8     *minate such activity and divest ownership or control*  
9     *of the shares of such company before the end of the*  
10    *10-year period beginning on the date of the enactment*  
11    *of the Financial Services Act of 1998. The Board*  
12    *may, upon application by a financial holding com-*  
13    *pany, extend such 10-year period by not to exceed an*  
14    *additional 5 years if such extension would not be det-*  
15    *rimental to the public interest.*

16            “(g) *DEVELOPING ACTIVITIES.*—*A financial holding*  
17    *company and a wholesale financial holding company may*  
18    *engage directly or indirectly, or acquire shares of any com-*  
19    *pany engaged, in any activity that the Board has not deter-*  
20    *mined to be financial in nature or incidental to financial*  
21    *activities under subsection (c) if—*

22            “(1) *the holding company reasonably concludes*  
23    *that the activity is financial in nature or incidental*  
24    *to financial activities;*

1           “(2) the gross revenues from all activities con-  
2           ducted under this subsection represent less than 5 per-  
3           cent of the consolidated gross revenues of the holding  
4           company;

5           “(3) the aggregate total assets of all companies  
6           the shares of which are held under this subsection do  
7           not exceed 5 percent of the holding company’s consoli-  
8           dated total assets;

9           “(4) the total capital invested in activities con-  
10          ducted under this subsection represents less than 5  
11          percent of the consolidated total capital of the holding  
12          company;

13          “(5) the Board has not determined that the ac-  
14          tivity is not financial in nature or incidental to fi-  
15          nancial activities under subsection (c);

16          “(6) the holding company is not required to pro-  
17          vide prior written notice of the transaction to the  
18          Board under subsection (c)(6); and

19          “(7) the holding company provides written noti-  
20          fication to the Board describing the activity com-  
21          menced or conducted by the company acquired no  
22          later than 10 business days after commencing the ac-  
23          tivity or consummating the acquisition.”.

24 **SEC. 104. OPERATION OF STATE LAW.**

25        (a) *AFFILIATIONS.*—

1           (1) *IN GENERAL.*—*Except as provided in para-*  
2 *graph (2), no State may, by statute, regulation, order,*  
3 *interpretation, or other action, prevent or restrict an*  
4 *insured depository institution or wholesale financial*  
5 *institution, or a subsidiary or affiliate thereof, from*  
6 *being affiliated directly or indirectly or associated*  
7 *with any person or entity, as authorized or permitted*  
8 *by this Act or any other provision of Federal law.*

9           (2) *INSURANCE.*—*With respect to affiliations be-*  
10 *tween insured depository institutions or wholesale fi-*  
11 *nancial institutions, or any subsidiary or affiliate*  
12 *thereof, and persons or entities engaged in the busi-*  
13 *ness of insurance, paragraph (1) does not prohibit*  
14 *any State from—*

15                 (A) *requiring any person or entity that pro-*  
16 *poses to acquire control of an entity that is en-*  
17 *gaged in the business of insurance and domiciled*  
18 *in that State (hereafter in this subparagraph re-*  
19 *ferred to as the “insurer”) to furnish to the in-*  
20 *surance regulatory authority of that State, on or*  
21 *before the date on which notification is given*  
22 *under section 7(a) of the Clayton Act (15 U.S.C.*  
23 *18(a))—*

24                         (i) *the name and address of each per-*  
25 *son by whom, or on whose behalf, the affili-*

1            *ation referred to in this subparagraph is to*  
2            *be effected (hereafter in this subparagraph*  
3            *referred to as the “acquiring party”);*

4            *(ii) if the acquiring party is an indi-*  
5            *vidual, his or her principal occupation and*  
6            *all offices and positions held during the 5*  
7            *years preceding the date of notification, and*  
8            *any conviction of crimes other than minor*  
9            *traffic violations during the 10 years pre-*  
10           *ceding the date of notification;*

11           *(iii) if the acquiring party is not an*  
12           *individual—*

13           *(I) a report of the nature of its*  
14           *business operations during the 5 years*  
15           *preceding the date of notification, or*  
16           *for such shorter period as such person*  
17           *and any predecessors thereof shall have*  
18           *been in existence;*

19           *(II) an informative description of*  
20           *the business intended to be done by the*  
21           *acquiring party and any subsidiary*  
22           *thereof; and*

23           *(III) a list of all individuals who*  
24           *are, or who have been selected to be-*  
25           *come, directors or executive officers of*

1            *the acquiring party or who perform, or*  
2            *will perform, functions appropriate to*  
3            *such positions, including, for each such*  
4            *individual, the information required*  
5            *by clause (ii);*

6            *(iv) the source, nature, and amount of*  
7            *the consideration used, or to be used, in ef-*  
8            *fecting the merger or other acquisition of*  
9            *control, a description of any transaction*  
10           *wherein funds were, or are to be, obtained*  
11           *for any such purpose, and the identity of*  
12           *persons furnishing such consideration, ex-*  
13           *cept that, if a source of such consideration*  
14           *is a loan made in the lender's ordinary*  
15           *course of business, the identity of the lender*  
16           *shall remain confidential if the person fil-*  
17           *ing such statement so requests;*

18           *(v) fully audited financial information*  
19           *as to the earnings and financial condition*  
20           *of each acquiring party for the 5 fiscal*  
21           *years preceding the date of notification of*  
22           *each such acquiring party, or for such lesser*  
23           *period as such acquiring party and any*  
24           *predecessors thereof shall have been in exist-*  
25           *ence, and similar unaudited information as*

1           of a date not earlier than 90 days before the  
2           date of notification, except that, in the case  
3           of an acquiring party that is an insurer ac-  
4           tively engaged in the business of insurance,  
5           the financial statements of such insurer  
6           need not be audited, but such audit may be  
7           required if the need therefor is determined  
8           by the insurance regulatory authority of the  
9           State;

10           (vi) any plans or proposals that each  
11           acquiring party may have to liquidate such  
12           insurer, to sell its assets, or to merge or con-  
13           solidate it with any person or to make any  
14           other material change in its business or cor-  
15           porate structure or management;

16           (vii) the number of shares of any secu-  
17           rity of the insurer that each acquiring  
18           party proposes to acquire, the terms of any  
19           offer, request, invitation, agreement, or ac-  
20           quisition, and a statement as to the method  
21           by which the fairness of the proposal was  
22           arrived at;

23           (viii) the amount of each class of any  
24           security of the insurer that is beneficially  
25           owned or concerning which there is a right

1           to acquire beneficial ownership by each ac-  
2           quiring party;

3           (i $x$ ) a full description of any contracts,  
4           arrangements, or understandings with re-  
5           spect to any security of the insurer in which  
6           any acquiring party is involved, including  
7           transfer of any of the securities, joint ven-  
8           tures, loan or option arrangements, puts or  
9           calls, guarantees of loans, guarantees  
10          against loss or guarantees of profits, divi-  
11          sion of losses or profits, or the giving or  
12          withholding of proxies, and identification of  
13          the persons with whom such contracts, ar-  
14          rangements, or understandings have been  
15          entered into;

16          (x) a description of the purchase of  
17          any security of the insurer during the 12-  
18          month period preceding the date of notifica-  
19          tion by any acquiring party, including the  
20          dates of purchase, names of the purchasers,  
21          and consideration paid, or agreed to be  
22          paid, therefor;

23          (xi) a description of any recommenda-  
24          tions to purchase any security of the insurer  
25          made during the 12-month period preceding

1           *the date of notification by any acquiring*  
2           *party or by any person based upon inter-*  
3           *views or at the suggestion of such acquiring*  
4           *party;*

5                     *(xii) copies of all tender offers for, re-*  
6                     *quests or invitations for tenders of, exchange*  
7                     *offers for and agreements to acquire or ex-*  
8                     *change any securities of the insurer and, if*  
9                     *distributed, of additional soliciting material*  
10                    *relating thereto; and*

11                    *(xiii) the terms of any agreement, con-*  
12                    *tract, or understanding made with any*  
13                    *broker-dealer as to solicitation of securities*  
14                    *of the insurer for tender and the amount of*  
15                    *any fees, commissions, or other compensa-*  
16                    *tion to be paid to broker-dealers with regard*  
17                    *thereto;*

18                    *(B) requiring an entity that is acquiring*  
19                    *control of an entity that is engaged in the busi-*  
20                    *ness of insurance and domiciled in that State to*  
21                    *maintain or restore the capital requirements of*  
22                    *that insurance entity to the level required under*  
23                    *the capital regulations of general applicability*  
24                    *in that State to avoid the requirement of prepar-*  
25                    *ing and filing with the insurance regulatory au-*

1            *thority of that State a plan to increase the cap-*  
2            *ital of the entity, except that any determination*  
3            *by the State insurance regulatory authority with*  
4            *respect to such requirement shall be made not*  
5            *later than 60 days after the date of notification*  
6            *under subparagraph (A); or*

7            *(C) taking actions with respect to the re-*  
8            *ceivership or conservatorship of any insurance*  
9            *company.*

10        *(b) ACTIVITIES.—*

11            *(1) IN GENERAL.—Except as provided in para-*  
12            *graph (3), and except with respect to insurance sales,*  
13            *solicitation, and cross marketing activities covered*  
14            *under paragraph (2), no State may, by statute, regu-*  
15            *lation, order, interpretation, or other action, prevent*  
16            *or restrict an insured depository institution, whole-*  
17            *sale financial institution, or subsidiary or affiliate*  
18            *thereof from engaging directly or indirectly, either by*  
19            *itself or in conjunction with a subsidiary, affiliate, or*  
20            *any other entity or person, in any activity authorized*  
21            *or permitted under this Act.*

22            *(2) INSURANCE SALES.—*

23            *(A) IN GENERAL.—No State may, by stat-*  
24            *ute, regulation, order, interpretation, or other ac-*  
25            *tion, prevent or significantly interfere with the*

1           *ability of an insured depository institution or*  
2           *wholesale financial institution, or a subsidiary*  
3           *or affiliate thereof, to engage, directly or indi-*  
4           *rectly, either by itself or in conjunction with a*  
5           *subsidiary, affiliate, or any other party, in any*  
6           *insurance sales, solicitation, or cross-marketing*  
7           *activity.*

8                   *(B) CERTAIN STATE LAWS PRESERVED.—*  
9           *Notwithstanding subparagraph (A), a State may*  
10           *impose—*

11                   *(i) restrictions prohibiting the rejection*  
12                   *of an insurance policy solely because the*  
13                   *policy has been issued or underwritten by*  
14                   *any person who is not associated with such*  
15                   *insured depository institution or wholesale*  
16                   *financial institution, or any subsidiary or*  
17                   *affiliate thereof, when such insurance is re-*  
18                   *quired in connection with a loan or exten-*  
19                   *sion of credit;*

20                   *(ii) restrictions prohibiting a require-*  
21                   *ment for any debtor, insurer, or insurance*  
22                   *agent or broker to pay a separate charge in*  
23                   *connection with the handling of insurance*  
24                   *that is required in connection with a loan*  
25                   *or other extension of credit or the provision*

1           of another traditional banking product, un-  
2           less such charge would be required when the  
3           insured depository institution or wholesale  
4           financial institution, or any subsidiary or  
5           affiliate thereof, is the licensed insurance  
6           agent or broker providing the insurance;

7           (iii) restrictions prohibiting the use of  
8           any advertisement or other insurance pro-  
9           motional material by an insured depository  
10          institution or wholesale financial institu-  
11          tion, or any subsidiary or affiliate thereof,  
12          that would cause a reasonable person to be-  
13          lieve mistakenly that—

14                (I) a State or the Federal Govern-  
15                ment is responsible for the insurance  
16                sales activities of, or stands behind the  
17                credit of, the institution, affiliate, or  
18                subsidiary; or

19                (II) a State, or the Federal Gov-  
20                ernment guarantees any returns on in-  
21                surance products, or is a source of pay-  
22                ment on any insurance obligation of or  
23                sold by the institution, affiliate, or  
24                subsidiary;

1           (iv) restrictions prohibiting the pay-  
2           ment or receipt of any commission or bro-  
3           kerage fee for services as a licensed agent or  
4           broker to or by any person, unless such per-  
5           son holds a valid State license regarding the  
6           applicable class of insurance at the time at  
7           which the services are performed, except  
8           that, in this clause, the term “services as a  
9           licensed agent or broker” does not include a  
10          referral by an unlicensed person of a cus-  
11          tomer or potential customer to a licensed  
12          insurance agent or broker that does not in-  
13          clude a discussion of specific insurance pol-  
14          icy terms and conditions;

15          (v) restrictions prohibiting any com-  
16          pensation paid to or received by any indi-  
17          vidual who is not licensed to sell insurance,  
18          for the referral of a customer that seeks to  
19          purchase, or seeks an opinion or advice on,  
20          any insurance product to a person that sells  
21          or provides opinions or advice on such  
22          product, based on the purchase of insurance  
23          by the customer;

24          (vi) restrictions prohibiting the release  
25          of the insurance information of a customer

1           *(defined as information concerning the pre-*  
2           *miums, terms, and conditions of insurance*  
3           *coverage, including expiration dates and*  
4           *rates, and insurance claims of a customer*  
5           *contained in the records of the insured de-*  
6           *pository institution or wholesale financial*  
7           *institution, or a subsidiary or affiliate*  
8           *thereof) to any person or entity other than*  
9           *an officer, director, employee, agent, sub-*  
10          *subsidiary, or affiliate of an insured depository*  
11          *institution or a wholesale financial institu-*  
12          *tion, for the purpose of soliciting or selling*  
13          *insurance, without the express consent of the*  
14          *customer, other than a provision that pro-*  
15          *hibits—*

16                   *(I) a transfer of insurance infor-*  
17                   *mation to an unaffiliated insurance*  
18                   *company, agent, or broker in connec-*  
19                   *tion with transferring insurance in*  
20                   *force on existing insureds of the in-*  
21                   *sured depository institution or whole-*  
22                   *sale financial institution, or subsidi-*  
23                   *ary or affiliate thereof, or in connec-*  
24                   *tion with a merger with or acquisition*

1                   of an unaffiliated insurance company,  
2                   agent, or broker; or

3                   (II) the release of information as  
4                   otherwise authorized by State or Fed-  
5                   eral law;

6                   (vii) restrictions prohibiting the use of  
7                   health information obtained from the insur-  
8                   ance records of a customer for any purpose,  
9                   other than for its activities as a licensed  
10                  agent or broker, without the express consent  
11                  of the customer;

12                  (viii) restrictions prohibiting the exten-  
13                  sion of credit or any product or service that  
14                  is equivalent to an extension of credit, or  
15                  fixing or varying the consideration for any  
16                  such extension of credit, on the condition or  
17                  requirement that the customer obtain insur-  
18                  ance from the insured depository institu-  
19                  tion, wholesale financial institution, a sub-  
20                  sidiary or affiliate thereof, or a particular  
21                  insurer, agent, or broker, other than a pro-  
22                  hibition that would prevent any insured de-  
23                  pository institution or wholesale financial  
24                  institution, or any subsidiary or affiliate  
25                  thereof—

1           (I) from engaging in any activity  
2           that would not violate section 106 of  
3           the Bank Holding Company Act  
4           Amendments of 1970, as interpreted by  
5           the Board of Governors of the Federal  
6           Reserve System; or

7           (II) from informing a customer or  
8           prospective customer that insurance is  
9           required in order to obtain a loan or  
10          credit, that loan or credit approval is  
11          contingent upon the procurement by  
12          the customer of acceptable insurance,  
13          or that insurance is available from the  
14          insured depository institution or  
15          wholesale financial institution, or any  
16          subsidiary or affiliate thereof;

17          (ix) restrictions requiring, when an  
18          application by a consumer for a loan or  
19          other extension of credit from an insured  
20          depository institution or wholesale financial  
21          institution is pending, and insurance is of-  
22          fered to the consumer or is required in con-  
23          nection with the loan or extension of credit  
24          by the insured depository institution or  
25          wholesale financial institution, that a writ-

1            *ten disclosure be provided to the consumer*  
2            *indicating that his or her choice of an in-*  
3            *surance provider will not affect the credit*  
4            *decision or credit terms in any way, except*  
5            *that the insured depository institution or*  
6            *wholesale financial institution, or subsidi-*  
7            *ary or affiliate thereof, may impose reason-*  
8            *able requirements concerning the credit-*  
9            *worthiness of the insurance provider and*  
10           *scope of coverage chosen;*

11           *(x) restrictions requiring clear and*  
12           *conspicuous disclosure, in writing, where*  
13           *practicable, to the customer prior to the sale*  
14           *of any insurance policy that such policy—*

15                    *(I) is not a deposit;*

16                    *(II) is not insured by the Federal*  
17                    *Deposit Insurance Corporation;*

18                    *(III) is not guaranteed by the in-*  
19                    *surated depository institution or whole-*  
20                    *sale financial institution or, if appro-*  
21                    *priate, its subsidiaries or affiliates or*  
22                    *any person soliciting the purchase of*  
23                    *or selling insurance on the premises*  
24                    *thereof; and*

1                   (IV) where appropriate, involves  
2                   investment risk, including potential  
3                   loss of principal;

4                   (xi) restrictions requiring that, when a  
5                   customer obtains insurance (other than  
6                   credit insurance or flood insurance) and  
7                   credit from an insured depository institu-  
8                   tion or wholesale financial institution, or  
9                   any subsidiary or affiliate thereof, or any  
10                  person soliciting the purchase of or selling  
11                  insurance on the premises thereof, the credit  
12                  and insurance transactions be completed  
13                  through separate documents;

14                  (xii) restrictions prohibiting, when a  
15                  customer obtains insurance (other than  
16                  credit insurance or flood insurance) and  
17                  credit from an insured depository institu-  
18                  tion or wholesale financial institution or its  
19                  subsidiaries or affiliates, or any person so-  
20                  liciting the purchase of or selling insurance  
21                  on the premises thereof, inclusion of the ex-  
22                  pense of insurance premiums in the pri-  
23                  mary credit transaction without the express  
24                  written consent of the customer; and

1           *(xiii) restrictions requiring maintenance of separate and distinct books and*  
2           *records relating to insurance transactions,*  
3           *including all files relating to and reflecting*  
4           *consumer complaints, and requiring that*  
5           *such insurance books and records be made*  
6           *available to the appropriate State insurance*  
7           *regulator for inspection upon reasonable notice.*

9  
10       (C) *LIMITATIONS.*—

11           *(i) OCC DEFERENCE.*—*Section 307(e)*  
12           *does not apply with respect to any State*  
13           *statute, regulation, order, interpretation, or*  
14           *other action regarding insurance sales, so-*  
15           *licitation, or cross marketing activities de-*  
16           *scribed in subparagraph (A) that was*  
17           *issued, adopted, or enacted before September*  
18           *3, 1998, and that is not described in sub-*  
19           *paragraph (B).*

20           *(ii) NONDISCRIMINATION.*—*Subsection*  
21           *(c) does not apply with respect to any State*  
22           *statute, regulation, order, interpretation, or*  
23           *other action regarding insurance sales, so-*  
24           *licitation, or cross marketing activities de-*  
25           *scribed in subparagraph (A) that was*

1           *issued, adopted, or enacted before September*  
2           *3, 1998, and that is not described in sub-*  
3           *paragraph (B).*

4           *(iii) CONSTRUCTION.—Nothing in this*  
5           *paragraph shall be construed to limit the*  
6           *applicability of the decision of the Supreme*  
7           *Court in *Barnett Bank of Marion County**  
8           *N.A. v. Nelson, 116 S. Ct. 1103 (1996) with*  
9           *respect to a State statute, regulation, order,*  
10          *interpretation, or other action that is not*  
11          *described in subparagraph (B).*

12          *(iv) LIMITATION ON INFERENCES.—*  
13          *Nothing in this paragraph shall be con-*  
14          *strued to create any inference with respect*  
15          *to any State statute, regulation, order, in-*  
16          *terpretation, or other action that is not re-*  
17          *ferred to or described in this paragraph.*

18          (3) *INSURANCE ACTIVITIES OTHER THAN*  
19          *SALES.—State statutes, regulations, interpretations,*  
20          *orders, and other actions shall not be preempted*  
21          *under subsection (b)(1) to the extent that they—*

22                  *(A) relate to, or are issued, adopted, or en-*  
23                  *acted for the purpose of regulating the business*  
24                  *of insurance in accordance with the Act of March*

1           9, 1945 (commonly known as the “McCarran-  
2           Ferguson Act”);

3           (B) apply only to entities that are not in-  
4           sured depository institutions or wholesale finan-  
5           cial institutions, but that are directly engaged in  
6           the business of insurance (except that they may  
7           apply to depository institutions engaged in pro-  
8           viding savings bank life insurance as principal  
9           to the extent of regulating such insurance);

10           (C) do not relate to or directly or indirectly  
11           regulate insurance sales, solicitations, or cross-  
12           marketing activities; and

13           (D) are not prohibited under subsection (c).

14           (c) *NONDISCRIMINATION.*—Except as provided in any  
15           restrictions described in subsection (b)(2)(B), no State may,  
16           by statute, regulation, order, interpretation, or other action,  
17           regulate the insurance activities authorized or permitted  
18           under this Act or any other provision of Federal law of an  
19           insured depository institution or wholesale financial insti-  
20           tution, or subsidiary or affiliate thereof, to the extent that  
21           such statute, regulation, order, interpretation, or other ac-  
22           tion—

23           (1) distinguishes by its terms between insured  
24           depository institutions or wholesale financial institu-  
25           tions, or subsidiaries or affiliates thereof, and other

1        *persons or entities engaged in such activities, in a*  
2        *manner that is in any way adverse to any such in-*  
3        *insured depository institution or wholesale financial in-*  
4        *stitution, or subsidiary or affiliate thereof;*

5            *(2) as interpreted or applied, has or will have an*  
6        *impact on depository institutions or wholesale finan-*  
7        *cial institutions, or subsidiaries or affiliates thereof,*  
8        *that is substantially more adverse than its impact on*  
9        *other persons or entities providing the same products*  
10       *or services or engaged in the same activities that are*  
11       *not insured depository institutions, wholesale finan-*  
12       *cial institutions, or subsidiaries or affiliates thereof,*  
13       *or persons or entities affiliated therewith;*

14           *(3) effectively prevents a depository institution*  
15       *or wholesale financial institution, or subsidiary or af-*  
16       *affiliate thereof, from engaging in insurance activities*  
17       *authorized or permitted by this Act or any other pro-*  
18       *vision of Federal law; or*

19           *(4) conflicts with the intent of this Act generally*  
20       *to permit affiliations that are authorized or permitted*  
21       *by Federal law between insured depository institu-*  
22       *tions or wholesale financial institutions, or subsidi-*  
23       *aries or affiliates thereof, and persons and entities en-*  
24       *gaged in the business of insurance.*

1       (d) *DEFINITION.*—For purposes of this section, the  
2 term “State” means any State of the United States, the Dis-  
3 trict of Columbia, any territory of the United States, Puerto  
4 Rico, Guam, American Samoa, the Trust Territory of the  
5 Pacific Islands, the Virgin Islands, and the Northern Mari-  
6 ana Islands.

7 **SEC. 105. MUTUAL BANK HOLDING COMPANIES AUTHOR-**  
8 **IZED.**

9       Section 3(g)(2) of the Bank Holding Company Act of  
10 1956 (12 U.S.C. 1842(g)(2)) is amended to read as follows:

11           “(2) *REGULATIONS.*—A bank holding company  
12 organized as a mutual holding company shall be reg-  
13 ulated on terms, and shall be subject to limitations,  
14 comparable to those applicable to any other bank  
15 holding company.”.

16 **SEC. 106. PROHIBITION ON DEPOSIT PRODUCTION OF-**  
17 **FICES.**

18       (a) *IN GENERAL.*—Section 109(d) of the Riegle-Neal  
19 Interstate Banking and Branching Efficiency Act of 1994  
20 (12 U.S.C. 1835a(d)) is amended—

21           (1) by inserting “, the Financial Services Act of  
22 1998,” after “pursuant to this title”; and

23           (2) by inserting “or such Act” after “made by  
24 this title”.

1           (b) *TECHNICAL AND CONFORMING AMENDMENT.*—Section  
 2   tion 109(e)(4) of the Riegle-Neal Interstate Banking and  
 3   Branching Efficiency Act of 1994 (12 U.S.C. 1835a(e)(4))  
 4   is amended by inserting “and any branch of a bank con-  
 5   trolled by an out-of-State bank holding company (as defined  
 6   in section 2(o)(7) of the Bank Holding Company Act of  
 7   1956)” before the period.

8   **SEC. 107. CLARIFICATION OF BRANCH CLOSURE REQUIRE-**  
 9   **MENTS.**

10           Section 42(d)(4)(A) of the Federal Deposit Insurance  
 11   Act (12 U.S.C. 1831r-1(d)(4)(A)) is amended by inserting  
 12   “and any bank controlled by an out-of-State bank holding  
 13   company (as defined in section 2(o)(7) of the Bank Holding  
 14   Company Act of 1956)” before the period.

15   **SEC. 108. AMENDMENTS RELATING TO LIMITED PURPOSE**  
 16   **BANKS.**

17           (a) *IN GENERAL.*—Section 4(f) of the Bank Holding  
 18   Company Act of 1956 (12 U.S.C. 1843(f)) is amended—

19                   (1) in paragraph (2)(A)(ii)—

20                                   (A) by striking “and” at the end of sub-  
 21                                   clause (IX);

22                                   (B) by inserting “and” after the semicolon  
 23                                   at the end of subclause (X); and

24                                   (C) by inserting after subclause (X) the fol-  
 25                                   lowing new subclause:

1                   “(XI) consumer loan assets that  
2                   are derived from or incidental to ac-  
3                   tivities in which institutions described  
4                   in subparagraph (F) or (H) of section  
5                   2(c)(2) are permitted to engage;”;

6                   (2) in paragraph (2), by striking subparagraph  
7                   (B) and inserting the following new subparagraphs:

8                   “(B) any bank subsidiary of such company  
9                   engages in any activity in which the bank was  
10                  not lawfully engaged as of March 5, 1987, unless  
11                  the bank is well managed and well capitalized;

12                  “(C) any bank subsidiary of such company  
13                  both—

14                  “(i) accepts demand deposits or depos-  
15                  its that the depositor may withdraw by  
16                  check or similar means for payment to  
17                  third parties; and

18                  “(ii) engages in the business of making  
19                  commercial loans (and, for purposes of this  
20                  clause, loans made in the ordinary course of  
21                  a credit card operation shall not be treated  
22                  as commercial loans); or

23                  “(D) after the date of the enactment of the  
24                  Competitive Equality Amendments of 1987, any  
25                  bank subsidiary of such company permits any

1           *overdraft (including any intraday overdraft), or*  
2           *incurs any such overdraft in such bank's account*  
3           *at a Federal reserve bank, on behalf of an affili-*  
4           *ate, other than an overdraft described in para-*  
5           *graph (3)."; and*

6           *(3) by striking paragraphs (3) and (4) and in-*  
7           *serting the following new paragraphs:*

8           *“(3) PERMISSIBLE OVERDRAFTS DESCRIBED.—*  
9           *For purposes of paragraph (2)(D), an overdraft is de-*  
10           *scribed in this paragraph if—*

11           *“(A) such overdraft results from an inad-*  
12           *vertent computer or accounting error that is be-*  
13           *yond the control of both the bank and the affili-*  
14           *ate; or*

15           *“(B) such overdraft—*

16           *“(i) is permitted or incurred on behalf*  
17           *of an affiliate which is monitored by, re-*  
18           *ports to, and is recognized as a primary*  
19           *dealer by the Federal Reserve Bank of New*  
20           *York; and*

21           *“(ii) is fully secured, as required by*  
22           *the Board, by bonds, notes, or other obliga-*  
23           *tions which are direct obligations of the*  
24           *United States or on which the principal*  
25           *and interest are fully guaranteed by the*

1                    *United States or by securities and obliga-*  
2                    *tions eligible for settlement on the Federal*  
3                    *Reserve book entry system.*

4                    “(4) *DIVESTITURE IN CASE OF LOSS OF EXEMP-*  
5                    *TION.—If any company described in paragraph (1)*  
6                    *fails to qualify for the exemption provided under such*  
7                    *paragraph by operation of paragraph (2), such ex-*  
8                    *emption shall cease to apply to such company and*  
9                    *such company shall divest control of each bank it con-*  
10                   *trols before the end of the 180-day period beginning*  
11                   *on the date that the company receives notice from the*  
12                   *Board that the company has failed to continue to*  
13                   *qualify for such exemption, unless before the end of*  
14                   *such 180-day period, the company has—*

15                    “(A) *corrected the condition or ceased the*  
16                    *activity that caused the company to fail to con-*  
17                    *tinue to qualify for the exemption; and*

18                    “(B) *implemented procedures that are rea-*  
19                    *sonably adapted to avoid the reoccurrence of such*  
20                    *condition or activity.”.*

21                    (b) *INDUSTRIAL LOAN COMPANIES AFFILIATE OVER-*  
22                    *DRAFTS.—Section 2(c)(2)(H) of the Bank Holding Com-*  
23                    *pany Act of 1956 (12 U.S.C. 1841(c)(2)(H)) is amended*  
24                    *by inserting before the period at the end “, or that is other-*

1 *wise permissible for a bank controlled by a company de-*  
2 *scribed in section 4(f)(1)”.*

3 **SEC. 109. REPORTS ON ONGOING FTC STUDY OF CONSUMER**  
4 **PRIVACY ISSUES.**

5 *With respect to the ongoing multistage study being*  
6 *conducted by the Federal Trade Commission on consumer*  
7 *privacy issues, the Commission shall submit to the Congress*  
8 *an interim report on the findings and conclusions of the*  
9 *Commission, together with such recommendations for legis-*  
10 *lative and administrative action as the Commission deter-*  
11 *mines to be appropriate, at the conclusion of each stage of*  
12 *such study and a final report at the conclusion of the study.*

13 **SEC. 110. GAO STUDY OF ECONOMIC IMPACT ON COMMU-**  
14 **NITY BANKS AND OTHER SMALL FINANCIAL**  
15 **INSTITUTIONS.**

16 *(a) STUDY REQUIRED.—The Comptroller General of*  
17 *the United States shall conduct a study of the projected eco-*  
18 *nomie impact that the enactment of this Act will have on*  
19 *financial institutions which have total assets of*  
20 *\$100,000,000 or less.*

21 *(b) REPORT TO THE CONGRESS.—The Comptroller*  
22 *General of the United States shall submit a report to the*  
23 *Congress before the end of the 6-month period beginning on*  
24 *the date of the date of the enactment of this Act containing*  
25 *the findings and conclusions of the Comptroller General*

1 *with regard to the study required under subsection (a) and*  
2 *such recommendations for legislative or administrative ac-*  
3 *tion as the Comptroller General may determine to be appro-*  
4 *priate.*

5 ***Subtitle B—Streamlining Super-***  
6 ***vision of Financial Holding***  
7 ***Companies***

8 ***SEC. 111. STREAMLINING FINANCIAL HOLDING COMPANY***  
9 ***SUPERVISION.***

10 *Section 5(c) of the Bank Holding Company Act of*  
11 *1956 (12 U.S.C. 1844(c)) is amended to read as follows:*

12 *“(c) REPORTS AND EXAMINATIONS.—*

13 *“(1) REPORTS.—*

14 *“(A) IN GENERAL.—The Board from time to*  
15 *time may require any bank holding company*  
16 *and any subsidiary of such company to submit*  
17 *reports under oath to keep the Board informed as*  
18 *to—*

19 *“(i) its financial condition, systems for*  
20 *monitoring and controlling financial and*  
21 *operating risks, and transactions with de-*  
22 *pository institution subsidiaries of the hold-*  
23 *ing company; and*

1           “(i) compliance by the company or  
2 subsidiary with applicable provisions of  
3 this Act.

4           “(B) USE OF EXISTING REPORTS.—

5           “(i) IN GENERAL.—The Board shall, to  
6 the fullest extent possible, accept reports in  
7 fulfillment of the Board’s reporting require-  
8 ments under this paragraph that a bank  
9 holding company or any subsidiary of such  
10 company has provided or been required to  
11 provide to other Federal and State super-  
12 visors or to appropriate self-regulatory or-  
13 ganizations.

14           “(ii) AVAILABILITY.—A bank holding  
15 company or a subsidiary of such company  
16 shall provide to the Board, at the request of  
17 the Board, a report referred to in clause (i).

18           “(iii) REQUIRED USE OF PUBLICLY  
19 REPORTED INFORMATION.—The Board  
20 shall, to the fullest extent possible, accept in  
21 fulfillment of any reporting or record-  
22 keeping requirements under this Act infor-  
23 mation that is otherwise required to be re-  
24 ported publicly and externally audited fi-  
25 nancial statements.

1                   “(iv) *REPORTS FILED WITH OTHER*  
2                   *AGENCIES.—In the event the Board requires*  
3                   *a report from a functionally regulated non-*  
4                   *depository institution subsidiary of a bank*  
5                   *holding company of a kind that is not re-*  
6                   *quired by another Federal or State regu-*  
7                   *lator or appropriate self-regulatory organi-*  
8                   *zation, the Board shall request that the ap-*  
9                   *propriate regulator or self-regulatory orga-*  
10                  *nization obtain such report. If the report is*  
11                  *not made available to the Board, and the*  
12                  *report is necessary to assess a material risk*  
13                  *to the bank holding company or its subsidi-*  
14                  *ary depository institution or compliance*  
15                  *with this Act, the Board may require such*  
16                  *subsidiary to provide such a report to the*  
17                  *Board.*

18                  “(C) *DEFINITION.—For purposes of this*  
19                  *subsection, the term ‘functionally regulated non-*  
20                  *depository institution’ means—*

21                         “(i) *a broker or dealer registered under*  
22                         *the Securities Exchange Act of 1934;*

23                         “(ii) *an investment adviser registered*  
24                         *under the Investment Advisers Act of 1940,*  
25                         *or with any State, with respect to the in-*

1            *vestment advisory activities of such invest-*  
 2            *ment adviser and activities incidental to*  
 3            *such investment advisory activities;*

4            “(iii) *an insurance company subject to*  
 5            *supervision by a State insurance commis-*  
 6            *sion, agency, or similar authority; and*

7            “(iv) *an entity subject to regulation by*  
 8            *the Commodity Futures Trading Commis-*  
 9            *sion, with respect to the commodities activi-*  
 10           *ties of such entity and activities incidental*  
 11           *to such commodities activities.*

12           “(2) *EXAMINATIONS.—*

13           “(A) *EXAMINATION AUTHORITY.—*

14           “(i) *IN GENERAL.—The Board may*  
 15           *make examinations of each bank holding*  
 16           *company and each subsidiary of a bank*  
 17           *holding company.*

18           “(ii) *FUNCTIONALLY REGULATED NON-*  
 19           *DEPOSITORY INSTITUTION SUBSIDIARIES.—*  
 20           *Notwithstanding clause (i), the Board may*  
 21           *make examinations of a functionally regu-*  
 22           *lated nondepository institution subsidiary*  
 23           *of a bank holding company only if—*

24           “(I) *the Board has reasonable*  
 25           *cause to believe that such subsidiary is*

1 engaged in activities that pose a mate-  
2 rial risk to an affiliated depository in-  
3 stitution, or

4 “(II) based on reports and other  
5 available information, the Board has  
6 reasonable cause to believe that a sub-  
7 sidiary is not in compliance with this  
8 Act or with provisions relating to  
9 transactions with an affiliated depository  
10 tory institution and the Board cannot  
11 make such determination through ex-  
12 amination of the affiliated depository  
13 institution or bank holding company.

14 “(B) LIMITATIONS ON EXAMINATION AU-  
15 THORITY FOR BANK HOLDING COMPANIES AND  
16 SUBSIDIARIES.—Subject to subparagraph (A)(ii),  
17 the Board may make examinations under sub-  
18 paragraph (A)(i) of each bank holding company  
19 and each subsidiary of such holding company in  
20 order to—

21 “(i) inform the Board of the nature of  
22 the operations and financial condition of  
23 the holding company and such subsidiaries;

24 “(ii) inform the Board of—

1           “(I) *the financial and operational*  
2           *risks within the holding company sys-*  
3           *tem that may pose a threat to the safe-*  
4           *ty and soundness of any subsidiary de-*  
5           *pository institution of such holding*  
6           *company; and*

7           “(II) *the systems for monitoring*  
8           *and controlling such risks; and*

9           “(iii) *monitor compliance with the*  
10          *provisions of this Act and those governing*  
11          *transactions and relationships between any*  
12          *subsidiary depository institution and its af-*  
13          *filiates.*

14          “(C) *RESTRICTED FOCUS OF EXAMINA-*  
15          *TIONS.—The Board shall, to the fullest extent*  
16          *possible, limit the focus and scope of any exam-*  
17          *ination of a bank holding company to—*

18                 “(i) *the bank holding company; and*

19                 “(ii) *any subsidiary of the holding*  
20                 *company that, because of—*

21                         “(I) *the size, condition, or activi-*  
22                         *ties of the subsidiary;*

23                         “(II) *the nature or size of trans-*  
24                         *actions between such subsidiary and*  
25                         *any depository institution which is*

1                    *also a subsidiary of such holding com-*  
2                    *pany; or*

3                    *“(III) the centralization of func-*  
4                    *tions within the holding company sys-*  
5                    *tem,*

6                    *could have a materially adverse effect on the*  
7                    *safety and soundness of any depository in-*  
8                    *stitution affiliate of the holding company.*

9                    *“(D) DEFERENCE TO BANK EXAMINA-*  
10                    *TIONS.—The Board shall, to the fullest extent*  
11                    *possible, use, for the purposes of this paragraph,*  
12                    *the reports of examinations of depository institu-*  
13                    *tions made by the appropriate Federal and State*  
14                    *depository institution supervisory authority.*

15                    *“(E) DEFERENCE TO OTHER EXAMINA-*  
16                    *TIONS.—The Board shall, to the fullest extent*  
17                    *possible, address the circumstances which might*  
18                    *otherwise permit or require an examination by*  
19                    *the Board by forgoing an examination and in-*  
20                    *stead reviewing the reports of examination made*  
21                    *of—*

22                    *“(i) any registered broker or dealer by*  
23                    *or on behalf of the Securities and Exchange*  
24                    *Commission;*

1           “(ii) any registered investment adviser  
2           properly registered by or on behalf of either  
3           the Securities and Exchange Commission or  
4           any State;

5           “(iii) any licensed insurance company  
6           by or on behalf of any state regulatory au-  
7           thority responsible for the supervision of in-  
8           surance companies; and

9           “(iv) any other subsidiary that the  
10          Board finds to be comprehensively super-  
11          vised by a Federal or State authority.

12          “(3) CAPITAL.—

13                 “(A) IN GENERAL.—The Board shall not, by  
14                 regulation, guideline, order or otherwise, pre-  
15                 scribe or impose any capital or capital adequacy  
16                 rules, guidelines, standards, or requirements on  
17                 any subsidiary of a financial holding company  
18                 that is not a depository institution and—

19                         “(i) is in compliance with applicable  
20                         capital requirements of another Federal reg-  
21                         ulatory authority (including the Securities  
22                         and Exchange Commission) or State insur-  
23                         ance authority; or

1           “(i) is properly registered as an in-  
2           vestment adviser under the Investment Ad-  
3           visers Act of 1940, or with any State.

4           “(B) *RULE OF CONSTRUCTION.*—Subpara-  
5           graph (A) shall not be construed as preventing  
6           the Board from imposing capital or capital ade-  
7           quacy rules, guidelines, standards, or require-  
8           ments with respect to activities of a registered  
9           investment adviser other than investment advi-  
10          sory activities or activities incidental to invest-  
11          ment advisory activities.

12          “(C) *LIMITATIONS ON INDIRECT ACTION.*—  
13          In developing, establishing, or assessing holding  
14          company capital or capital adequacy rules,  
15          guidelines, standards, or requirements for pur-  
16          poses of this paragraph, the Board shall not take  
17          into account the activities, operations, or invest-  
18          ments of an affiliated investment company reg-  
19          istered under the Investment Company Act of  
20          1940, if the investment company is not—

21                 “(i) a bank holding company; or

22                 “(ii) controlled by a bank holding com-  
23                 pany by reason of ownership by the bank  
24                 holding company (including through all of  
25                 its affiliates) of 25 percent or more of the

1           *shares of the investment company, where the*  
2           *shares owned by the bank holding company*  
3           *have a market value equal to more than*  
4           *\$1,000,000.*

5           “(4) *TRANSFER OF BOARD AUTHORITY TO AP-*  
6           *PROPRIATE FEDERAL BANKING AGENCY.—*

7           “(A) *IN GENERAL.—In the case of any bank*  
8           *holding company which is not significantly en-*  
9           *gaged in nonbanking activities, the Board, in*  
10          *consultation with the appropriate Federal bank-*  
11          *ing agency, may designate the appropriate Fed-*  
12          *eral banking agency of the lead insured deposi-*  
13          *tory institution subsidiary of such holding com-*  
14          *pany as the appropriate Federal banking agency*  
15          *for the bank holding company.*

16          “(B) *AUTHORITY TRANSFERRED.—An agen-*  
17          *cy designated by the Board under subparagraph*  
18          *(A) shall have the same authority as the Board*  
19          *under this Act to—*

20                 “(i) *examine and require reports from*  
21                 *the bank holding company and any affiliate*  
22                 *of such company (other than a depository*  
23                 *institution) under section 5;*

24                 “(ii) *approve or disapprove applica-*  
25                 *tions or transactions under section 3;*

1           “(iii) take actions and impose pen-  
2           alties under subsections (e) and (f) of sec-  
3           tion 5 and section 8; and

4           “(iv) take actions regarding the hold-  
5           ing company, any affiliate of the holding  
6           company (other than a depository institu-  
7           tion), or any institution-affiliated party of  
8           such company or affiliate under the Federal  
9           Deposit Insurance Act and any other stat-  
10          ute which the Board may designate.

11          “(C) AGENCY ORDERS.—Section 9 (of this  
12          Act) and section 105 of the Bank Holding Com-  
13          pany Act Amendments of 1970 shall apply to or-  
14          ders issued by an agency designated under sub-  
15          paragraph (A) in the same manner such sections  
16          apply to orders issued by the Board.

17          “(5) FUNCTIONAL REGULATION OF SECURITIES  
18          AND INSURANCE ACTIVITIES.—The Board shall defer  
19          to—

20                 “(A) the Securities and Exchange Commis-  
21                 sion with regard to all interpretations of, and  
22                 the enforcement of, applicable Federal securities  
23                 laws (and rules, regulations, orders, and other  
24                 directives issued thereunder) relating to the ac-  
25                 tivities, conduct, and operations of registered

1           *brokers, dealers, investment advisers, and invest-*  
2           *ment companies;*

3           “(B) *the relevant State securities authorities*  
4           *with regard to all interpretations of, and the en-*  
5           *forcement of, applicable State securities laws*  
6           *(and rules, regulations, orders, and other direc-*  
7           *tives issued thereunder) relating to the activities,*  
8           *conduct, and operations of registered brokers,*  
9           *dealers, and investment advisers; and*

10           “(C) *the relevant State insurance authori-*  
11           *ties with regard to all interpretations of, and the*  
12           *enforcement of, applicable State insurance laws*  
13           *(and rules, regulations, orders, and other direc-*  
14           *tives issued thereunder) relating to the activities,*  
15           *conduct, and operations of insurance companies*  
16           *and insurance agents.”.*

17 **SEC. 112. ELIMINATION OF APPLICATION REQUIREMENT**  
18           **FOR FINANCIAL HOLDING COMPANIES.**

19           (a) *PREVENTION OF DUPLICATIVE FILINGS.*—*Section*  
20           *5(a) of the Bank Holding Company Act of 1956 (12 U.S.C.*  
21           *1844(a)) is amended by adding the following new sentence*  
22           *at the end: “A declaration filed in accordance with section*  
23           *6(b)(1)(E) shall satisfy the requirements of this subsection*  
24           *with regard to the registration of a bank holding company*

1 *but not any requirement to file an application to acquire*  
2 *a bank pursuant to section 3.”.*

3 (b) *DIVESTITURE PROCEDURES.*—Section 5(e)(1) of  
4 *the Bank Holding Company Act of 1956 (12 U.S.C.*  
5 *1844(e)(1)) is amended—*

6 (1) *by striking “Financial Institutions Super-*  
7 *visory Act of 1966, order” and inserting “Financial*  
8 *Institutions Supervisory Act of 1966, at the election*  
9 *of the bank holding company—*

10 “(A) order”; and

11 (2) *by striking “shareholders of the bank holding*  
12 *company. Such distribution” and inserting “share-*  
13 *holders of the bank holding company; or*

14 “(B) *order the bank holding company, after due*  
15 *notice and opportunity for hearing, and after con-*  
16 *sultation with the primary supervisor for the bank,*  
17 *which shall be the Comptroller of the Currency in the*  
18 *case of a national bank, and the Federal Deposit In-*  
19 *surance Corporation and the appropriate State super-*  
20 *visor in the case of an insured nonmember bank, to*  
21 *terminate (within 120 days or such longer period as*  
22 *the Board may direct) the ownership or control of*  
23 *any such bank by such company.*

24 “*The distribution referred to in subparagraph (A)*”.

1 **SEC. 113. AUTHORITY OF STATE INSURANCE REGULATOR**  
2 **AND SECURITIES AND EXCHANGE COMMIS-**  
3 **SION.**

4 *Section 5 of the Bank Holding Company Act of 1956*  
5 *(12 U.S.C. 1844) is amended by adding at the end the fol-*  
6 *lowing new subsection:*

7 *“(g) AUTHORITY OF STATE INSURANCE REGULATOR*  
8 *AND THE SECURITIES AND EXCHANGE COMMISSION.—*

9 *“(1) IN GENERAL.—Notwithstanding any other*  
10 *provision of law, any regulation, order, or other ac-*  
11 *tion of the Board which requires a bank holding com-*  
12 *pany to provide funds or other assets to a subsidiary*  
13 *insured depository institution shall not be effective*  
14 *nor enforceable if—*

15 *“(A) such funds or assets are to be provided*  
16 *by—*

17 *“(i) a bank holding company that is*  
18 *an insurance company or is a broker or*  
19 *dealer registered under the Securities Ex-*  
20 *change Act of 1934; or*

21 *“(ii) an affiliate of the depository in-*  
22 *stitution which is an insurance company or*  
23 *a broker or dealer registered under such Act;*  
24 *and*

25 *“(B) the State insurance authority for the*  
26 *insurance company or the Securities and Ex-*

1           *change Commission for the registered broker or*  
2           *dealer, as the case may be, determines in writing*  
3           *sent to the holding company and the Board that*  
4           *the holding company shall not provide such*  
5           *funds or assets because such action would have*  
6           *a material adverse effect on the financial condi-*  
7           *tion of the insurance company or the broker or*  
8           *dealer, as the case may be.*

9           “(2) *NOTICE TO STATE INSURANCE AUTHORITY*  
10          *OR SEC REQUIRED.—If the Board requires a bank*  
11          *holding company, or an affiliate of a bank holding*  
12          *company, which is an insurance company or a broker*  
13          *or dealer described in paragraph (1)(A) to provide*  
14          *funds or assets to an insured depository institution*  
15          *subsidiary of the holding company pursuant to any*  
16          *regulation, order, or other action of the Board referred*  
17          *to in paragraph (1), the Board shall promptly notify*  
18          *the State insurance authority for the insurance com-*  
19          *pany or the Securities and Exchange Commission, as*  
20          *the case may be, of such requirement.*

21          “(3) *DIVESTITURE IN LIEU OF OTHER ACTION.—*  
22          *If the Board receives a notice described in paragraph*  
23          *(1)(B) from a State insurance authority or the Secu-*  
24          *rities and Exchange Commission with regard to a*  
25          *bank holding company or affiliate referred to in that*

1 paragraph, the Board may order the bank holding  
2 company to divest the insured depository institution  
3 not later than 180 days after receiving the notice, or  
4 such longer period as the Board determines consistent  
5 with the safe and sound operation of the insured de-  
6 pository institution.

7 “(4) *CONDITIONS BEFORE DIVESTITURE.*—Dur-  
8 ing the period beginning on the date an order to di-  
9 vest is issued by the Board under paragraph (3) to  
10 a bank holding company and ending on the date the  
11 divestiture is completed, the Board may impose any  
12 conditions or restrictions on the holding company’s  
13 ownership or operation of the insured depository in-  
14 stitution, including restricting or prohibiting trans-  
15 actions between the insured depository institution and  
16 any affiliate of the institution, as are appropriate  
17 under the circumstances.”.

18 **SEC. 114. PRUDENTIAL SAFEGUARDS.**

19 Section 5 of the Bank Holding Company Act of 1956  
20 (12 U.S.C. 1844) is amended by inserting after subsection  
21 (g) (as added by section 113 of this subtitle) the following  
22 new subsection:

23 “(h) *PRUDENTIAL SAFEGUARDS.*—

24 “(1) *IN GENERAL.*—The Board may, by regula-  
25 tion or order, impose restrictions or requirements on

1        *relationships or transactions between a depository in-*  
2        *stitution subsidiary of a bank holding company and*  
3        *any affiliate of such depository institution (other*  
4        *than a subsidiary of such institution) which the*  
5        *Board finds is consistent with the public interest, the*  
6        *purposes of this Act, the Financial Services Act of*  
7        *1998, the Federal Reserve Act, and other Federal law*  
8        *applicable to depository institution subsidiaries of*  
9        *bank holding companies and the standards in para-*  
10       *graph (2).*

11            *“(2) STANDARDS.—The Board may exercise au-*  
12        *thority under paragraph (1) if the Board finds that*  
13        *such action would—*

14                    *“(A) avoid any significant risk to the safety*  
15                    *and soundness of depository institutions or any*  
16                    *Federal deposit insurance fund;*

17                    *“(B) enhance the financial stability of bank*  
18                    *holding companies;*

19                    *“(C) avoid conflicts of interest or other*  
20                    *abuses;*

21                    *“(D) enhance the privacy of customers of*  
22                    *depository institutions; or*

23                    *“(E) promote the application of national*  
24                    *treatment and equality of competitive oppor-*  
25                    *tunity between nonbank affiliates owned or con-*

1           *trolled by domestic bank holding companies and*  
2           *nonbank affiliates owned or controlled by foreign*  
3           *banks operating in the United States.*

4           “(3) *REVIEW.*—*The Board shall regularly—*

5                   “(A) *review all restrictions or requirements*  
6                   *established pursuant to paragraph (1) to deter-*  
7                   *mine whether there is a continuing need for any*  
8                   *such restriction or requirement to carry out the*  
9                   *purposes of the Act, including any purpose de-*  
10                   *scribed in paragraph (2); and*

11                   “(B) *modify or eliminate any restriction or*  
12                   *requirement the Board finds is no longer re-*  
13                   *quired for such purposes.*

14           “(4) *FOREIGN BANKS.*—*The Board may, by reg-*  
15           *ulation or order, impose restrictions or requirements*  
16           *on relationships or transactions between a foreign*  
17           *bank and any affiliate in the United States of such*  
18           *foreign bank that the Board finds are consistent with*  
19           *the public interest, the purposes of this Act, the Fi-*  
20           *nancial Services Act of 1998, the Federal Reserve Act,*  
21           *and other Federal law applicable to foreign banks and*  
22           *their affiliates in the United States, and the stand-*  
23           *ards in paragraphs (2) and (3).”.*

24 **SEC. 115. EXAMINATION OF INVESTMENT COMPANIES.**

25           (a) *EXCLUSIVE COMMISSION AUTHORITY.*—

1           (1) *IN GENERAL.*—*The Commission shall be the*  
2           *sole Federal agency with authority to inspect and ex-*  
3           *amine any registered investment company that is not*  
4           *a bank holding company.*

5           (2) *PROHIBITION ON BANKING AGENCIES.*—*A*  
6           *Federal banking agency may not inspect or examine*  
7           *any registered investment company that is not a bank*  
8           *holding company.*

9           (b) *EXAMINATION RESULTS AND OTHER INFORMA-*  
10          *TION.*—*The Commission shall provide to any Federal bank-*  
11          *ing agency, upon request, the results of any examination,*  
12          *reports, records, or other information with respect to any*  
13          *registered investment company to the extent necessary for*  
14          *the agency to carry out its statutory responsibilities.*

15          (c) *DEFINITIONS.*—*For purposes of this section, the fol-*  
16          *lowing definitions shall apply:*

17               (1) *BANK HOLDING COMPANY.*—*The term “bank*  
18               *holding company” has the same meaning as in sec-*  
19               *tion 2 of the Bank Holding Company Act of 1956.*

20               (2) *COMMISSION.*—*The term “Commission”*  
21               *means the Securities and Exchange Commission.*

22               (3) *FEDERAL BANKING AGENCY.*—*The term*  
23               *“Federal banking agency” has the same meaning as*  
24               *in section 3(z) of the Federal Deposit Insurance Act.*

1           (4) *REGISTERED INVESTMENT COMPANY.*—The  
2           term “registered investment company” means an in-  
3           vestment company which is registered with the Com-  
4           mission under the Investment Company Act of 1940.

5   **SEC. 116. LIMITATION ON RULEMAKING, PRUDENTIAL, SU-**  
6                           **PERVISORY, AND ENFORCEMENT AUTHORITY**  
7                           **OF THE BOARD.**

8           The Bank Holding Company Act of 1956 (12 U.S.C.  
9   1841 et seq.) is amended by inserting after section 10 the  
10 following new section:

11   **“SEC. 10A. LIMITATION ON RULEMAKING, PRUDENTIAL, SU-**  
12                           **PERVISORY, AND ENFORCEMENT AUTHORITY**  
13                           **OF THE BOARD.**

14           “(a) *LIMITATION ON DIRECT ACTION.*—

15                   “(1) *IN GENERAL.*—The Board may not pre-  
16                   scribe regulations, issue or seek entry of orders, im-  
17                   pose restraints, restrictions, guidelines, requirements,  
18                   safeguards, or standards, or otherwise take any action  
19                   under or pursuant to any provision of this Act or sec-  
20                   tion 8 of the Federal Deposit Insurance Act against  
21                   or with respect to a regulated subsidiary of a bank  
22                   holding company unless the action is necessary to  
23                   prevent or redress an unsafe or unsound practice or  
24                   breach of fiduciary duty by such subsidiary that poses  
25                   a material risk to—

1           “(A) *the financial safety, soundness, or sta-*  
2           *bility of an affiliated depository institution; or*

3           “(B) *the domestic or international payment*  
4           *system.*

5           “(2) *CRITERIA FOR BOARD ACTION.—The Board*  
6           *shall not take action otherwise permitted under para-*  
7           *graph (1) unless the Board finds that it is not reason-*  
8           *ably possible to effectively protect against the material*  
9           *risk at issue through action directed at or against the*  
10          *affiliated depository institution or against depository*  
11          *institutions generally.*

12          “(b) *LIMITATION ON INDIRECT ACTION.—The Board*  
13          *may not prescribe regulations, issue or seek entry of orders,*  
14          *impose restraints, restrictions, guidelines, requirements,*  
15          *safeguards, or standards, or otherwise take any action*  
16          *under or pursuant to any provision of this Act or section*  
17          *8 of the Federal Deposit Insurance Act against or with re-*  
18          *spect to a financial holding company or a wholesale finan-*  
19          *cial holding company where the purpose or effect of doing*  
20          *so would be to take action indirectly against or with respect*  
21          *to a regulated subsidiary that may not be taken directly*  
22          *against or with respect to such subsidiary in accordance*  
23          *with subsection (a).*

24          “(c) *ACTIONS SPECIFICALLY AUTHORIZED.—Notwith-*  
25          *standing subsection (a), the Board may take action under*

1 *this Act or section 8 of the Federal Deposit Insurance Act*  
2 *to enforce compliance by a regulated subsidiary with Fed-*  
3 *eral law that the Board has specific jurisdiction to enforce*  
4 *against such subsidiary.*

5       “(d) *REGULATED SUBSIDIARY DEFINED.*—*For pur-*  
6 *poses of this section, the term ‘regulated subsidiary’ means*  
7 *any company that is not a bank holding company and is—*

8               “(1) *a broker or dealer registered under the Secu-*  
9 *rities Exchange Act of 1934;*

10              “(2) *a registered investment adviser, properly*  
11 *registered by or on behalf of either the Securities and*  
12 *Exchange Commission or any State, with respect to*  
13 *the investment advisory activities of such investment*  
14 *adviser and activities incidental to such investment*  
15 *advisory activities;*

16              “(3) *an investment company registered under the*  
17 *Investment Company Act of 1940;*

18              “(4) *an insurance company or an insurance*  
19 *agency subject to supervision by a State insurance*  
20 *commission, agency, or similar authority; or*

21              “(5) *an entity subject to regulation by the Com-*  
22 *modity Futures Trading Commission, with respect to*  
23 *the commodities activities of such entity and activi-*  
24 *ties incidental to such commodities activities.”.*

1 **SEC. 117. INTERAGENCY CONSULTATION.**

2       (a) *PURPOSE.*—*It is the intention of Congress that the*  
3 *Board of Governors of the Federal Reserve System, as the*  
4 *umbrella supervisor for financial holding companies, and*  
5 *the State insurance regulators, as the functional regulators*  
6 *of companies engaged in insurance activities, coordinate ef-*  
7 *forts to supervise companies that control both a depository*  
8 *institution and a company engaged in insurance activities*  
9 *regulated under State law. In particular, Congress believes*  
10 *that the Board and the State insurance regulators should*  
11 *share, on a confidential basis, information relevant to the*  
12 *supervision of companies that control both a depository in-*  
13 *stitution and a company engaged in insurance activities,*  
14 *including information regarding the financial health of the*  
15 *consolidated organization and information regarding trans-*  
16 *actions and relationships between insurance companies and*  
17 *affiliated depository institutions. The appropriate Federal*  
18 *banking agencies for depository institutions should also*  
19 *share, on a confidential basis, information with the relevant*  
20 *State insurance regulators regarding transactions and rela-*  
21 *tionships between depository institutions and affiliated*  
22 *companies engaged in insurance activities. The purpose of*  
23 *this section is to encourage this coordination and confiden-*  
24 *tial sharing of information, and to thereby improve both*  
25 *the efficiency and the quality of the supervision of financial*

1 *holding companies and their affiliated depository institu-*  
2 *tions and companies engaged in insurance activities.*

3 (b) *EXAMINATION RESULTS AND OTHER INFORMA-*  
4 *TION.—*

5 (1) *INFORMATION OF THE BOARD.—Upon the re-*  
6 *quest of the appropriate insurance regulator of any*  
7 *State, the Board may provide any information of the*  
8 *Board regarding the financial condition, risk man-*  
9 *agement policies, and operations of any financial*  
10 *holding company that controls a company that is en-*  
11 *gaged in insurance activities and is regulated by such*  
12 *State insurance regulator, and regarding any trans-*  
13 *action or relationship between such an insurance*  
14 *company and any affiliated depository institution.*  
15 *The Board may provide any other information to the*  
16 *appropriate State insurance regulator that the Board*  
17 *believes is necessary or appropriate to permit the*  
18 *State insurance regulator to administer and enforce*  
19 *applicable State insurance laws.*

20 (2) *BANKING AGENCY INFORMATION.—Upon the*  
21 *request of the appropriate insurance regulator of any*  
22 *State, the appropriate Federal banking agency may*  
23 *provide any information of the agency regarding any*  
24 *transaction or relationship between a depository in-*  
25 *stitution supervised by such Federal banking agency*

1       *and any affiliated company that is engaged in insur-*  
2       *ance activities regulated by such State insurance reg-*  
3       *ulator. The appropriate Federal banking agency may*  
4       *provide any other information to the appropriate*  
5       *State insurance regulator that the agency believes is*  
6       *necessary or appropriate to permit the State insur-*  
7       *ance regulator to administer and enforce applicable*  
8       *State insurance laws.*

9               (3) *STATE INSURANCE REGULATOR INFORMA-*  
10       *TION.—Upon the request of the Board or the appro-*  
11       *priate Federal banking agency, a State insurance reg-*  
12       *ulator may provide any examination or other reports,*  
13       *records, or other information to which such insurance*  
14       *regulator may have access with respect to a company*  
15       *which—*

16                       (A) *is engaged in insurance activities and*  
17                       *regulated by such insurance regulator; and*

18                       (B) *is an affiliate of an insured depository*  
19                       *institution, wholesale financial institution, or fi-*  
20                       *nancial holding company.*

21       (c) *CONSULTATION.—Before making any determina-*  
22       *tion relating to the initial affiliation of, or the continuing*  
23       *affiliation of, an insured depository institution, wholesale*  
24       *financial institution, or financial holding company with*  
25       *a company engaged in insurance activities, the appropriate*

1 *Federal banking agency shall consult with the appropriate*  
2 *State insurance regulator of such company and take the*  
3 *views of such insurance regulator into account in making*  
4 *such determination.*

5 *(d) EFFECT ON OTHER AUTHORITY.—Nothing in this*  
6 *section shall limit in any respect the authority of the appro-*  
7 *priate Federal banking agency with respect to an insured*  
8 *depository institution, wholesale financial institution, or*  
9 *bank holding company or any affiliate thereof under any*  
10 *provision of law.*

11 *(e) CONFIDENTIALITY AND PRIVILEGE.—*

12 *(1) CONFIDENTIALITY.—The appropriate Federal*  
13 *banking agency shall not provide any information or*  
14 *material that is entitled to confidential treatment*  
15 *under applicable Federal banking agency regulations,*  
16 *or other applicable law, to a State insurance regu-*  
17 *lator unless such regulator agrees to maintain the in-*  
18 *formation or material in confidence and to take all*  
19 *reasonable steps to oppose any effort to secure disclo-*  
20 *sure of the information or material by the regulator.*  
21 *The appropriate Federal banking agency shall treat*  
22 *as confidential any information or material obtained*  
23 *from a State insurance regulator that is entitled to*  
24 *confidential treatment under applicable State regula-*  
25 *tions, or other applicable law, and take all reasonable*

1        *steps to oppose any effort to secure disclosure of the*  
2        *information or material by the Federal banking agen-*  
3        *cy.*

4            (2) *PRIVILEGE.—The provision pursuant to this*  
5        *section of information or material by a Federal bank-*  
6        *ing agency or State insurance regulator shall not con-*  
7        *stitute a waiver of, or otherwise affect, any privilege*  
8        *to which the information or material is otherwise sub-*  
9        *ject.*

10        (f) *DEFINITIONS.—For purposes of this section, the fol-*  
11        *lowing definitions shall apply:*

12            (1) *APPROPRIATE FEDERAL BANKING AGENCY;*  
13        *INSURED DEPOSITORY INSTITUTION.—The terms “ap-*  
14        *propriate Federal banking agency” and “insured de-*  
15        *pository institution” have the same meanings as in*  
16        *section 3 of the Federal Deposit Insurance Act.*

17            (2) *BOARD; FINANCIAL HOLDING COMPANY; AND*  
18        *WHOLESALE FINANCIAL INSTITUTION.—The terms*  
19        *“Board”, “financial holding company”, and “whole-*  
20        *sale financial institution” have the same meanings as*  
21        *in section 2 of the Bank Holding Company Act of*  
22        *1956.*

23        **SEC. 118. EQUIVALENT REGULATION AND SUPERVISION.**

24        *Notwithstanding any other provision of law, the provi-*  
25        *sions of—*



1 *benefit any shareholder of” and inserting “to benefit any*  
 2 *shareholder, affiliate (other than an insured depository in-*  
 3 *stitution that receives assistance in accordance with the*  
 4 *provision of this Act), or subsidiary of”.*

5 ***Subtitle C—Subsidiaries of***  
 6 ***National Banks***

7 ***SEC. 121. PERMISSIBLE ACTIVITIES FOR SUBSIDIARIES OF***  
 8 ***NATIONAL BANKS.***

9 *(a) FINANCIAL SUBSIDIARIES OF NATIONAL BANKS.—*  
 10 *Chapter one of title LXII of the Revised Statutes of United*  
 11 *States (12 U.S.C. 21 et seq.) is amended—*

12 *(1) by redesignating section 5136A as section*  
 13 *5136C; and*

14 *(2) by inserting after section 5136 (12 U.S.C.*  
 15 *24) the following new section:*

16 ***“SEC. 5136A. SUBSIDIARIES OF NATIONAL BANKS.***

17 ***“(a) SUBSIDIARIES OF NATIONAL BANKS AUTHORIZED***  
 18 ***TO ENGAGE IN FINANCIAL ACTIVITIES.—***

19 ***“(1) EXCLUSIVE AUTHORITY.—No provision of***  
 20 ***section 5136 or any other provision of this title LXII***  
 21 ***of the Revised Statutes shall be construed as authoriz-***  
 22 ***ing a subsidiary of a national bank to engage in, or***  
 23 ***own any share of or any other interest in any com-***  
 24 ***pany engaged in, any activity that—***

1           “(A) is not permissible for a national bank  
2           to engage in directly; or

3           “(B) is conducted under terms or conditions  
4           other than those that would govern the conduct  
5           of such activity by a national bank,  
6           unless a national bank is specifically authorized by  
7           the express terms of a Federal statute and not by im-  
8           plication or interpretation to acquire shares of or an  
9           interest in, or to control, such subsidiary, such as by  
10          paragraph (2) of this subsection and section 25A of  
11          the Federal Reserve Act.

12          “(2) SPECIFIC AUTHORIZATION TO CONDUCT  
13          AGENCY ACTIVITIES WHICH ARE FINANCIAL IN NA-  
14          TURE.—A national bank may control a company that  
15          engages in agency activities that have been deter-  
16          mined to be financial in nature or incidental to such  
17          financial activities pursuant to and in accordance  
18          with section 6(c) of the Bank Holding Company Act  
19          of 1956 if—

20                 “(A) the company engages in such activities  
21                 solely as agent and not directly or indirectly as  
22                 principal;

23                 “(B) the national bank is well capitalized  
24                 and well managed, and has achieved a rating of  
25                 satisfactory or better at the most recent examina-

1           *tion of the bank under the Community Reinvest-*  
2           *ment Act of 1977;*

3           “(C) *all depository institution affiliates of*  
4           *the national bank are well capitalized and well*  
5           *managed, and have achieved a rating of satisfac-*  
6           *tory or better at the most recent examination of*  
7           *each such depository institution under the Com-*  
8           *munity Reinvestment Act of 1977; and*

9           “(D) *the bank has received the approval of*  
10          *the Comptroller of the Currency.*

11          “(3) *RATING DOES NOT REQUIRE DIVESTI-*  
12          *TURE.—A national bank shall not be required to di-*  
13          *vest any subsidiary held pursuant to paragraph (2)*  
14          *solely based on a rating described in subparagraph*  
15          *(B) or (C) of paragraph (2), other than a rating de-*  
16          *scribed in paragraph (4)(C).*

17          “(4) *DEFINITIONS.—For purposes of this section,*  
18          *the following definitions shall apply:*

19                 “(A) *COMPANY; CONTROL; AFFILIATE; SUB-*  
20                 *SIDIARY.—The terms ‘company’, ‘control’, ‘affili-*  
21                 *ate’, and ‘subsidiary’ have the same meanings as*  
22                 *in section 2 of the Bank Holding Company Act*  
23                 *of 1956.*

24                 “(B) *WELL CAPITALIZED.—The term ‘well*  
25                 *capitalized’ has the same meaning as in section*

1           38 of the *Federal Deposit Insurance Act* and, for  
2           purposes of this section, the Comptroller shall  
3           have exclusive jurisdiction to determine whether  
4           a national bank is well capitalized.

5           “(C) *WELL MANAGED*.—The term ‘well  
6           managed’ means—

7                   “(i) in the case of a depository institu-  
8                   tion that has been examined, unless other-  
9                   wise determined in writing by the appro-  
10                  priate Federal banking agency—

11                           “(I) the achievement of a compos-  
12                           ite rating of 1 or 2 under the *Uniform*  
13                           *Financial Institutions Rating System*  
14                           (or an equivalent rating under an  
15                           equivalent rating system) in connec-  
16                           tion with the most recent examination  
17                           or subsequent review of the depository  
18                           institution; and

19                           “(II) at least a rating of 2 for  
20                           management, if that rating is given; or

21                           “(ii) in the case of any depository in-  
22                           stitution that has not been examined, the  
23                           existence and use of managerial resources  
24                           that the appropriate Federal banking agen-  
25                           cy determines are satisfactory.

1                   “(D) *INCORPORATED DEFINITIONS.*—*The*  
2                   *terms ‘appropriate Federal banking agency’ and*  
3                   *‘depository institution’ have the same meanings*  
4                   *as in section 3 of the Federal Deposit Insurance*  
5                   *Act.*

6                   “(b) *LIMITED EXCLUSIONS FROM COMMUNITY NEEDS*  
7                   *REQUIREMENTS FOR NEWLY ACQUIRED DEPOSITORY IN-*  
8                   *STITUTIONS.*—*Any depository institution which becomes af-*  
9                   *iliated with a national bank during the 24-month period*  
10                   *preceding the submission of an application to acquire a*  
11                   *subsidiary under subsection (a)(2), and any depository in-*  
12                   *stitution which becomes so affiliated after the approval of*  
13                   *such application, may be excluded for purposes of subsection*  
14                   *(a)(2)(C) during the 24-month period beginning on the date*  
15                   *of such acquisition if—*

16                   “(1) *the depository institution has submitted an*  
17                   *affirmative plan to the appropriate Federal banking*  
18                   *agency (as defined in section 3 of the Federal Deposit*  
19                   *Insurance Act) to take such action as may be nec-*  
20                   *essary in order for such institution to achieve a ‘satis-*  
21                   *factory record of meeting community credit needs’, or*  
22                   *better, at the next examination of the institution*  
23                   *under the Community Reinvestment Act of 1977; and*

24                   “(2) *the plan has been approved by the appro-*  
25                   *priate Federal banking agency.”.*

1       (b) *LIMITATION ON CERTAIN ACTIVITIES IN SUBSIDI-*  
2 *ARIES.*—Section 21(a)(1) of the *Banking Act of 1933* (12  
3 *U.S.C. 378(a)(1)*) is amended—

4           (1) by inserting “, or to be a subsidiary of any  
5       person, firm, corporation, association, business trust,  
6       or similar organization engaged (unless such subsidi-  
7       ary (A) was engaged in such securities activities as  
8       of September 15, 1997, or (B) is a nondepository sub-  
9       sidiary of (i) a foreign bank and is not also a sub-  
10      sidiary of a domestic depository institution, or (ii)  
11      an unincorporated private bank that is not insured  
12      under the *Federal Deposit Insurance Act*),” after “to  
13      engage at the same time”; and

14           (2) by inserting “or any subsidiary of such bank,  
15      company, or institution” after “or private bankers”.

16      (c) *TECHNICAL AND CONFORMING AMENDMENTS.*—

17           (1) *ANTITYING.*—Section 106(a) of the *Bank*  
18 *Holding Company Act Amendments of 1970* is  
19 amended by adding at the end the following new sen-  
20 tence: “For purposes of this section, a subsidiary of  
21 a national bank which engages in activities as an  
22 agent pursuant to section 5136A(a)(2) shall be  
23 deemed to be a subsidiary of a bank holding com-  
24 pany, and not a subsidiary of a bank.”.

1           (2) *SECTION 23B.*—*Section 23B(a) of the Federal*  
2           *Reserve Act (12 U.S.C. 371c–1(a)) is amended by*  
3           *adding at the end the following new paragraph:*

4           “(4) *SUBSIDIARY OF NATIONAL BANK.*—*For pur-*  
5           *poses of this section, a subsidiary of a national bank*  
6           *which engages in activities as an agent pursuant to*  
7           *section 5136A(a)(2) shall be deemed to be an affiliate*  
8           *of the national bank and not a subsidiary of the*  
9           *bank.”.*

10          (d) *CLERICAL AMENDMENT.*—*The table of sections for*  
11          *chapter one of title LXII of the Revised Statutes of the*  
12          *United States is amended—*

13                 (1) *by redesignating the item relating to section*  
14                 *5136A as section 5136C; and*

15                 (2) *by inserting after the item relating to section*  
16                 *5136 the following new item:*

               “5136A. *Financial subsidiaries of national banks.*”.

17         ***SEC. 122. MISREPRESENTATIONS REGARDING DEPOSITORY***  
18                         ***INSTITUTION LIABILITY FOR OBLIGATIONS***  
19                         ***OF AFFILIATES.***

20           (a) *IN GENERAL.*—*Chapter 47 of title 18, United*  
21           *States Code, is amended by inserting after section 1007 the*  
22           *following new section:*

1 **“§ 1008. Misrepresentations regarding financial insti-**  
2 **tution liability for obligations of affiliates**

3 “(a) *IN GENERAL.*—No institution-affiliated party of  
4 an insured depository institution or institution-affiliated  
5 party of a subsidiary or affiliate of an insured depository  
6 institution shall fraudulently represent that the institution  
7 is or will be liable for any obligation of a subsidiary or  
8 other affiliate of the institution.

9 “(b) *CRIMINAL PENALTY.*—Whoever violates subsection  
10 (a) shall be fined under this title, imprisoned for not more  
11 than 1 year, or both.

12 “(c) *INSTITUTION-AFFILIATED PARTY DEFINED.*—For  
13 purposes of this section, the term ‘institution-affiliated  
14 party’ with respect to a subsidiary or affiliate has the same  
15 meaning as in section 3 of the Federal Deposit Insurance  
16 Act, except that references to an insured depository institu-  
17 tion shall be deemed to be references to a subsidiary or affil-  
18 iate of an insured depository institution.

19 “(d) *OTHER DEFINITIONS.*—For purposes of this sec-  
20 tion, the terms ‘affiliate’, ‘insured depository institution’,  
21 and ‘subsidiary’ have same meanings as in section 3 of the  
22 Federal Deposit Insurance Act.”.

23 (b) *CLERICAL AMENDMENT.*—The table of sections for  
24 chapter 47 of title 18, United States Code, is amended by  
25 inserting after the item relating to section 1007 the follow-  
26 ing new item:

“1008. Misrepresentations regarding financial institution liability for obligations of affiliates.”.

1 **SEC. 123. REPEAL OF STOCK LOAN LIMIT IN FEDERAL RE-**  
 2 **SERVE ACT.**

3 *Section 11 of the Federal Reserve Act (12 U.S.C. 248)*  
 4 *is amended by striking the paragraph designated as “(m)”*  
 5 *and inserting “(m) [Repealed]”.*

6 **Subtitle D—Wholesale Financial**  
 7 **Holding Companies; Wholesale**  
 8 **Financial Institutions**

9 **CHAPTER 1—WHOLESALE FINANCIAL**  
 10 **HOLDING COMPANIES**

11 **SEC. 131. WHOLESALE FINANCIAL HOLDING COMPANIES ES-**  
 12 **TABLISHED.**

13 *(a) DEFINITION AND SUPERVISION.—Section 10 of the*  
 14 *Bank Holding Company Act of 1956 (12 U.S.C. 1841 et*  
 15 *seq.) is amended to read as follows:*

16 **“SEC. 10. WHOLESALE FINANCIAL HOLDING COMPANIES.**

17 **“(a) COMPANIES THAT CONTROL WHOLESALE FINAN-**  
 18 **CIAL INSTITUTIONS.—**

19 **“(1) WHOLESALE FINANCIAL HOLDING COMPANY**  
 20 **DEFINED.—The term ‘wholesale financial holding**  
 21 **company’ means any company that—**

22 **“(A) is registered as a bank holding com-**  
 23 **pany;**

1           “(B) is predominantly engaged in financial  
2           activities as defined in section 6(g)(2);

3           “(C) controls 1 or more wholesale financial  
4           institutions;

5           “(D) does not control—

6                 “(i) a bank other than a wholesale fi-  
7                 nancial institution;

8                 “(ii) an insured bank other than an  
9                 institution permitted under subparagraph  
10                (D), (F), or (G) of section 2(c)(2); or

11               “(iii) a savings association; and

12           “(E) is not a foreign bank (as defined in  
13           section 1(b)(7) of the International Banking Act  
14           of 1978).

15           “(2) SAVINGS ASSOCIATION TRANSITION PE-  
16           RIOD.—Notwithstanding paragraph (1)(D)(iii), the  
17           Board may permit a company that controls a savings  
18           association and that otherwise meets the requirements  
19           of paragraph (1) to become supervised under para-  
20           graph (1), if the company divests control of any such  
21           savings association within such period, not to exceed  
22           5 years after becoming supervised under paragraph  
23           (1), as permitted by the Board.

24           “(b) SUPERVISION BY THE BOARD.—

1           “(1) *IN GENERAL.*—*The provisions of this section*  
2           *shall govern the reporting, examination, and capital*  
3           *requirements of wholesale financial holding compa-*  
4           *nies.*

5           “(2) *REPORTS.*—

6           “(A) *IN GENERAL.*—*The Board from time to*  
7           *time may require any wholesale financial hold-*  
8           *ing company and any subsidiary of such com-*  
9           *pany to submit reports under oath to keep the*  
10           *Board informed as to—*

11                   “(i) *the company’s or subsidiary’s ac-*  
12                   *tivities, financial condition, policies, sys-*  
13                   *tems for monitoring and controlling finan-*  
14                   *cial and operational risks, and transactions*  
15                   *with depository institution subsidiaries of*  
16                   *the holding company; and*

17                   “(ii) *the extent to which the company*  
18                   *or subsidiary has complied with the provi-*  
19                   *sions of this Act and regulations prescribed*  
20                   *and orders issued under this Act.*

21           “(B) *USE OF EXISTING REPORTS.*—

22                   “(i) *IN GENERAL.*—*The Board shall, to*  
23                   *the fullest extent possible, accept reports in*  
24                   *fulfillment of the Board’s reporting require-*  
25                   *ments under this paragraph that the whole-*

1           *sale financial holding company or any sub-*  
2           *subsidiary of such company has provided or*  
3           *been required to provide to other Federal*  
4           *and State supervisors or to appropriate self-*  
5           *regulatory organizations.*

6           “(ii) *AVAILABILITY.*—*A wholesale fi-*  
7           *nancial holding company or a subsidiary of*  
8           *such company shall provide to the Board, at*  
9           *the request of the Board, a report referred to*  
10           *in clause (i).*

11           “(C) *EXEMPTIONS FROM REPORTING RE-*  
12           *QUIREMENTS.*—

13           “(i) *IN GENERAL.*—*The Board may, by*  
14           *regulation or order, exempt any company*  
15           *or class of companies, under such terms and*  
16           *conditions and for such periods as the*  
17           *Board shall provide in such regulation or*  
18           *order, from the provisions of this paragraph*  
19           *and any regulation prescribed under this*  
20           *paragraph.*

21           “(ii) *CRITERIA FOR CONSIDERATION.*—  
22           *In making any determination under clause*  
23           *(i) with regard to any exemption under*  
24           *such clause, the Board shall consider,*  
25           *among such other factors as the Board may*

1           *determine to be appropriate, the following*  
2           *factors:*

3                   “(I) *Whether information of the*  
4                   *type required under this paragraph is*  
5                   *available from a supervisory agency*  
6                   *(as defined in section 1101(7) of the*  
7                   *Right to Financial Privacy Act of*  
8                   *1978) or a foreign regulatory authority*  
9                   *of a similar type.*

10                   “(II) *The primary business of the*  
11                   *company.*

12                   “(III) *The nature and extent of*  
13                   *the domestic and foreign regulation of*  
14                   *the activities of the company.*

15           “(3) *EXAMINATIONS.—*

16                   “(A) *LIMITED USE OF EXAMINATION AU-*  
17                   *THORITY.—The Board may make examinations*  
18                   *of each wholesale financial holding company and*  
19                   *each subsidiary of such company in order to—*

20                           “(i) *inform the Board regarding the*  
21                           *nature of the operations and financial con-*  
22                           *dition of the wholesale financial holding*  
23                           *company and its subsidiaries;*

24                           “(ii) *inform the Board regarding—*

1                   “(I) the financial and operational  
2                   risks within the wholesale financial  
3                   holding company system that may af-  
4                   fect any depository institution owned  
5                   by such holding company; and

6                   “(II) the systems of the holding  
7                   company and its subsidiaries for mon-  
8                   itoring and controlling those risks; and

9                   “(iii) monitor compliance with the  
10                  provisions of this Act and those governing  
11                  transactions and relationships between any  
12                  depository institution controlled by the  
13                  wholesale financial holding company and  
14                  any of the company’s other subsidiaries.

15                  “(B) *RESTRICTED FOCUS OF EXAMINA-*  
16                  *TIONS.—The Board shall, to the fullest extent*  
17                  *possible, limit the focus and scope of any exam-*  
18                  *ination of a wholesale financial holding com-*  
19                  *pany under this paragraph to—*

20                         “(i) the holding company; and

21                         “(ii) any subsidiary (other than an in-  
22                         sured depository institution subsidiary) of  
23                         the holding company that, because of the  
24                         size, condition, or activities of the subsidi-  
25                         ary, the nature or size of transactions be-

1           *tween such subsidiary and any affiliated*  
2           *depository institution, or the centralization*  
3           *of functions within the holding company*  
4           *system, could have a materially adverse ef-*  
5           *fect on the safety and soundness of any de-*  
6           *pository institution affiliate of the holding*  
7           *company.*

8           “(C) *DEFERENCE TO BANK EXAMINA-*  
9           *TIONS.—The Board shall, to the fullest extent*  
10           *possible, use the reports of examination of depos-*  
11           *itory institutions made by the Comptroller of the*  
12           *Currency, the Federal Deposit Insurance Cor-*  
13           *poration, the Director of the Office of Thrift Su-*  
14           *per vision or the appropriate State depository in-*  
15           *stitution supervisory authority for the purposes*  
16           *of this section.*

17           “(D) *DEFERENCE TO OTHER EXAMINA-*  
18           *TIONS.—The Board shall, to the fullest extent*  
19           *possible, address the circumstances which might*  
20           *otherwise permit or require an examination by*  
21           *the Board by forgoing an examination and by*  
22           *instead reviewing the reports of examination*  
23           *made of—*

1           “(i) *any registered broker or dealer or*  
2           *any registered investment adviser by or on*  
3           *behalf of the Commission; and*

4           “(ii) *any licensed insurance company*  
5           *by or on behalf of any State government in-*  
6           *surance agency responsible for the super-*  
7           *vision of the insurance company.*

8           “(E) *CONFIDENTIALITY OF REPORTED IN-*  
9           *FORMATION.—*

10           “(i) *IN GENERAL.—Notwithstanding*  
11           *any other provision of law, the Board shall*  
12           *not be compelled to disclose any nonpublic*  
13           *information required to be reported under*  
14           *this paragraph, or any information sup-*  
15           *plied to the Board by any domestic or for-*  
16           *ign regulatory agency, that relates to the*  
17           *financial or operational condition of any*  
18           *wholesale financial holding company or any*  
19           *subsidiary of such company.*

20           “(ii) *COMPLIANCE WITH REQUESTS*  
21           *FOR INFORMATION.—No provision of this*  
22           *subparagraph shall be construed as author-*  
23           *izing the Board to withhold information*  
24           *from the Congress, or preventing the Board*  
25           *from complying with a request for informa-*

1            *tion from any other Federal department or*  
2            *agency for purposes within the scope of such*  
3            *department's or agency's jurisdiction, or*  
4            *from complying with any order of a court*  
5            *of competent jurisdiction in an action*  
6            *brought by the United States or the Board.*

7            *“(iii) COORDINATION WITH OTHER*  
8            *LAW.—For purposes of section 552 of title 5,*  
9            *United States Code, this subparagraph shall*  
10           *be considered to be a statute described in*  
11           *subsection (b)(3)(B) of such section.*

12           *“(iv) DESIGNATION OF CONFIDENTIAL*  
13           *INFORMATION.—In prescribing regulations*  
14           *to carry out the requirements of this sub-*  
15           *section, the Board shall designate informa-*  
16           *tion described in or obtained pursuant to*  
17           *this paragraph as confidential information.*

18           *“(F) COSTS.—The cost of any examination*  
19           *conducted by the Board under this section may*  
20           *be assessed against, and made payable by, the*  
21           *wholesale financial holding company.*

22           *“(4) CAPITAL ADEQUACY GUIDELINES.—*

23           *“(A) CAPITAL ADEQUACY PROVISIONS.—*  
24           *Subject to the requirements of, and solely in ac-*  
25           *cordance with, the terms of this paragraph, the*

1           *Board may adopt capital adequacy rules or*  
2           *guidelines for wholesale financial holding compa-*  
3           *nies.*

4           “(B) *METHOD OF CALCULATION.—In devel-*  
5           *oping rules or guidelines under this paragraph,*  
6           *the following provisions shall apply:*

7                   “(i) *FOCUS ON DOUBLE LEVERAGE.—*  
8                   *The Board shall focus on the use by whole-*  
9                   *sale financial holding companies of debt*  
10                   *and other liabilities to fund capital invest-*  
11                   *ments in subsidiaries.*

12                   “(ii) *NO UNWEIGHTED CAPITAL*  
13                   *RATIO.—The Board shall not, by regulation,*  
14                   *guideline, order, or otherwise, impose under*  
15                   *this section a capital ratio that is not based*  
16                   *on appropriate risk-weighting consider-*  
17                   *ations.*

18                   “(iii) *NO CAPITAL REQUIREMENT ON*  
19                   *REGULATED ENTITIES.—The Board shall*  
20                   *not, by regulation, guideline, order or other-*  
21                   *wise, prescribe or impose any capital or*  
22                   *capital adequacy rules, standards, guide-*  
23                   *lines, or requirements upon any subsidiary*  
24                   *that—*

1                   “(I) is not a depository institu-  
2                   tion; and

3                   “(II) is in compliance with appli-  
4                   cable capital requirements of another  
5                   Federal regulatory authority (includ-  
6                   ing the Securities and Exchange Com-  
7                   mission) or State insurance authority.

8                   “(iv) CERTAIN SUBSIDIARIES.—The  
9                   Board shall not, by regulation, guideline,  
10                  order or otherwise, prescribe or impose any  
11                  capital or capital adequacy rules, stand-  
12                  ards, guidelines, or requirements upon any  
13                  subsidiary that is not a depository institu-  
14                  tion and that is registered as an investment  
15                  adviser under the Investment Advisers Act  
16                  of 1940, except that this clause shall not be  
17                  construed as preventing the Board from im-  
18                  posing capital or capital adequacy rules,  
19                  guidelines, standards, or requirements with  
20                  respect to activities of a registered invest-  
21                  ment adviser other than investment advi-  
22                  sory activities or activities incidental to in-  
23                  vestment advisory activities.

24                  “(v) LIMITATIONS ON INDIRECT AC-  
25                  TION.—In developing, establishing, or as-

1           *sessing holding company capital or capital*  
2           *adequacy rules, guidelines, standards, or re-*  
3           *quirements for purposes of this paragraph,*  
4           *the Board shall not take into account the*  
5           *activities, operations, or investments of an*  
6           *affiliated investment company registered*  
7           *under the Investment Company Act of 1940,*  
8           *if the investment company is not—*

9                     *“(I) a bank holding company; or*

10                    *“(II) controlled by a bank holding*  
11                    *company by reason of ownership by the*  
12                    *bank holding company (including*  
13                    *through all of its affiliates) of 25 per-*  
14                    *cent or more of the shares of the invest-*  
15                    *ment company, where the shares owned*  
16                    *by the bank holding company have a*  
17                    *market value equal to more than*  
18                    *\$1,000,000.*

19                    *“(vi) APPROPRIATE EXCLUSIONS.—The*  
20                    *Board shall take full account of—*

21                    *“(I) the capital requirements*  
22                    *made applicable to any subsidiary that*  
23                    *is not a depository institution by an-*  
24                    *other Federal regulatory authority or*  
25                    *State insurance authority; and*

1                   “(II) *industry norms for capital-*  
2                   *ization of a company’s unregulated*  
3                   *subsidiaries and activities.*

4                   “(vii) *INTERNAL RISK MANAGEMENT*  
5                   *MODELS.—The Board may incorporate in-*  
6                   *ternal risk management models of wholesale*  
7                   *financial holding companies into its capital*  
8                   *adequacy guidelines or rules and may take*  
9                   *account of the extent to which resources of*  
10                   *a subsidiary depository institution may be*  
11                   *used to service the debt or other liabilities of*  
12                   *the wholesale financial holding company.*

13                   “(c) *NONFINANCIAL ACTIVITIES AND INVESTMENTS.—*

14                   “(1) *GRANDFATHERED ACTIVITIES.—*

15                   “(A) *IN GENERAL.—Notwithstanding sec-*  
16                   *tion 4(a), a company that becomes a wholesale*  
17                   *financial holding company may continue to en-*  
18                   *gage, directly or indirectly, in any activity and*  
19                   *may retain ownership and control of shares of a*  
20                   *company engaged in any activity if—*

21                   “(i) *on the date of the enactment of the*  
22                   *Financial Services Act of 1998, such whole-*  
23                   *sale financial holding company was law-*  
24                   *fully engaged in that nonfinancial activity,*  
25                   *held the shares of such company, or had en-*

1           tered into a contract to acquire shares of  
2           any company engaged in such activity; and

3           “(ii) the company engaged in such ac-  
4           tivity continues to engage only in the same  
5           activities that such company conducted on  
6           the date of the enactment of the *Financial*  
7           *Services Act of 1998*, and other activities  
8           permissible under this Act.

9           “(B) *NO EXPANSION OF GRANDFATHERED*  
10          *COMMERCIAL ACTIVITIES THROUGH MERGER OR*  
11          *CONSOLIDATION.*—A wholesale financial holding  
12          company that engages in activities or holds  
13          shares pursuant to this paragraph, or a subsidi-  
14          ary of such wholesale financial holding company,  
15          may not acquire, in any merger, consolidation,  
16          or other type of business combination, assets of  
17          any other company which is engaged in any ac-  
18          tivity which the Board has not determined to be  
19          financial in nature or incidental to activities  
20          that are financial in nature under section 6(c).

21          “(C) *LIMITATION TO SINGLE EXEMPTION.*—  
22          No company that engages in any activity or con-  
23          trols any shares under subsection (f) of section 6  
24          may engage in any activity or own any shares  
25          pursuant to this paragraph.

1           “(2) *COMMODITIES.*—

2                   “(A) *IN GENERAL.*—*Notwithstanding sec-*  
3                   *tion 4(a), a wholesale financial holding company*  
4                   *which was predominately engaged as of January*  
5                   *1, 1997, in financial activities in the United*  
6                   *States (or any successor to any such company)*  
7                   *may engage in, or directly or indirectly own or*  
8                   *control shares of a company engaged in, activi-*  
9                   *ties related to the trading, sale, or investment in*  
10                   *commodities and underlying physical properties*  
11                   *that were not permissible for bank holding com-*  
12                   *panies to conduct in the United States as of*  
13                   *January 1, 1997, if such wholesale financial*  
14                   *holding company, or any subsidiary of such*  
15                   *holding company, was engaged directly, indi-*  
16                   *rectly, or through any such company in any of*  
17                   *such activities as of January 1, 1997, in the*  
18                   *United States.*

19                   “(B) *LIMITATION.*—*The attributed aggre-*  
20                   *gate consolidated assets of a wholesale financial*  
21                   *holding company held under the authority grant-*  
22                   *ed under this paragraph and not otherwise per-*  
23                   *mitted to be held by all wholesale financial hold-*  
24                   *ing companies under this section may not exceed*  
25                   *5 percent of the total consolidated assets of the*

1           *wholesale financial holding company, except that*  
2           *the Board may increase such percentage of total*  
3           *consolidated assets by such amounts and under*  
4           *such circumstances as the Board considers ap-*  
5           *propriate, consistent with the purposes of this*  
6           *Act.*

7           “(3) *CROSS MARKETING RESTRICTIONS.—A*  
8           *wholesale financial holding company shall not per-*  
9           *mit—*

10                   “(A) *any company whose shares it owns or*  
11                   *controls pursuant to paragraph (1) or (2) to*  
12                   *offer or market any product or service of an af-*  
13                   *filiated wholesale financial institution; or*

14                   “(B) *any affiliated wholesale financial in-*  
15                   *stitution to offer or market any product or serv-*  
16                   *ice of any company whose shares are owned or*  
17                   *controlled by such wholesale financial holding*  
18                   *company pursuant to such paragraphs.*

19           “(d) *QUALIFICATION OF FOREIGN BANK AS WHOLE-*  
20           *SALE FINANCIAL HOLDING COMPANY.—*

21                   “(1) *IN GENERAL.—Any foreign bank, or any*  
22                   *company that owns or controls a foreign bank, that*  
23                   *operates a branch, agency, or commercial lending*  
24                   *company in the United States, including a foreign*  
25                   *bank or company that owns or controls a wholesale*

1 *financial institution, may request a determination*  
2 *from the Board that such bank or company be treated*  
3 *as a wholesale financial holding company (other than*  
4 *for purposes of subsection (c)), subject to such condi-*  
5 *tions as the Board deems appropriate, giving due re-*  
6 *gard to the principle of national treatment and equal-*  
7 *ity of competitive opportunity and the requirements*  
8 *imposed on domestic banks and companies.*

9 “(2) *CONDITIONS FOR TREATMENT AS A WHOLE-*  
10 *SALE FINANCIAL HOLDING COMPANY.—A foreign bank*  
11 *and a company that owns or controls a foreign bank*  
12 *may not be treated as a wholesale financial holding*  
13 *company unless the bank and company meet and con-*  
14 *tinue to meet the following criteria:*

15 “(A) *NO INSURED DEPOSITS.—No deposits*  
16 *held directly by a foreign bank or through an af-*  
17 *filiate (other than an institution described in*  
18 *subparagraph (D) or (F) of section 2(c)(2)) are*  
19 *insured under the Federal Deposit Insurance*  
20 *Act.*

21 “(B) *CAPITAL STANDARDS.—The foreign*  
22 *bank meets risk-based capital standards com-*  
23 *parable to the capital standards required for a*  
24 *wholesale financial institution, giving due re-*

1           *gard to the principle of national treatment and*  
2           *equality of competitive opportunity.*

3           “(C) *TRANSACTION WITH AFFILIATES.—*  
4           *Transactions between a branch, agency, or com-*  
5           *mercial lending company subsidiary of the for-*  
6           *ign bank in the United States, and any securi-*  
7           *ties affiliate or company in which the foreign*  
8           *bank (or any company that owns or controls*  
9           *such foreign bank), that engages in any activity*  
10           *authorized only as a result of the application of*  
11           *subsection (c) or (g) of section 6, comply with the*  
12           *provisions of sections 23A and 23B of the Fed-*  
13           *eral Reserve Act in the same manner and to the*  
14           *same extent as such transactions would be re-*  
15           *quired to comply with such sections if the foreign*  
16           *bank were a member bank.*

17           “(3) *TREATMENT AS A WHOLESALE FINANCIAL*  
18           *INSTITUTION.—Any foreign bank which is, or is affili-*  
19           *ated with a company which is, treated as a wholesale*  
20           *financial holding company under this subsection shall*  
21           *be treated as a wholesale financial institution for*  
22           *purposes of paragraphs (1)(C) and (3) of section*  
23           *9B(c) of the Federal Reserve Act, and any such for-*  
24           *ign bank or company shall be subject to paragraphs*  
25           *(3), (4), and (5) of section 9B(d) of the Federal Re-*

1     *serve Act, except that the Board may adopt such*  
2     *modifications, conditions, or exemptions as the Board*  
3     *deems appropriate, giving due regard to the principle*  
4     *of national treatment and equality of competitive op-*  
5     *portunity.*

6             “(4) *SUPERVISION OF FOREIGN BANK WHICH*  
7     *MAINTAINS NO BANKING PRESENCE OTHER THAN CON-*  
8     *TROL OF A WHOLESALE FINANCIAL INSTITUTION.—A*  
9     *foreign bank that owns or controls a wholesale finan-*  
10    *cial institution but does not operate a branch, agency,*  
11    *or commercial lending company in the United States*  
12    *(and any company that owns or controls such foreign*  
13    *bank) may request a determination from the Board*  
14    *that such bank or company be treated as a wholesale*  
15    *financial holding company, except that such bank or*  
16    *company shall be subject to the restrictions of para-*  
17    *graphs (2)(A) and (3) of this subsection.*

18            “(5) *NO EFFECT ON OTHER PROVISIONS.—This*  
19    *section shall not be construed as limiting the author-*  
20    *ity of the Board under the International Banking Act*  
21    *of 1978 with respect to the regulation, supervision, or*  
22    *examination of foreign banks and their offices and af-*  
23    *iliates in the United States.”.*

1       (b) *UNINSURED STATE BANKS.*—Section 9 of the Fed-  
2 *eral Reserve Act (U.S.C. 321 et seq.) is amended by adding*  
3 *at the end the following new paragraph:*

4               “(24) *ENFORCEMENT AUTHORITY OVER UNIN-*  
5 *SURED STATE MEMBER BANKS.*—Section 3(u) of the  
6 *Federal Deposit Insurance Act, subsections (j) and (k)*  
7 *of section 7 of such Act, and subsections (b) through*  
8 *(n), (s), (u), and (v) of section 8 of such Act shall*  
9 *apply to an uninsured State member bank in the*  
10 *same manner and to the same extent such provisions*  
11 *apply to an insured State member bank and any ref-*  
12 *erence in any such provision to ‘insured depository*  
13 *institution’ shall be deemed to be a reference to ‘unin-*  
14 *sured State member bank’ for purposes of this para-*  
15 *graph.”.*

16 **SEC. 132. AUTHORIZATION TO RELEASE REPORTS.**

17       (a) *FEDERAL RESERVE ACT.*—The last sentence of the  
18 *eighth undesignated paragraph of section 9 of the Federal*  
19 *Reserve Act (12 U.S.C. 326) is amended to read as follows:*  
20 *“The Board of Governors of the Federal Reserve System,*  
21 *at its discretion, may furnish reports of examination or*  
22 *other confidential supervisory information concerning State*  
23 *member banks or any other entities examined under any*  
24 *other authority of the Board to any Federal or State au-*  
25 *thorities with supervisory or regulatory authority over the*

1 *examined entity, to officers, directors, or receivers of the ex-*  
 2 *amined entity, and to any other person that the Board de-*  
 3 *termines to be proper.”.*

4 (b) *COMMODITY FUTURES TRADING COMMISSION.—*  
 5 *The Right to Financial Privacy Act of 1978 (12 U.S.C.*  
 6 *3401 et seq.) is amended—*

7 (1) *in section 1101(7) (12 U.S.C. 3401(7))—*

8 (A) *by redesignating subparagraphs (G)*  
 9 *and (H) as subparagraphs (H) and (I), respec-*  
 10 *tively; and*

11 (B) *by inserting after subparagraph (F) the*  
 12 *following new subparagraph:*

13 “(G) *the Commodity Futures Trading Com-*  
 14 *mission; or”;* and

15 (2) *in section 1112(e) (12 U.S.C. 3412(e)), by*  
 16 *striking “and the Securities and Exchange Commis-*  
 17 *sion” and inserting “, the Securities and Exchange*  
 18 *Commission, and the Commodity Futures Trading*  
 19 *Commission”.*

20 **SEC. 133. CONFORMING AMENDMENTS.**

21 (a) *BANK HOLDING COMPANY ACT OF 1956.—*

22 (1) *DEFINITIONS.—Section 2 of the Bank Hold-*  
 23 *ing Company Act of 1956 (12 U.S.C. 1842) is amend-*  
 24 *ed by adding at the end the following new subsections:*

1       “(p) *WHOLESALE FINANCIAL INSTITUTION.*—*The term*  
2 *‘wholesale financial institution’ means a wholesale finan-*  
3 *cial institution subject to section 9B of the Federal Reserve*  
4 *Act.*

5       “(q) *COMMISSION.*—*The term ‘Commission’ means the*  
6 *Securities and Exchange Commission.*

7       “(r) *DEPOSITORY INSTITUTION.*—*The term ‘depository*  
8 *institution’—*

9               “(1) *has the same meaning as in section 3 of the*  
10 *Federal Deposit Insurance Act; and*

11              “(2) *includes a wholesale financial institution.*”.

12              (2) *DEFINITION OF BANK INCLUDES WHOLESALE*  
13 *FINANCIAL INSTITUTION.*—*Section 2(c)(1) of the Bank*  
14 *Holding Company Act of 1956 (12 U.S.C. 1841(c)(1))*  
15 *is amended by adding at the end the following new*  
16 *subparagraph:*

17              “(C) *A wholesale financial institution.*”.

18              (3) *INCORPORATED DEFINITIONS.*—*Section 2(n)*  
19 *of the Bank Holding Company Act of 1956 (12*  
20 *U.S.C. 1841(n)) is amended by inserting “‘insured*  
21 *bank’,” after “‘in danger of default’,”.*

22              (4) *EXCEPTION TO DEPOSIT INSURANCE RE-*  
23 *QUIREMENT.*—*Section 3(e) of the Bank Holding Com-*  
24 *pany Act of 1956 (12 U.S.C. 1842(e)) is amended by*

1       *adding at the end the following: “This subsection shall*  
 2       *not apply to a wholesale financial institution.”.*

3       **(b) FEDERAL DEPOSIT INSURANCE ACT.**—*Section*  
 4       *3(q)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C.*  
 5       *1813(q)(2)(A)) is amended to read as follows:*

6               *“(A) any State member insured bank (ex-*  
 7               *cept a District bank) and any wholesale finan-*  
 8               *cial institution as authorized pursuant to section*  
 9               *9B of the Federal Reserve Act;”.*

10       **CHAPTER 2—WHOLESALE FINANCIAL**  
 11       **INSTITUTIONS**

12       **SEC. 136. WHOLESALE FINANCIAL INSTITUTIONS.**

13       **(a) NATIONAL WHOLESALE FINANCIAL INSTITU-**  
 14       **TIONS.**—

15               **(1) IN GENERAL.**—*Chapter one of title LXII of*  
 16       *the Revised Statutes of the United States (12 U.S.C.*  
 17       *21 et seq.) is amended by inserting after section*  
 18       *5136A (as added by section 121(a) of this title) the*  
 19       *following new section:*

20       **“SEC. 5136B. NATIONAL WHOLESALE FINANCIAL INSTITU-**  
 21       **TIONS.**

22               **“(a) AUTHORIZATION OF THE COMPTROLLER RE-**  
 23       **QUIRED.**—*A national bank may apply to the Comptroller*  
 24       *on such forms and in accordance with such regulations as*

1 *the Comptroller may prescribe, for permission to operate*  
 2 *as a national wholesale financial institution.*

3       “(b) *REGULATION.*—*A national wholesale financial in-*  
 4 *stitution may exercise, in accordance with such institu-*  
 5 *tion’s articles of incorporation and regulations issued by*  
 6 *the Comptroller, all the powers and privileges of a national*  
 7 *bank formed in accordance with section 5133 of the Revised*  
 8 *Statutes of the United States, subject to section 9B of the*  
 9 *Federal Reserve Act and the limitations and restrictions*  
 10 *contained therein.*

11       “(c) *COMMUNITY REINVESTMENT ACT OF 1977.*—*A*  
 12 *national wholesale financial institution shall be subject to*  
 13 *the Community Reinvestment Act of 1977, only if the*  
 14 *wholesale financial institution has an affiliate that is an*  
 15 *insured depository institution or that operates an insured*  
 16 *branch, as those terms are defined in section 3 of the Fed-*  
 17 *eral Deposit Insurance Act.”.*

18               (2) *CLERICAL AMENDMENT.*—*The table of sec-*  
 19 *tions for chapter one of title LXII of the Revised Stat-*  
 20 *utes of the United States is amended by inserting*  
 21 *after the item relating to section 5136A (as added by*  
 22 *section 121(d) of this title) the following new item:*

“5136B. *National wholesale financial institutions.*”.

23       (b) *STATE WHOLESAL FINANCIAL INSTITUTIONS.*—  
 24 *The Federal Reserve Act (12 U.S.C. 221 et seq.) is amended*  
 25 *by inserting after section 9A the following new section:*

1 **“SEC. 9B. WHOLESALE FINANCIAL INSTITUTIONS.**

2       “(a) *APPLICATION FOR MEMBERSHIP AS WHOLESALE*  
3 *FINANCIAL INSTITUTION.—*

4               “(1) *APPLICATION REQUIRED.—*

5                       “(A) *IN GENERAL.—Any bank may apply*  
6 *to the Board of Governors of the Federal Reserve*  
7 *System to become a wholesale financial institu-*  
8 *tion and, as a wholesale financial institution, to*  
9 *subscribe to the stock of the Federal reserve bank*  
10 *organized within the district where the applying*  
11 *bank is located.*

12                       “(B) *TREATMENT AS MEMBER BANK.—Any*  
13 *application under subparagraph (A) shall be*  
14 *treated as an application under, and shall be*  
15 *subject to the provisions of section 9.*

16               “(2) *INSURANCE TERMINATION.—No bank the de-*  
17 *posits of which are insured under the Federal Deposit*  
18 *Insurance Act may become a wholesale financial in-*  
19 *stitution unless it has met all requirements under*  
20 *that Act for voluntary termination of deposit insur-*  
21 *ance.*

22       “(b) *GENERAL REQUIREMENTS APPLICABLE TO*  
23 *WHOLESALE FINANCIAL INSTITUTIONS.—*

24               “(1) *FEDERAL RESERVE ACT.—Except as other-*  
25 *wise provided in this section, wholesale financial in-*  
26 *stitutions shall be member banks and shall be subject*

1       to the provisions of this Act that apply to member  
2       banks to the same extent and in the same manner as  
3       State member insured banks, except that a wholesale  
4       financial institution may terminate membership  
5       under this Act only with the prior written approval  
6       of the Board and on terms and conditions that the  
7       Board determines are appropriate to carry out the  
8       purposes of this Act.

9               “(2) *PROMPT CORRECTIVE ACTION.*—A wholesale  
10       financial institution shall be deemed to be an insured  
11       depository institution for purposes of section 38 of the  
12       Federal Deposit Insurance Act except that—

13               “(A) the relevant capital levels and capital  
14       measures for each capital category shall be the  
15       levels specified by the Board for wholesale finan-  
16       cial institutions; and

17               “(B) all references to the appropriate Fed-  
18       eral banking agency or to the Corporation in  
19       that section shall be deemed to be references to  
20       the Board.

21               “(3) *ENFORCEMENT AUTHORITY.*—Subsections  
22       (j) and (k) of section 7, subsections (b) through (n),  
23       (s), and (v) of section 8, and section 19 of the Federal  
24       Deposit Insurance Act shall apply to a wholesale fi-  
25       nancial institution in the same manner and to the

1       *same extent as such provisions apply to State member*  
2       *insured banks and any reference in such sections to*  
3       *an insured depository institution shall be deemed to*  
4       *include a reference to a wholesale financial institu-*  
5       *tion.*

6               “(4) *CERTAIN OTHER STATUTES APPLICABLE.—*  
7       *A wholesale financial institution shall be deemed to*  
8       *be a banking institution, and the Board shall be the*  
9       *appropriate Federal banking agency for such bank*  
10       *and all such bank’s affiliates, for purposes of the*  
11       *International Lending Supervision Act.*

12               “(5) *BANK MERGER ACT.—A wholesale financial*  
13       *institution shall be subject to sections 18(c) and 44 of*  
14       *the Federal Deposit Insurance Act in the same man-*  
15       *ner and to the same extent the wholesale financial in-*  
16       *stitution would be subject to such sections if the insti-*  
17       *tution were a State member insured bank.*

18               “(6) *BRANCHING.—Notwithstanding any other*  
19       *provision of law, a wholesale financial institution*  
20       *may establish and operate a branch at any location*  
21       *on such terms and conditions as established by the*  
22       *Board and, in the case of a State-chartered wholesale*  
23       *financial institution, with the approval of the Board,*  
24       *and, in the case of a national bank wholesale finan-*

1        *cial institution, with the approval of the Comptroller*  
2        *of the Currency.*

3                “(7) *ACTIVITIES OF OUT-OF-STATE BRANCHES OF*  
4        *WHOLESALE FINANCIAL INSTITUTIONS.—*

5                “(A) *GENERAL.—A State-chartered whole-*  
6        *sale financial institution shall be deemed to be a*  
7        *State bank and an insured State bank for pur-*  
8        *poses of paragraphs (1), (2), and (3) of section*  
9        *24(j) of the Federal Deposit Insurance Act, and*  
10        *a national wholesale financial institution shall*  
11        *be deemed to be a national bank for purposes of*  
12        *section 5155(f) of the Revised Statutes of the*  
13        *United States.*

14                “(B) *DEFINITIONS.—The following defini-*  
15        *tions shall apply solely for purposes of applying*  
16        *paragraph (1):*

17                “(i) *HOME STATE.—The term ‘home*  
18        *State’ means—*

19                “(I) *with respect to a national*  
20        *wholesale financial institution, the*  
21        *State in which the main office of the*  
22        *institution is located; and*

23                “(II) *with respect to a State-char-*  
24        *tered wholesale financial institution,*

1                   *the State by which the institution is*  
2                   *chartered.*

3                   “(ii) *HOST STATE.*—*The term ‘host*  
4                   *State’ means a State, other than the home*  
5                   *State of the wholesale financial institution,*  
6                   *in which the institution maintains, or seeks*  
7                   *to establish and maintain, a branch.*

8                   “(iii) *OUT-OF-STATE BANK.*—*The term*  
9                   *‘out-of-State bank’ means, with respect to*  
10                   *any State, a wholesale financial institution*  
11                   *whose home State is another State.*

12                   “(8) *DISCRIMINATION REGARDING INTEREST*  
13                   *RATES.*—*Section 27 of the Federal Deposit Insurance*  
14                   *Act shall apply to State-chartered wholesale financial*  
15                   *institutions in the same manner and to the same ex-*  
16                   *tent as such provisions apply to State member in-*  
17                   *sured banks and any reference in such section to a*  
18                   *State-chartered insured depository institution shall be*  
19                   *deemed to include a reference to a State-chartered*  
20                   *wholesale financial institution.*

21                   “(9) *PREEMPTION OF STATE LAWS REQUIRING*  
22                   *DEPOSIT INSURANCE FOR WHOLESALE FINANCIAL IN-*  
23                   *STITUTIONS.*—*The appropriate State banking author-*  
24                   *ity may grant a charter to a wholesale financial in-*  
25                   *stitution notwithstanding any State constitution or*

1     *statute requiring that the institution obtain insurance*  
2     *of its deposits and any such State constitution or*  
3     *statute is hereby preempted solely for purposes of this*  
4     *paragraph.*

5             “(10) *PARITY FOR WHOLESALE FINANCIAL INSTI-*  
6     *TUTIONS.—A State bank that is a wholesale financial*  
7     *institution under this section shall have all of the*  
8     *rights, powers, privileges, and immunities (including*  
9     *those derived from status as a federally chartered in-*  
10    *stitution) of and as if it were a national bank, subject*  
11    *to such terms and conditions as established by the*  
12    *Board.*

13            “(11) *COMMUNITY REINVESTMENT ACT OF*  
14    *1977.—A State wholesale financial institution shall be*  
15    *subject to the Community Reinvestment Act of 1977,*  
16    *only if the wholesale financial institution has an af-*  
17    *filiate that is an insured depository institution or*  
18    *that operates an insured branch, as those terms are*  
19    *defined in section 3 of the Federal Deposit Insurance*  
20    *Act.*

21            “(c) *SPECIFIC REQUIREMENTS APPLICABLE TO*  
22    *WHOLESALE FINANCIAL INSTITUTIONS.—*

23                    “(1) *LIMITATIONS ON DEPOSITS.—*

24                            “(A) *MINIMUM AMOUNT.—*

1           “(i) *IN GENERAL.*—No wholesale finan-  
2           cial institution may receive initial deposits  
3           of \$100,000 or less, other than on an inci-  
4           dental and occasional basis.

5           “(ii) *LIMITATION ON DEPOSITS OF*  
6           *LESS THAN \$100,000.*—No wholesale finan-  
7           cial institution may receive initial deposits  
8           of \$100,000 or less if such deposits con-  
9           stitute more than 5 percent of the institu-  
10          tion’s total deposits.

11          “(B) *NO DEPOSIT INSURANCE.*—Except as  
12          otherwise provided in section 8A(f) of the Federal  
13          Deposit Insurance Act, no deposits held by a  
14          wholesale financial institution shall be insured  
15          deposits under the Federal Deposit Insurance  
16          Act.

17          “(C) *ADVERTISING AND DISCLOSURE.*—The  
18          Board shall prescribe regulations pertaining to  
19          advertising and disclosure by wholesale financial  
20          institutions to ensure that each depositor is noti-  
21          fied that deposits at the wholesale financial in-  
22          stitution are not federally insured or otherwise  
23          guaranteed by the United States Government.

24          “(2) *MINIMUM CAPITAL LEVELS APPLICABLE TO*  
25          *WHOLESALE FINANCIAL INSTITUTIONS.*—The Board

1 shall, by regulation, adopt capital requirements for  
2 wholesale financial institutions—

3 “(A) to account for the status of wholesale  
4 financial institutions as institutions that accept  
5 deposits that are not insured under the Federal  
6 Deposit Insurance Act; and

7 “(B) to provide for the safe and sound oper-  
8 ation of the wholesale financial institution with-  
9 out undue risk to creditors or other persons, in-  
10 cluding Federal reserve banks, engaged in trans-  
11 actions with the bank.

12 “(3) *ADDITIONAL REQUIREMENTS APPLICABLE*  
13 *TO WHOLESALE FINANCIAL INSTITUTIONS.*—In addi-  
14 tion to any requirement otherwise applicable to State  
15 member insured banks or applicable, under this sec-  
16 tion, to wholesale financial institutions, the Board  
17 may impose, by regulation or order, upon wholesale  
18 financial institutions—

19 “(A) limitations on transactions, direct or  
20 indirect, with affiliates to prevent—

21 “(i) the transfer of risk to the deposit  
22 insurance funds; or

23 “(ii) an affiliate from gaining access  
24 to, or the benefits of, credit from a Federal

1           *reserve bank, including overdrafts at a Fed-*  
2           *eral reserve bank;*

3           *“(B) special clearing balance requirements;*

4           *and*

5           *“(C) any additional requirements that the*  
6           *Board determines to be appropriate or necessary*

7           *to—*

8                   *“(i) promote the safety and soundness*  
9                   *of the wholesale financial institution or any*  
10                  *insured depository institution affiliate of*  
11                  *the wholesale financial institution;*

12                  *“(ii) prevent the transfer of risk to the*  
13                  *deposit insurance funds; or*

14                  *“(iii) protect creditors and other per-*  
15                  *sons, including Federal reserve banks, en-*  
16                  *gaged in transactions with the wholesale fi-*  
17                  *nancial institution.*

18           *“(4) EXEMPTIONS FOR WHOLESAL FINANCIAL*  
19           *INSTITUTIONS.—The Board may, by regulation or*  
20           *order, exempt any wholesale financial institution*  
21           *from any provision applicable to a member bank that*  
22           *is not a wholesale financial institution, if the Board*  
23           *finds that such exemption is not inconsistent with—*

24                    *“(A) the promotion of the safety and sound-*  
25                    *ness of the wholesale financial institution or any*

1           *insured depository institution affiliate of the*  
2           *wholesale financial institution;*

3           “(B) *the protection of the deposit insurance*  
4           *funds; and*

5           “(C) *the protection of creditors and other*  
6           *persons, including Federal reserve banks, en-*  
7           *gaged in transactions with the wholesale finan-*  
8           *cial institution.*

9           “(5) *LIMITATION ON TRANSACTIONS BETWEEN A*  
10          *WHOLESALE FINANCIAL INSTITUTION AND AN IN-*  
11          *SURED BANK.—For purposes of section 23A(d)(1) of*  
12          *the Federal Reserve Act, a wholesale financial institu-*  
13          *tion that is affiliated with an insured bank shall not*  
14          *be a bank.*

15          “(6) *NO EFFECT ON OTHER PROVISIONS.—This*  
16          *section shall not be construed as limiting the Board’s*  
17          *authority over member banks under any other provi-*  
18          *sion of law, or to create any obligation for any Fed-*  
19          *eral reserve bank to make, increase, renew, or extend*  
20          *any advance or discount under this Act to any mem-*  
21          *ber bank or other depository institution.*

22          “(d) *CAPITAL AND MANAGERIAL REQUIREMENTS.—*

23                 “(1) *IN GENERAL.—A wholesale financial insti-*  
24                 *tution shall be well capitalized and well managed.*

1           “(2) *NOTICE TO COMPANY.*—*The Board shall*  
2           *promptly provide notice to a company that controls*  
3           *a wholesale financial institution whenever such whole-*  
4           *sale financial institution is not well capitalized or*  
5           *well managed.*

6           “(3) *AGREEMENT TO RESTORE INSTITUTION.*—  
7           *Not later than 45 days after the date of receipt of a*  
8           *notice under paragraph (2) (or such additional pe-*  
9           *riod not to exceed 90 days as the Board may permit),*  
10          *the company shall execute an agreement acceptable to*  
11          *the Board to restore the wholesale financial institu-*  
12          *tion to compliance with all of the requirements of*  
13          *paragraph (1).*

14          “(4) *LIMITATIONS UNTIL INSTITUTION RE-*  
15          *STORED.*—*Until the wholesale financial institution is*  
16          *restored to compliance with all of the requirements of*  
17          *paragraph (1), the Board may impose such limita-*  
18          *tions on the conduct or activities of the company or*  
19          *any affiliate of the company as the Board determines*  
20          *to be appropriate under the circumstances.*

21          “(5) *FAILURE TO RESTORE.*—*If the company*  
22          *does not execute and implement an agreement in ac-*  
23          *cordance with paragraph (3), comply with any limi-*  
24          *tation imposed under paragraph (4), restore the*  
25          *wholesale financial institution to well capitalized sta-*

1        *tus not later than 180 days after the date of receipt*  
2        *by the company of the notice described in paragraph*  
3        *(2), or restore the wholesale financial institution to*  
4        *well managed status within such period as the Board*  
5        *may permit, the company shall, under such terms*  
6        *and conditions as may be imposed by the Board and*  
7        *subject to such extension of time as may be granted*  
8        *in the Board's discretion, divest control of its subsidi-*  
9        *ary depository institutions.*

10            “(6) *WELL MANAGED DEFINED.*—*For purposes of*  
11        *this subsection, the term ‘well managed’ has the same*  
12        *meaning as in section 2 of the Bank Holding Com-*  
13        *pany Act of 1956.*

14            “(e) *RESOLUTION OF WHOLESALE FINANCIAL INSTI-*  
15        *TUTIONS.*—

16            “(1) *CONSERVATORSHIP OR RECEIVERSHIP.*—

17            “(A) *APPOINTMENT.*—*The Board may ap-*  
18        *point a conservator or receiver for a wholesale fi-*  
19        *nancial institution to the same extent and in the*  
20        *same manner as the Comptroller of the Currency*  
21        *may appoint a conservator or receiver for a na-*  
22        *tional bank.*

23            “(B) *POWERS.*—*The conservator or receiver*  
24        *for a wholesale financial institution shall exer-*  
25        *cise the same powers, functions, and duties, sub-*

1           *ject to the same limitations, as a conservator or*  
2           *receiver for a national bank.*

3           “(2) *BOARD AUTHORITY.*—*The Board shall have*  
4           *the same authority with respect to any conservator or*  
5           *receiver appointed for a wholesale financial institu-*  
6           *tion under paragraph (1), and the wholesale financial*  
7           *institution for which it has been appointed, as the*  
8           *Comptroller of the Currency has with respect to a*  
9           *conservator or receiver for a national bank and the*  
10          *national bank for which the conservator or receiver*  
11          *has been appointed.*

12          “(3) *BANKRUPTCY PROCEEDINGS.*—*The Comp-*  
13          *troller of the Currency (in the case of a national*  
14          *wholesale financial institution) and the Board may*  
15          *direct the conservator or receiver of a wholesale finan-*  
16          *cial institution to file a petition pursuant to title 11,*  
17          *United States Code, in which case, title 11, United*  
18          *States Code, shall apply to the wholesale financial in-*  
19          *stitution in lieu of otherwise applicable Federal or*  
20          *State insolvency law.*

21          “(f) *EXCLUSIVE JURISDICTION.*—*Subsections (c) and*  
22          *(e) of section 43 of the Federal Deposit Insurance Act shall*  
23          *not apply to any wholesale financial institution.”.*

24          (c) *VOLUNTARY TERMINATION OF INSURED STATUS BY*  
25          *CERTAIN INSTITUTIONS.*—

1           (1) *SECTION 8 DESIGNATIONS.*—Section 8(a) of  
2     *the Federal Deposit Insurance Act (12 U.S.C.*  
3     *1818(a)) is amended—*

4                     (A) *by striking paragraph (1); and*

5                     (B) *by redesignating paragraphs (2)*  
6     *through (10) as paragraphs (1) through (9), re-*  
7     *spectively.*

8           (2) *VOLUNTARY TERMINATION OF INSURED STA-*  
9     *TUS.*—*The Federal Deposit Insurance Act (12 U.S.C.*  
10    *1811 et seq.) is amended by inserting after section 8*  
11    *the following new section:*

12    **“SEC. 8A. VOLUNTARY TERMINATION OF STATUS AS IN-**  
13                     **SURED DEPOSITORY INSTITUTION.**

14           “(a) *IN GENERAL.*—*Except as provided in subsection*  
15    *(b), an insured State bank or a national bank may volun-*  
16    *tarily terminate such bank’s status as an insured depository*  
17    *institution in accordance with regulations of the Corpora-*  
18    *tion if—*

19                     “(1) *the bank provides written notice of the*  
20    *bank’s intent to terminate such insured status—*

21                             “(A) *to the Corporation and the Board of*  
22    *Governors of the Federal Reserve System not less*  
23    *than 6 months before the effective date of such*  
24    *termination; and*

1           “(B) to all depositors at such bank, not less  
2 than 6 months before the effective date of the ter-  
3 mination of such status; and

4           “(2) either—

5           “(A) the deposit insurance fund of which  
6 such bank is a member equals or exceeds the  
7 fund’s designated reserve ratio as of the date the  
8 bank provides a written notice under paragraph  
9 (1) and the Corporation determines that the fund  
10 will equal or exceed the applicable designated re-  
11 serve ratio for the 2 semiannual assessment peri-  
12 ods immediately following such date; or

13           “(B) the Corporation and the Board of Gov-  
14 ernors of the Federal Reserve System approved  
15 the termination of the bank’s insured status and  
16 the bank pays an exit fee in accordance with  
17 subsection (e).

18           “(b) *EXCEPTION.*—Subsection (a) shall not apply with  
19 respect to—

20           “(1) an insured savings association; or

21           “(2) an insured branch that is required to be in-  
22 sured under subsection (a) or (b) of section 6 of the  
23 *International Banking Act of 1978.*

24           “(c) *ELIGIBILITY FOR INSURANCE TERMINATED.*—  
25 Any bank that voluntarily elects to terminate the bank’s

1 *insured status under subsection (a) shall not be eligible for*  
2 *insurance on any deposits or any assistance authorized*  
3 *under this Act after the period specified in subsection (f)(1).*

4       “(d) *INSTITUTION MUST BECOME WHOLESALE FINAN-*  
5 *CIAL INSTITUTION OR TERMINATE DEPOSIT-TAKING AC-*  
6 *TIVITIES.—Any depository institution which voluntarily*  
7 *terminates such institution’s status as an insured deposi-*  
8 *tory institution under this section may not, upon termi-*  
9 *nation of insurance, accept any deposits unless the institu-*  
10 *tion is a wholesale financial institution subject to section*  
11 *9B of the Federal Reserve Act.*

12       “(e) *EXIT FEES.—*

13               “(1) *IN GENERAL.—Any bank that voluntarily*  
14 *terminates such bank’s status as an insured deposi-*  
15 *tory institution under this section shall pay an exit*  
16 *fee in an amount that the Corporation determines is*  
17 *sufficient to account for the institution’s pro rata*  
18 *share of the amount (if any) which would be required*  
19 *to restore the relevant deposit insurance fund to the*  
20 *fund’s designated reserve ratio as of the date the bank*  
21 *provides a written notice under subsection (a)(1).*

22               “(2) *PROCEDURES.—The Corporation shall pre-*  
23 *scribe, by regulation, procedures for assessing any exit*  
24 *fee under this subsection.*

1       “(f) *TEMPORARY INSURANCE OF DEPOSITS INSURED*  
2 *AS OF TERMINATION.*—

3               “(1) *TRANSITION PERIOD.*—*The insured deposits*  
4 *of each depositor in a State bank or a national bank*  
5 *on the effective date of the voluntary termination of*  
6 *the bank’s insured status, less all subsequent with-*  
7 *drawals from any deposits of such depositor, shall*  
8 *continue to be insured for a period of not less than*  
9 *6 months and not more than 2 years, as determined*  
10 *by the Corporation. During such period, no additions*  
11 *to any such deposits, and no new deposits in the de-*  
12 *pository institution made after the effective date of*  
13 *such termination shall be insured by the Corporation.*

14               “(2) *TEMPORARY ASSESSMENTS; OBLIGATIONS*  
15 *AND DUTIES.*—*During the period specified in para-*  
16 *graph (1) with respect to any bank, the bank shall*  
17 *continue to pay assessments under section 7 as if the*  
18 *bank were an insured depository institution. The*  
19 *bank shall, in all other respects, be subject to the au-*  
20 *thority of the Corporation and the duties and obliga-*  
21 *tions of an insured depository institution under this*  
22 *Act during such period, and in the event that the*  
23 *bank is closed due to an inability to meet the de-*  
24 *mands of the bank’s depositors during such period,*  
25 *the Corporation shall have the same powers and*

1 *rights with respect to such bank as in the case of an*  
2 *insured depository institution.*

3 “(g) *ADVERTISEMENTS.*—

4 “(1) *IN GENERAL.*—*A bank that voluntarily ter-*  
5 *minates the bank’s insured status under this section*  
6 *shall not advertise or hold itself out as having insured*  
7 *deposits, except that the bank may advertise the tem-*  
8 *porary insurance of deposits under subsection (f) if,*  
9 *in connection with any such advertisement, the adver-*  
10 *tisement also states with equal prominence that addi-*  
11 *tions to deposits and new deposits made after the ef-*  
12 *fective date of the termination are not insured.*

13 “(2) *CERTIFICATES OF DEPOSIT, OBLIGATIONS,*  
14 *AND SECURITIES.*—*Any certificate of deposit or other*  
15 *obligation or security issued by a State bank or a na-*  
16 *tional bank after the effective date of the voluntary*  
17 *termination of the bank’s insured status under this*  
18 *section shall be accompanied by a conspicuous,*  
19 *prominently displayed notice that such certificate of*  
20 *deposit or other obligation or security is not insured*  
21 *under this Act.*

22 “(h) *NOTICE REQUIREMENTS.*—

23 “(1) *NOTICE TO THE CORPORATION.*—*The notice*  
24 *required under subsection (a)(1)(A) shall be in such*  
25 *form as the Corporation may require.*

1           “(2) *NOTICE TO DEPOSITORS.*—*The notice re-*  
2           *quired under subsection (a)(1)(B) shall be—*

3                     “(A) *sent to each depositor’s last address of*  
4                     *record with the bank; and*

5                     “(B) *in such manner and form as the Cor-*  
6                     *poration finds to be necessary and appropriate*  
7                     *for the protection of depositors.”.*

8           “(3) *DEFINITION.*—*Section 19(b)(1)(A)(i) of the*  
9           *Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i)) is*  
10           *amended by inserting “, or any wholesale financial*  
11           *institution subject to section 9B of this Act” after*  
12           *“such Act”.*

13           “(d) *TECHNICAL AND CONFORMING AMENDMENTS TO*  
14           *THE BANKRUPTCY CODE.*—

15                     “(1) *BANKRUPTCY CODE DEBTORS.*—*Section*  
16                     *109(b)(2) of title 11, United States Code, is amended*  
17                     *by striking “; or” and inserting the following: “, ex-*  
18                     *cept that—*

19                             “(A) *a wholesale financial institution estab-*  
20                             *lished under section 5136B of the Revised Stat-*  
21                             *utes of the United States or section 9B of the*  
22                             *Federal Reserve Act may be a debtor if a peti-*  
23                             *tion is filed at the direction of the Comptroller*  
24                             *of the Currency (in the case of a wholesale finan-*  
25                             *cial institution established under section 5136B*

1           *of the Revised Statutes of the United States) or*  
2           *the Board of Governors of the Federal Reserve*  
3           *System (in the case of any wholesale financial*  
4           *institution); and*

5           *“(B) a corporation organized under section*  
6           *25A of the Federal Reserve Act may be a debtor*  
7           *if a petition is filed at the direction of the Board*  
8           *of Governors of the Federal Reserve System; or”.*

9           (2) *CHAPTER 7 DEBTORS.—Section 109(d) of*  
10          *title 11, United States Code, is amended to read as*  
11          *follows:*

12          *“(d) Only a railroad and a person that may be a debt-*  
13          *or under chapter 7 of this title, except that a stockbroker,*  
14          *a wholesale financial institution established under section*  
15          *5136B of the Revised Statutes of the United States or sec-*  
16          *tion 9B of the Federal Reserve Act, a corporation organized*  
17          *under section 25A of the Federal Reserve Act, or a commod-*  
18          *ity broker, may be a debtor under chapter 11 of this title.”.*

19          (3) *DEFINITION OF FINANCIAL INSTITUTION.—*  
20          *Section 101(22) of title 11, United States Code, is*  
21          *amended to read as follows:*

22          *“(22) ‘financial institution’ means a person that*  
23          *is a commercial or savings bank, industrial savings*  
24          *bank, savings and loan association, trust company,*  
25          *wholesale financial institution established under sec-*

1        *tion 5136B of the Revised Statutes of the United*  
 2        *States or section 9B of the Federal Reserve Act, or*  
 3        *corporation organized under section 25A of the Fed-*  
 4        *eral Reserve Act and, when any such person is acting*  
 5        *as agent or custodian for a customer in connection*  
 6        *with a securities contract, as defined in section 741*  
 7        *of this title, such customer.”.*

8                (4) *SUBCHAPTER V OF CHAPTER 7.—*

9                    (A) *IN GENERAL.—Section 103 of title 11,*  
 10                  *United States Code, is amended—*

11                            (i) *by redesignating subsections (e)*  
 12                            *through (i) as subsections (f) through (j), re-*  
 13                            *spectively; and*

14                            (ii) *by inserting after subsection (d)*  
 15                            *the following:*

16                  “(e) *Subchapter V of chapter 7 of this title applies only*  
 17                  *in a case under such chapter concerning the liquidation of*  
 18                  *a wholesale financial institution established under section*  
 19                  *5136B of the Revised Statutes of the United States or sec-*  
 20                  *tion 9B of the Federal Reserve Act, or a corporation orga-*  
 21                  *nized under section 25A of the Federal Reserve Act.”.*

22                    (B) *WHOLESALE BANK LIQUIDATION.—*

23                    *Chapter 7 of title 11, United States Code, is*  
 24                    *amended by adding at the end the following:*



1 *it appointed the conservator or receiver) designates an al-*  
2 *ternative trustee. The Comptroller of the Currency or the*  
3 *Board (as applicable) may designate a successor trustee, if*  
4 *required.*

5 **“§ 783. Additional powers of trustee**

6 “(a) *The trustee under this subchapter has power, with*  
7 *permission of the court—*

8 “(1) *to sell the wholesale bank to a depository in-*  
9 *stitution or consortium of depository institutions*  
10 *(which consortium may agree on the allocation of the*  
11 *wholesale bank among the consortium);*

12 “(2) *to merge the wholesale bank with a deposi-*  
13 *tory institution;*

14 “(3) *to transfer contracts to the same extent as*  
15 *could a receiver for a depository institution under*  
16 *paragraphs (9) and (10) of section 11(e) of the Fed-*  
17 *eral Deposit Insurance Act;*

18 “(4) *to transfer assets or liabilities to a deposi-*  
19 *tory institution;*

20 “(5) *to distribute property not of the estate, in-*  
21 *cluding distributions to customers that are mandated*  
22 *by subchapters III and IV of this chapter; or*

23 “(6) *to transfer assets and liabilities to a bridge*  
24 *bank as provided in paragraphs (1), (3)(A), (5), (6),*  
25 *and (9) through (13), and subparagraphs (A) through*

1       (H) and (K) of paragraph (4) of section 11(n) of the  
2       Federal Deposit Insurance Act, except that—

3               “(A) the bridge bank shall be treated as a  
4               wholesale bank for the purpose of this subsection;  
5               and

6               “(B) any references in any such provision  
7               of law to the Federal Deposit Insurance Corpora-  
8               tion shall be construed to be references to the ap-  
9               pointing agency and that references to deposit  
10              insurance shall be omitted.

11       “(b) Any reference in this section to transfers of liabil-  
12       ities includes a ratable transfer of liabilities within a prior-  
13       ity class.

14       **“§ 784. Right to be heard**

15       “The Comptroller of the Currency (in the case of a na-  
16       tional wholesale financial institution), the Board (in the  
17       case of any wholesale bank), or a Federal Reserve bank (in  
18       the case of a wholesale bank that is a member of that bank)  
19       may raise and may appear and be heard on any issue in  
20       a case under this subchapter.

21       **“§ 785. Expedited transfers**

22       “The trustee may make a transfer pursuant to section  
23       783 without prior judicial approval, if the Comptroller of  
24       the Currency (in the case of a national wholesale financial  
25       institution for which it appointed the conservator or re-

1 *ceiver) or the Board (in the case of any wholesale bank for*  
 2 *which it appointed the conservator or receiver) determines*  
 3 *that the transfer would be necessary to avert serious adverse*  
 4 *effects on economic conditions or financial stability.”.*

5 (C) *CONFORMING AMENDMENT.—The table*  
 6 *of sections for chapter 7 of title 11, United States*  
 7 *Code, is amended by adding at the end the fol-*  
 8 *lowing:*

*“781. Definitions for subchapter.*

*“782. Selection of trustee.*

*“783. Additional powers of trustee.*

*“784. Right to be heard.*

*“785. Expedited transfers.”.*

9 (e) *RESOLUTION OF EDGE CORPORATIONS.—Section*  
 10 *25A(16) of the Federal Reserve Act (12 U.S.C. 624(16)) is*  
 11 *amended to read as follows:*

12 “(16) *APPOINTMENT OF RECEIVER OR CON-*  
 13 *SERVATOR.—*

14 (A) *IN GENERAL.—The Board may ap-*  
 15 *point a conservator or receiver for a corporation*  
 16 *organized under the provisions of this section to*  
 17 *the same extent and in the same manner as the*  
 18 *Comptroller of the Currency may appoint a con-*  
 19 *servator or receiver for a national bank, and the*  
 20 *conservator or receiver for such corporation shall*  
 21 *exercise the same powers, functions, and duties,*  
 22 *subject to the same limitations, as a conservator*  
 23 *or receiver for a national bank.*

1           “(B) *EQUIVALENT AUTHORITY.*—*The Board*  
 2           *shall have the same authority with respect to any*  
 3           *conservator or receiver appointed for a corpora-*  
 4           *tion organized under the provisions of this sec-*  
 5           *tion under this paragraph and any such cor-*  
 6           *poration as the Comptroller of the Currency has*  
 7           *with respect to a conservator or receiver of a na-*  
 8           *tional bank and the national bank for which a*  
 9           *conservator or receiver has been appointed.*

10           “(C) *TITLE 11 PETITIONS.*—*The Board may*  
 11           *direct the conservator or receiver of a corpora-*  
 12           *tion organized under the provisions of this sec-*  
 13           *tion to file a petition pursuant to title 11,*  
 14           *United States Code, in which case, title 11,*  
 15           *United States Code, shall apply to the corpora-*  
 16           *tion in lieu of otherwise applicable Federal or*  
 17           *State insolvency law.”.*

18           ***Subtitle E—Preservation of FTC***  
 19           ***Authority***

20           ***SEC. 141. AMENDMENT TO THE BANK HOLDING COMPANY***  
 21           ***ACT OF 1956 TO MODIFY NOTIFICATION AND***  
 22           ***POST-APPROVAL WAITING PERIOD FOR SEC-***  
 23           ***TION 3 TRANSACTIONS.***

24           *Section 11(b)(1) of the Bank Holding Company Act*  
 25           *of 1956 (12 U.S.C. 1849(b)(1)) is amended by inserting*

1 “and, if the transaction also involves an acquisition under  
2 section 4 or section 6, the Board shall also notify the Fed-  
3 eral Trade Commission of such approval” before the period  
4 at the end of the first sentence.

5 **SEC. 142. INTERAGENCY DATA SHARING.**

6 To the extent not prohibited by other law, the Comp-  
7 troller of the Currency, the Director of the Office of Thrift  
8 Supervision, the Federal Deposit Insurance Corporation,  
9 and the Board of Governors of the Federal Reserve System  
10 shall make available to the Attorney General and the Fed-  
11 eral Trade Commission any data in the possession of any  
12 such banking agency that the antitrust agency deems nec-  
13 essary for antitrust review of any transaction requiring no-  
14 tice to any such antitrust agency or the approval of such  
15 agency under section 3, 4, or 6 of the Bank Holding Com-  
16 pany Act of 1956, section 18(c) of the Federal Deposit In-  
17 surance Act, the National Bank Consolidation and Merger  
18 Act, section 10 of the Home Owners’ Loan Act, or the anti-  
19 trust laws.

20 **SEC. 143. CLARIFICATION OF STATUS OF SUBSIDIARIES**  
21 **AND AFFILIATES.**

22 (a) **CLARIFICATION OF FEDERAL TRADE COMMISSION**  
23 **JURISDICTION.**—Any person which directly or indirectly  
24 controls, is controlled directly or indirectly by, or is directly  
25 or indirectly under common control with, any bank or sav-

1 *ings association (as such terms are defined in section 3 of*  
2 *the Federal Deposit Insurance Act) and is not itself a bank*  
3 *or savings association shall not be deemed to be a bank or*  
4 *savings association for purposes of the Federal Trade Com-*  
5 *mission Act or any other law enforced by the Federal Trade*  
6 *Commission.*

7       **(b) SAVINGS PROVISION.**—*No provision of this section*  
8 *shall be construed as restricting the authority of any Fed-*  
9 *eral banking agency (as defined in section 3 of the Federal*  
10 *Deposit Insurance Act) under any Federal banking law, in-*  
11 *cluding section 8 of the Federal Deposit Insurance Act.*

12       **(c) HART-SCOTT-RODINO AMENDMENT.**—*Section*  
13 *7A(c)(7) of the Clayton Act (15 U.S.C. 18a(c)(7)) is amend-*  
14 *ed by inserting before the semicolon at the end thereof the*  
15 *following: “, except that a portion of a transaction is not*  
16 *exempt under this paragraph if such portion of the trans-*  
17 *action (A) requires notice under section 6 of the Bank Hold-*  
18 *ing Company Act of 1956; and (B) does not require ap-*  
19 *proval under section 3 or 4 of the Bank Holding Company*  
20 *Act of 1956”.*

21 **SEC. 144. ANNUAL GAO REPORT.**

22       **(a) IN GENERAL.**—*By the end of the 1-year period be-*  
23 *ginning on the date of the enactment of this Act and annu-*  
24 *ally thereafter, the Comptroller General of the United States*  
25 *shall submit a report to the Congress on market concentra-*

1 *tion in the financial services industry and its impact on*  
2 *consumers.*

3 (b) *ANALYSIS.*—*Each report submitted under sub-*  
4 *section (a) shall contain an analysis of—*

5 (1) *the positive and negative effects of affiliations*  
6 *between various types of financial companies, and of*  
7 *acquisitions pursuant to this Act and the amend-*  
8 *ments made by this Act to other provisions of law, in-*  
9 *cluding any positive or negative effects on consumers,*  
10 *area markets, and submarkets thereof or on registered*  
11 *securities brokers and dealers which have been pur-*  
12 *chased by depository institutions or depository insti-*  
13 *tution holding companies;*

14 (2) *the changes in business practices and the ef-*  
15 *fects of any such changes on the availability of ven-*  
16 *ture capital, consumer credit, and other financial*  
17 *services or products and the availability of capital*  
18 *and credit for small businesses; and*

19 (3) *the acquisition patterns among depository*  
20 *institutions, depository institution holding compa-*  
21 *nies, securities firms, and insurance companies in-*  
22 *cluding acquisitions among the largest 20 percent of*  
23 *firms and acquisitions within regions or other limited*  
24 *geographical areas.*

1 ***Subtitle F—Applying the Principles***  
 2 ***of National Treatment and***  
 3 ***Equality of Competitive Oppor-***  
 4 ***tunity to Foreign Banks and For-***  
 5 ***ign Financial Institutions***

6 ***SEC. 151. APPLYING THE PRINCIPLES OF NATIONAL TREAT-***  
 7 ***MENT AND EQUALITY OF COMPETITIVE OP-***  
 8 ***PORTUNITY TO FOREIGN BANKS THAT ARE FI-***  
 9 ***NANCIAL HOLDING COMPANIES.***

10 *Section 8(c) of the International Banking Act of 1978*  
 11 *(12 U.S.C. 3106(c)) is amended by adding at the end the*  
 12 *following new paragraph:*

13 *“(3) TERMINATION OF GRANDFATHERED*  
 14 *RIGHTS.—*

15 *“(A) IN GENERAL.—If any foreign bank or*  
 16 *foreign company files a declaration under section*  
 17 *6(b)(1)(E) or which receives a determination*  
 18 *under section 10(d)(1) of the Bank Holding*  
 19 *Company Act of 1956, any authority conferred*  
 20 *by this subsection on any foreign bank or com-*  
 21 *pany to engage in any activity which the Board*  
 22 *has determined to be permissible for financial*  
 23 *holding companies under section 6 of such Act*  
 24 *shall terminate immediately.*

1           “(B) *RESTRICTIONS AND REQUIREMENTS*  
2           *AUTHORIZED.—If a foreign bank or company*  
3           *that engages, directly or through an affiliate*  
4           *pursuant to paragraph (1), in an activity which*  
5           *the Board has determined to be permissible for*  
6           *financial holding companies under section 6 of*  
7           *the Bank Holding Company Act of 1956 has not*  
8           *filed a declaration with the Board of its status*  
9           *as a financial holding company under such sec-*  
10          *tion or received a determination under section*  
11          *10(d)(1) by the end of the 2-year period begin-*  
12          *ning on the date of enactment of the Financial*  
13          *Services Act of 1998, the Board, giving due re-*  
14          *gard to the principle of national treatment and*  
15          *equality of competitive opportunity, may impose*  
16          *such restrictions and requirements on the con-*  
17          *duct of such activities by such foreign bank or*  
18          *company as are comparable to those imposed on*  
19          *a financial holding company organized under*  
20          *the laws of the United States, including a re-*  
21          *quirement to conduct such activities in compli-*  
22          *ance with any prudential safeguards established*  
23          *under section 5(h) of the Bank Holding Com-*  
24          *pany Act of 1956.”.*

1 **SEC. 152. APPLYING THE PRINCIPLES OF NATIONAL TREAT-**  
2 **MENT AND EQUALITY OF COMPETITIVE OP-**  
3 **PORTUNITY TO FOREIGN BANKS AND FOR-**  
4 **EIGN FINANCIAL INSTITUTIONS THAT ARE**  
5 **WHOLESALE FINANCIAL INSTITUTIONS.**

6 *Section 8A of the Federal Deposit Insurance Act (as*  
7 *added by section 136(c)(2) of this Act) is amended by add-*  
8 *ing at the end the following new subsection:*

9 *“(i) VOLUNTARY TERMINATION OF DEPOSIT INSUR-*  
10 *ANCE.—The provisions on voluntary termination of insur-*  
11 *ance in this section shall apply to an insured branch of*  
12 *a foreign bank (including a Federal branch) in the same*  
13 *manner and to the same extent as they apply to an insured*  
14 *State bank or a national bank.”.*

15 **SEC. 153. REPRESENTATIVE OFFICES.**

16 *(a) DEFINITION OF “REPRESENTATIVE OFFICE”.—*  
17 *Section 1(b)(15) of the International Banking Act of 1978*  
18 *(12 U.S.C. 3101(15)) is amended by striking “State agency,*  
19 *or subsidiary of a foreign bank” and inserting “or State*  
20 *agency”.*

21 *(b) EXAMINATIONS.—Section 10(c) of the Inter-*  
22 *national Banking Act of 1978 (12 U.S.C. 3107(c)) is*  
23 *amended by adding at the end the following: “The Board*  
24 *may also make examinations of any affiliate of a foreign*  
25 *bank conducting business in any State in which the Board*  
26 *deems it necessary to determine and enforce compliance*

1 *with this Act, the Bank Holding Company Act of 1956 (12*  
2 *U.S.C. 1841 et seq.), or other applicable Federal banking*  
3 *law.”.*

4       ***Subtitle G—Federal Home Loan***  
5           ***Bank System Modernization***

6 **SEC. 161. SHORT TITLE.**

7       *This subtitle may be cited as the “Federal Home Loan*  
8 *Bank System Modernization Act of 1998”.*

9 **SEC. 162. DEFINITIONS.**

10       *Section 2 of the Federal Home Loan Bank Act (12*  
11 *U.S.C. 1422) is amended—*

12           (1) *in paragraph (1), by striking “term ‘Board’*  
13 *means” and inserting “terms ‘Finance Board’ and*  
14 *‘Board’ mean”;*

15           (2) *by striking paragraph (3) and inserting the*  
16 *following:*

17           “(3) *STATE.—The term ‘State’, in addition to*  
18 *the States of the United States, includes the District*  
19 *of Columbia, Guam, Puerto Rico, the United States*  
20 *Virgin Islands, American Samoa, and the Common-*  
21 *wealth of the Northern Mariana Islands.”; and*

22           (3) *by adding at the end the following new para-*  
23 *graph:*

24           “(13) *COMMUNITY FINANCIAL INSTITUTION.—*

1           “(A) *IN GENERAL.*—*The term ‘community*  
2           *financial institution’ means a member—*

3                     “(i) *the deposits of which are insured*  
4                     *under the Federal Deposit Insurance Act;*  
5                     *and*

6                     “(ii) *that has, as of the date of the*  
7                     *transaction at issue, less than \$500,000,000*  
8                     *in average total assets, based on an average*  
9                     *of total assets over the 3 years preceding*  
10                    *that date.*

11                   “(B) *ADJUSTMENTS.*—*The \$500,000,000*  
12                   *limit referred to in subparagraph (A)(ii) shall be*  
13                   *adjusted annually by the Finance Board, based*  
14                   *on the annual percentage increase, if any, in the*  
15                   *Consumer Price Index for all urban consumers,*  
16                   *as published by the Department of Labor.”.*

17 **SEC. 163. SAVINGS ASSOCIATION MEMBERSHIP.**

18           (a) *FEDERAL HOME LOAN BANK MEMBERSHIP.*—*Sec-*  
19           *tion 5(f) of the Home Owners’ Loan Act (12 U.S.C. 1464(f))*  
20           *is amended to read as follows:*

21                   “(f) *FEDERAL HOME LOAN BANK MEMBERSHIP.*—*On*  
22                   *and after January 1, 1999, a Federal savings association*  
23                   *may become a member of the Federal Home Loan Bank*  
24                   *System, and shall qualify for such membership in the man-*  
25                   *ner provided by the Federal Home Loan Bank Act.”.*

1           (b) *WITHDRAWAL.*—Section 6(e) of the *Federal Home*  
2 *Loan Bank Act* (12 U.S.C. 1426(e)) is amended by striking  
3 “Any member other than a Federal savings and loan asso-  
4 ciation may withdraw” and inserting “Any member may  
5 withdraw”.

6 **SEC. 164. ADVANCES TO MEMBERS; COLLATERAL.**

7           (a) *IN GENERAL.*—Section 10(a) of the *Federal Home*  
8 *Loan Bank Act* (12 U.S.C. 1430(a)) is amended—

9                   (1) by redesignating paragraphs (1) through (4)  
10 as subparagraphs (A) through (D), respectively, and  
11 indenting appropriately;

12                   (2) by striking “(a) Each” and inserting the fol-  
13 lowing:

14                   “(a) *IN GENERAL.*—

15                           “(1) *ALL ADVANCES.*—Each”;

16                           (3) by striking the second sentence and inserting  
17 the following:

18                           “(2) *PURPOSES OF ADVANCES.*—A long-term ad-  
19 vance may only be made for the purposes of—

20                                   “(A) providing funds to any member for  
21 residential housing finance; and

22                                   “(B) providing funds to any community fi-  
23 nancial institution for small businesses, agricul-  
24 tural, rural development, or low-income commu-  
25 nity development lending.”;

1           (4) by striking “A Bank” and inserting the fol-  
2     *lowing:*

3           “(3) *COLLATERAL.—A Bank*”;

4           (5) in paragraph (3) (as so designated by para-  
5     *graph (4) of this subsection)—*

6           (A) in subparagraph (C) (as so redesignated  
7     *by paragraph (1) of this subsection) by striking*  
8     *“Deposits” and inserting “Cash or deposits”;*

9           (B) in subparagraph (D) (as so redesi-  
10    *gnated by paragraph (1) of this subsection), by*  
11    *striking the second sentence; and*

12          (C) by inserting after subparagraph (D) (as  
13    *so redesignated by paragraph (1) of this sub-*  
14    *section) the following new subparagraph:*

15          “(E) *Secured loans for small business, agri-*  
16    *culture, rural development, or low-income com-*  
17    *munity development, or securities representing a*  
18    *whole interest in such secured loans, in the case*  
19    *of any community financial institution.”;*

20          (6) in paragraph (5)—

21          (A) in the second sentence, by striking “and  
22    *the Board*”;

23          (B) in the third sentence, by striking  
24    *“Board” and inserting “Federal home loan*  
25    *bank*”; and

1                   (C) by striking “(5) Paragraphs (1) through  
2                   (4)” and inserting the following:

3                   “(4) *ADDITIONAL BANK AUTHORITY.*—Subpara-  
4                   graphs (A) through (E) of paragraph (3)”; and  
5                   (7) by adding at the end the following:

6                   “(5) *REVIEW OF CERTAIN COLLATERAL STAND-*  
7                   *ARDS.*—The Board may review the collateral stand-  
8                   ards applicable to each Federal home loan bank for  
9                   the classes of collateral described in subparagraphs  
10                  (D) and (E) of paragraph (3), and may, if necessary  
11                  for safety and soundness purposes, require an increase  
12                  in the collateral standards for any or all of those  
13                  classes of collateral.

14                  “(6) *DEFINITIONS.*—For purposes of this sub-  
15                  section, the terms ‘small business’, ‘agriculture’, ‘rural  
16                  development’, and ‘low-income community develop-  
17                  ment’ shall have the meanings given those terms by  
18                  rule or regulation of the Finance Board.”.

19                  (b) *CLERICAL AMENDMENT.*—The section heading for  
20                  section 10 of the Federal Home Loan Bank Act (12 U.S.C.  
21                  1430) is amended to read as follows:

22                  “**SEC. 10. ADVANCES TO MEMBERS.**”.

23                  **SEC. 165. ELIGIBILITY CRITERIA.**

24                  Section 4(a) of the Federal Home Loan Bank Act (12  
25                  U.S.C. 1424(a)) is amended—

1           (1) in paragraph (2)(A), by inserting, “(other  
2           than a community financial institution)” after “in-  
3           stitution”; and

4           (2) by adding at the end the following new para-  
5           graph:

6           “(3) *LIMITED EXEMPTION FOR COMMUNITY FI-*  
7           *NANCIAL INSTITUTIONS.—A community financial in-*  
8           *stitution that otherwise meets the requirements of*  
9           *paragraph (2) may become a member without regard*  
10          *to the percentage of its total assets that is represented*  
11          *by residential mortgage loans, as described in sub-*  
12          *paragraph (A) of paragraph (2).”.*

13 **SEC. 166. MANAGEMENT OF BANKS.**

14          (a) *BOARD OF DIRECTORS.—Section 7(d) of the Fed-*  
15          *eral Home Loan Bank Act (12 U.S.C. 1427(d)) is amend-*  
16          *ed—*

17                 (1) by striking “(d) *The term*” and inserting the  
18                 *following:*

19                 “(d) *TERMS OF OFFICE.—The term*”; and

20                 (2) by striking “*shall be two years*”.

21          (b) *COMPENSATION.—Section 7(i) of the Federal Home*  
22          *Loan Bank Act (12 U.S.C. 1427(i)) is amended by striking*  
23          “*, subject to the approval of the board*”.

24          (c) *REPEAL OF SECTIONS 22A AND 27.—The Federal*  
25          *Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended*

1 *by striking sections 22A (12 U.S.C. 1442a) and 27 (12*  
2 *U.S.C. 1447).*

3 (d) SECTION 12.—Section 12 of the Federal Home  
4 Loan Bank Act (12 U.S.C. 1432) is amended—

5 (1) in subsection (a)—

6 (A) by striking “, but, except” and all that  
7 follows through “ten years”;

8 (B) by striking “, subject to the approval of  
9 the Board” each place that term appears;

10 (C) by striking “and, by its Board of direc-  
11 tors,” and all that follows through “agent of such  
12 bank,” and inserting “and, by the board of direc-  
13 tors of the bank, to prescribe, amend, and repeal  
14 by-laws governing the manner in which its af-  
15 fairs may be administered, consistent with ap-  
16 plicable laws and regulations, as administered  
17 by the Finance Board. No officer, employee, at-  
18 torney, or agent of a Federal home loan bank”;  
19 and

20 (D) by striking “Board of directors” each  
21 place that term appears and inserting “board of  
22 directors”; and

23 (2) in subsection (b), by striking “loans banks”  
24 and inserting “loan banks”.

1        *(e) POWERS AND DUTIES OF FEDERAL HOUSING FI-*  
2 *NANCE BOARD.—*

3            *(1) ISSUANCE OF NOTICES OF VIOLATIONS.—Sec-*  
4 *tion 2B(a) of the Federal Home Loan Bank Act (12*  
5 *U.S.C. 1422b(a)) is amended by adding at the end the*  
6 *following new paragraphs:*

7            *“(5) To issue and serve a notice of charges upon*  
8 *a Federal home loan bank or upon any executive offi-*  
9 *cer or director of a Federal home loan bank if, in the*  
10 *determination of the Finance Board, the bank, execu-*  
11 *tive officer, or director is engaging or has engaged in,*  
12 *or the Finance Board has reasonable cause to believe*  
13 *that the bank, executive officer, or director is about to*  
14 *engage in, any conduct that violates any provision of*  
15 *this Act or any law, order, rule, or regulation or any*  
16 *condition imposed in writing by the Finance Board*  
17 *in connection with the granting of any application or*  
18 *other request by the bank, or any written agreement*  
19 *entered into by the bank with the agency, in accord-*  
20 *ance with the procedures provided in section 1371(c)*  
21 *of the Federal Housing Enterprises Financial Safety*  
22 *and Soundness Act of 1992. Such authority includes*  
23 *the same authority to take affirmative action to cor-*  
24 *rect conditions resulting from violations or practices*  
25 *or to limit activities of a bank or any executive officer*

1       or director of a bank as appropriate Federal banking  
2       agencies have to take with respect to insured deposi-  
3       tory institutions under paragraphs (6) and (7) of sec-  
4       tion 8(b) of the Federal Deposit Insurance Act, and  
5       to have all other powers, rights, and duties to enforce  
6       this Act with respect to the Federal home loan banks  
7       and their executive officers and directors as the Office  
8       of Federal Housing Enterprise Oversight has to en-  
9       force the Federal Housing Enterprises Financial  
10       Safety and Soundness Act of 1992, the Federal Na-  
11       tional Mortgage Association Charter Act, or the Fed-  
12       eral Home Loan Mortgage Corporation Act with re-  
13       spect to the Federal housing enterprises under the  
14       Federal Housing Enterprises Financial Safety and  
15       Soundness Act of 1992.

16               “(6) To address any insufficiencies in capital  
17       levels resulting from the application of section 5(f) of  
18       the Home Owners’ Loan Act.

19               “(7) To sue and be sued, by and through its own  
20       attorneys.”.

21               (2) TECHNICAL AMENDMENT.—Section 111 of  
22       Public Law 93–495 (12 U.S.C. 250) is amended by  
23       inserting “Federal Housing Finance Board,” after  
24       “Director of the Office of Thrift Supervision,”.

25       (f) ELIGIBILITY TO SECURE ADVANCES.—

1           (1) *SECTION 9.*—Section 9 of the Federal Home  
2     *Loan Bank Act (12 U.S.C. 1429) is amended—*

3           (A) *in the second sentence, by striking*  
4     *“with the approval of the Board”; and*

5           (B) *in the third sentence, by striking “, sub-*  
6     *ject to the approval of the Board,”.*

7           (2) *SECTION 10.*—Section 10 of the Federal  
8     *Home Loan Bank Act (12 U.S.C. 1430) is amended—*

9           (A) *in subsection (c)—*

10          (i) *in the first sentence, by striking*  
11     *“Board” and inserting “Federal home loan*  
12     *bank”; and*

13          (ii) *in the second sentence, by striking*  
14     *“held by” and all that follows before the pe-*  
15     *riod;*

16          (B) *in subsection (d)—*

17          (i) *in the first sentence, by striking*  
18     *“and the approval of the Board”; and*

19          (ii) *by striking “Subject to the ap-*  
20     *proval of the Board, any” and inserting*  
21     *“Any”; and*

22          (C) *in subsection (j)(1)—*

23          (i) *by striking “to subsidize the interest*  
24     *rate on advances” and inserting “to provide*

1           *subsidies, including subsidized interest rates*  
2           *on advances”;*

3                   *(ii) by striking “Pursuant” and insert-*  
4           *ing the following:*

5                   *“(A) ESTABLISHMENT.—Pursuant”;* and

6                   *(iii) by adding at the end the following*  
7           *new subparagraph:*

8                   *“(B) NONDELEGATION OF APPROVAL AU-*  
9           *THORITY.—Subject to such regulations as the Fi-*  
10          *nance Board may prescribe, the board of direc-*  
11          *tors of each Federal home loan bank may ap-*  
12          *prove or disapprove requests from members for*  
13          *Affordable Housing Program subsidies, and may*  
14          *not delegate such authority.”.*

15          *(g) SECTION 16.—Section 16(a) of the Federal Home*  
16          *Loan Bank Act (12 U.S.C. 1436(a)) is amended—*

17                   *(1) in the third sentence—*

18                           *(A) by striking “net earnings” and insert-*  
19                   *ing “previously retained earnings or current net*  
20                   *earnings”;* and

21                           *(B) by striking “, and then only with the*  
22                   *approval of the Federal Housing Finance*  
23                   *Board”;* and

24                   *(2) by striking the fourth sentence.*

1       (h) *SECTION 18.*—Section 18(b) of the Federal Home  
2 *Loan Bank Act (12 U.S.C. 1438(b)) is amended by striking*  
3 *paragraph (4).*

4 **SEC. 167. RESOLUTION FUNDING CORPORATION.**

5       (a) *IN GENERAL.*—Section 21B(f)(2)(C) of the Federal  
6 *Home Loan Bank Act (12 U.S.C. 1441b(f)(2)(C)) is amend-*  
7 *ed to read as follows:*

8               “(C) *PAYMENTS BY FEDERAL HOME LOAN*  
9               *BANKS.*—

10               “(i) *IN GENERAL.*—To the extent that  
11               the amounts available pursuant to subpara-  
12               graphs (A) and (B) are insufficient to cover  
13               the amount of interest payments, each Fed-  
14               eral home loan bank shall pay to the Fund-  
15               ing Corporation in each calendar year,  
16               20.75 percent of the net earnings of that  
17               bank (after deducting expenses relating to  
18               section 10(j) and operating expenses).

19               “(ii) *ANNUAL DETERMINATION.*—The  
20               Board annually shall determine the extent  
21               to which the value of the aggregate amounts  
22               paid by the Federal home loan banks ex-  
23               ceeds or falls short of the value of an annu-  
24               ity of \$300,000,000 per year that com-  
25               mences on the issuance date and ends on the

1           *final scheduled maturity date of the obliga-*  
2           *tions, and shall select appropriate present*  
3           *value factors for making such determina-*  
4           *tions.*

5           “(iii) *PAYMENT TERM ALTERATIONS.*—

6           *The Board shall extend or shorten the term*  
7           *of the payment obligations of a Federal*  
8           *home loan bank under this subparagraph as*  
9           *necessary to ensure that the value of all*  
10           *payments made by the banks is equivalent*  
11           *to the value of an annuity referred to in*  
12           *clause (i).*

13           “(iv) *TERM BEYOND MATURITY.*—*If the*

14           *Board extends the term of payments beyond*  
15           *the final scheduled maturity date for the ob-*  
16           *ligations, each Federal home loan bank shall*  
17           *continue to pay 20.75 percent of its net*  
18           *earnings (after deducting expenses relating*  
19           *to section 10(j) and operating expenses) to*  
20           *the Treasury of the United States until the*  
21           *value of all such payments by the Federal*  
22           *home loan banks is equivalent to the value*  
23           *of an annuity referred to in clause (i). In*  
24           *the final year in which the Federal home*  
25           *loan banks are required to make any pay-*

1           *ment to the Treasury under this subpara-*  
 2           *graph, if the dollar amount represented by*  
 3           *20.75 percent of the net earnings of the Fed-*  
 4           *eral home loan banks exceeds the remaining*  
 5           *obligation of the banks to the Treasury, the*  
 6           *Finance Board shall reduce the percentage*  
 7           *pro rata to a level sufficient to pay the re-*  
 8           *maining obligation.”.*

9           ***(b) EFFECTIVE DATE.***—*The amendment made by sub-*  
 10          *section (a) shall become effective on January 1, 1999. Pay-*  
 11          *ments made by a Federal home loan bank before that effec-*  
 12          *tive date shall be counted toward the total obligation of that*  
 13          *bank under section 21B(f)(2)(C) of the Federal Home Loan*  
 14          *Bank Act, as amended by this section.*

15                   ***Subtitle H—Direct Activities of***  
 16                                   ***Banks***

17          ***SEC. 181. AUTHORITY OF NATIONAL BANKS TO UNDER-***  
 18                                   ***WRITE CERTAIN MUNICIPAL BONDS.***

19           *The paragraph designated the Seventh of section 5136*  
 20          *of the Revised Statutes of the United States (12 U.S.C.*  
 21          *24(7)) is amended by adding at the end the following new*  
 22          *sentence: “In addition to the provisions in this paragraph*  
 23          *for dealing in, underwriting or purchasing securities, the*  
 24          *limitations and restrictions contained in this paragraph as*  
 25          *to dealing in, underwriting, and purchasing investment se-*

1 *curities for the national bank's own account shall not apply*  
 2 *to obligations (including limited obligation bonds, revenue*  
 3 *bonds, and obligations that satisfy the requirements of sec-*  
 4 *tion 142(b)(1) of the Internal Revenue Code of 1986) issued*  
 5 *by or on behalf of any state or political subdivision of a*  
 6 *state, including any municipal corporate instrumentality*  
 7 *of 1 or more states, or any public agency or authority of*  
 8 *any state or political subdivision of a state, if the national*  
 9 *banking association is well capitalized (as defined in sec-*  
 10 *tion 38 of the Federal Deposit Insurance Act).”.*

11           ***Subtitle I—Deposit Insurance***  
 12                                   ***Funds***

13 ***SEC. 186. STUDY OF SAFETY AND SOUNDNESS OF FUNDS.***

14           *(a) STUDY REQUIRED.—The Board of Directors of the*  
 15 *Federal Deposit Insurance Corporation shall conduct a*  
 16 *study of the following issues with regard to the Bank Insur-*  
 17 *ance Fund and the Savings Association Insurance Fund:*

18                   *(1) SAFETY AND SOUNDNESS.—The safety and*  
 19                   *soundness of the funds and the adequacy of the reserve*  
 20                   *requirements applicable to the funds in light of—*

21                                   *(A) the size of the insured depository insti-*  
 22                                   *tutions which are resulting from mergers and*  
 23                                   *consolidations since the effective date of the Rie-*  
 24                                   *gle-Neal Interstate Banking and Branching Effi-*  
 25                                   *ciency Act of 1994; and*

1           (B) the affiliation of insured depository in-  
2           stitutions with other financial institutions pur-  
3           suant to this Act and the amendments made by  
4           this Act.

5           (2) *CONCENTRATION LEVELS.*—The concentra-  
6           tion levels of the funds, taking into account the num-  
7           ber of members of each fund and the geographic dis-  
8           tribution of such members, and the extent to which ei-  
9           ther fund is exposed to higher risks due to a regional  
10          concentration of members or an insufficient member-  
11          ship base relative to the size of member institutions.

12          (3) *MERGER ISSUES.*—Issues relating to the  
13          planned merger of the funds, including the cost of  
14          merging the funds and the manner in which such  
15          costs will be distributed among the members of the re-  
16          spective funds.

17          (b) *REPORT REQUIRED.*—

18               (1) *IN GENERAL.*—Before the end of the 9-month  
19               period beginning on the date of the enactment of this  
20               Act, the Board of Directors of the Federal Deposit In-  
21               surance Corporation shall submit a report to the Con-  
22               gress on the study conducted pursuant to subsection  
23               (a).

24               (2) *CONTENTS OF REPORT.*—The report shall in-  
25               clude—

1           (A) detailed findings of the Board of Direc-  
2           tors with regard to the issues described in sub-  
3           section (a);

4           (B) a description of the plans developed by  
5           the Board of Directors for merging the Bank In-  
6           surance Fund and the Savings Association In-  
7           surance Fund, including an estimate of the  
8           amount of the cost of such merger which would  
9           be borne by Savings Association Insurance Fund  
10          members; and

11          (C) such recommendations for legislative  
12          and administrative action as the Board of Direc-  
13          tors determines to be necessary or appropriate to  
14          preserve the safety and soundness of the deposit  
15          insurance funds, reduce the risks to such funds,  
16          provide for an efficient merger of such funds,  
17          and for other purposes.

18          (c) *DEFINITIONS.*—For purposes of this section, the fol-  
19          lowing definitions shall apply:

20           (1) *INSURED DEPOSITORY INSTITUTION.*—The  
21           term “insured depository institution” has the same  
22           meaning as in section 3(c) of the Federal Deposit In-  
23           surance Act.

24           (2) *BIF AND SAIF MEMBERS.*—The terms “Bank  
25           Insurance Fund member” and “Savings Association

1        *Insurance Fund member” have the same meanings as*  
 2        *in section 7(l) of the Federal Deposit Insurance Act.*

### 3        ***Subtitle J—Effective Date of Title***

#### 4        ***SEC. 191. EFFECTIVE DATE.***

5        *Except with regard to any subtitle or other provision*  
 6        *of this title for which a specific effective date is provided,*  
 7        *this title and the amendments made by this title shall take*  
 8        *effect at the end of the 270-day period beginning on the*  
 9        *date of the enactment of this Act.*

## 10        ***TITLE II—FUNCTIONAL*** 11        ***REGULATION***

### 12        ***Subtitle A—Brokers and Dealers***

#### 13        ***SEC. 201. DEFINITION OF BROKER.***

14        *Section 3(a)(4) of the Securities Exchange Act of 1934*  
 15        *(15 U.S.C. 78c(a)(4)) is amended to read as follows:*

16                *“(4) BROKER.—*

17                        *“(A) IN GENERAL.—The term ‘broker’*  
 18                        *means any person engaged in the business of ef-*  
 19                        *fecting transactions in securities for the account*  
 20                        *of others.*

21                        *“(B) EXCEPTION FOR CERTAIN BANK AC-*  
 22                        *TIVITIES.—A bank shall not be considered to be*  
 23                        *a broker because the bank engages in any of the*  
 24                        *following activities under the conditions de-*  
 25                        *scribed:*

1           “(i) *THIRD PARTY BROKERAGE AR-*  
2           *RANGEMENTS.—The bank enters into a con-*  
3           *tractual or other arrangement with a broker*  
4           *or dealer registered under this title under*  
5           *which the broker or dealer offers brokerage*  
6           *services on or off the premises of the bank*  
7           *if—*

8                     “(I) *such broker or dealer is clear-*  
9                     *ly identified as the person performing*  
10                    *the brokerage services;*

11                   “(II) *the broker or dealer performs*  
12                    *brokerage services in an area that is*  
13                    *clearly marked and, to the extent prac-*  
14                    *ticable, physically separate from the*  
15                    *routine deposit-taking activities of the*  
16                    *bank;*

17                   “(III) *any materials used by the*  
18                    *bank to advertise or promote generally*  
19                    *the availability of brokerage services*  
20                    *under the contractual or other arrange-*  
21                    *ment clearly indicate that the broker-*  
22                    *age services are being provided by the*  
23                    *broker or dealer and not by the bank;*

24                   “(IV) *any materials used by the*  
25                    *bank to advertise or promote generally*

1           *the availability of brokerage services*  
2           *under the contractual or other arrange-*  
3           *ment are in compliance with the Fed-*  
4           *eral securities laws before distribution;*

5           “(V) *bank employees (other than*  
6           *associated persons of a broker or dealer*  
7           *who are qualified pursuant to the rules*  
8           *of a self-regulatory organization) per-*  
9           *form only clerical or ministerial func-*  
10           *tions in connection with brokerage*  
11           *transactions including scheduling ap-*  
12           *pointments with the associated persons*  
13           *of a broker or dealer, except that bank*  
14           *employees may forward customer funds*  
15           *or securities and may describe in gen-*  
16           *eral terms the range of investment ve-*  
17           *hicles available from the bank and the*  
18           *broker or dealer under the contractual*  
19           *or other arrangement;*

20           “(VI) *bank employees do not di-*  
21           *rectly receive incentive compensation*  
22           *for any brokerage transaction unless*  
23           *such employees are associated persons*  
24           *of a broker or dealer and are qualified*  
25           *pursuant to the rules of a self-regu-*

1            *latory organization, except that the*  
2            *bank employees may receive compensa-*  
3            *tion for the referral of any customer if*  
4            *the compensation is a nominal one-*  
5            *time cash fee of a fixed dollar amount*  
6            *and the payment of the fee is not con-*  
7            *tingent on whether the referral results*  
8            *in a transaction;*

9            *“(VII) such services are provided*  
10           *by the broker or dealer on a basis in*  
11           *which all customers which receive any*  
12           *services are fully disclosed to the broker*  
13           *or dealer;*

14           *“(VIII) the bank does not carry a*  
15           *securities account of the customer ex-*  
16           *cept in a customary custodian or trust-*  
17           *ee capacity; and*

18           *“(IX) the bank, broker, or dealer*  
19           *informs each customer that the broker-*  
20           *age services are provided by the broker*  
21           *or dealer and not by the bank and that*  
22           *the securities are not deposits or other*  
23           *obligations of the bank, are not guar-*  
24           *anteed by the bank, and are not in-*

1                   sured by the Federal Deposit Insurance  
2                   Corporation.

3                   “(ii) *TRUST ACTIVITIES.*—The bank ef-  
4                   fects transactions in a trustee capacity, or  
5                   effects transactions in a fiduciary capacity  
6                   in its trust department or other department  
7                   that is regularly examined by bank examin-  
8                   ers for compliance with fiduciary principles  
9                   and standards, and (in either case)—

10                   “(I) is primarily compensated for  
11                   such transactions on the basis of an  
12                   administration or annual fee (payable  
13                   on a monthly, quarterly, or other  
14                   basis), a percentage of assets under  
15                   management, or a flat or capped per  
16                   order processing fee equal to not more  
17                   than the cost incurred by the bank in  
18                   connection with executing securities  
19                   transactions for trustee and fiduciary  
20                   customers, or any combination of such  
21                   fees, consistent with fiduciary prin-  
22                   ciples and standards; and

23                   “(II) does not publicly solicit bro-  
24                   kerage business, other than by advertis-  
25                   ing that it effects transactions in secu-

1                    *rities in conjunction with advertising*  
2                    *its other trust activities.*

3                    “(iii)     *PERMISSIBLE     SECURITIES*  
4                    *TRANSACTIONS.—The bank effects trans-*  
5                    *actions in—*

6                    “(I) *commercial paper, bankers*  
7                    *acceptances, or commercial bills;*

8                    “(II) *exempted securities;*

9                    “(III) *qualified Canadian govern-*  
10                    *ment obligations as defined in section*  
11                    *5136 of the Revised Statutes, in con-*  
12                    *formity with section 15C of this title*  
13                    *and the rules and regulations there-*  
14                    *under, or obligations of the North*  
15                    *American Development Bank; or*

16                    “(IV) *any standardized, credit en-*  
17                    *hanced debt security issued by a for-*  
18                    *ign government pursuant to the*  
19                    *March 1989 plan of then Secretary of*  
20                    *the Treasury Brady, used by such for-*  
21                    *ign government to retire outstanding*  
22                    *commercial bank loans.*

23                    “(iv)     *CERTAIN     STOCK     PURCHASE*  
24                    *PLANS.—*

1                   “(I)       EMPLOYEE       BENEFIT  
2                   PLANS.—The bank effects transactions,  
3                   as part of its transfer agency activities,  
4                   in the securities of an issuer as part of  
5                   any pension, retirement, profit-shar-  
6                   ing, bonus, thrift, savings, incentive, or  
7                   other similar benefit plan for the em-  
8                   ployees of that issuer or its subsidi-  
9                   aries, if—

10                               (aa) the bank does not solicit  
11                               transactions or provide invest-  
12                               ment advice with respect to the  
13                               purchase or sale of securities in  
14                               connection with the plan; and

15                               “(bb) the bank’s compensa-  
16                               tion for such plan or program  
17                               consists primarily of administra-  
18                               tion fees, or flat or capped per  
19                               order processing fees, or both.

20                   “(II)       DIVIDEND       REINVESTMENT  
21                   PLANS.—The bank effects transactions,  
22                   as part of its transfer agency activities,  
23                   in the securities of an issuer as part of  
24                   that issuer’s dividend reinvestment  
25                   plan, if—

1           “(aa) the bank does not so-  
2           licit transactions or provide in-  
3           vestment advice with respect to  
4           the purchase or sale of securities  
5           in connection with the plan;

6           “(bb) the bank does not net  
7           shareholders’ buy and sell orders,  
8           other than for programs for odd-  
9           lot holders or plans registered  
10          with the Commission; and

11          “(cc) the bank’s compensa-  
12          tion for such plan or program  
13          consists primarily of administra-  
14          tion fees, or flat or capped per  
15          order processing fees, or both.

16          “(III) ISSUER PLANS.—The bank  
17          effects transactions, as part of its  
18          transfer agency activities, in the secu-  
19          rities of an issuer as part of a plan or  
20          program for the purchase or sale of  
21          that issuer’s shares, if—

22                 “(aa) the bank does not so-  
23                 licit transactions or provide in-  
24                 vestment advice with respect to  
25                 the purchase or sale of securities

1           *in connection with the plan or*  
2           *program;*

3           “(bb) *the bank does not net*  
4           *shareholders’ buy and sell orders,*  
5           *other than for programs for odd-*  
6           *lot holders or plans registered*  
7           *with the Commission; and*

8           “(cc) *the bank’s compensa-*  
9           *tion for such plan or program*  
10           *consists primarily of administra-*  
11           *tion fees, or flat or capped per*  
12           *order processing fees, or both.*

13           “(IV) *PERMISSIBLE DELIVERY OF*  
14           *MATERIALS.—The exception to being*  
15           *considered a broker for a bank engaged*  
16           *in activities described in subclauses*  
17           *(I), (II), and (III) will not be affected*  
18           *by a bank’s delivery of written or elec-*  
19           *tronic plan materials to employees of*  
20           *the issuer, shareholders of the issuer, or*  
21           *members of affinity groups of the*  
22           *issuer, so long as such materials are—*

23           “(aa) *comparable in scope or*  
24           *nature to that permitted by the*  
25           *Commission as of the date of the*

1                    *enactment of the Financial Serv-*  
2                    *ices Act of 1998; or*

3                    *“(bb) otherwise permitted by*  
4                    *the Commission.*

5                    *“(v) SWEEP ACCOUNTS.—The bank ef-*  
6                    *fects transactions as part of a program for*  
7                    *the investment or reinvestment of bank de-*  
8                    *posit funds into any no-load, open-end*  
9                    *management investment company registered*  
10                   *under the Investment Company Act of 1940*  
11                   *that holds itself out as a money market*  
12                   *fund.*

13                   *“(vi) AFFILIATE TRANSACTIONS.—The*  
14                   *bank effects transactions for the account of*  
15                   *any affiliate of the bank (as defined in sec-*  
16                   *tion 2 of the Bank Holding Company Act*  
17                   *of 1956) other than—*

18                   *“(I) a registered broker or dealer;*

19                   *or*

20                   *“(II) an affiliate that is engaged*  
21                   *in merchant banking, as described in*  
22                   *section 6(c)(3)(H) of the Bank Holding*  
23                   *Company Act of 1956.*

24                   *“(vii) PRIVATE SECURITIES OFFER-*  
25                   *INGS.—The bank—*

1           “(I) effects sales as part of a pri-  
2           mary offering of securities not involv-  
3           ing a public offering, pursuant to sec-  
4           tion 3(b), 4(2), or 4(6) of the Securities  
5           Act of 1933 or the rules and regula-  
6           tions issued thereunder; and

7           “(II) effects transactions exclu-  
8           sively with qualified investors.

9           “(viii) *SAFEKEEPING AND CUSTODY*  
10          *ACTIVITIES.*—

11           “(I) *IN GENERAL.*—*The bank, as*  
12           *part of customary banking activities—*

13           “(aa) provides safekeeping or  
14           custody services with respect to se-  
15           curities, including the exercise of  
16           warrants and other rights on be-  
17           half of customers;

18           “(bb) facilitates the transfer  
19           of funds or securities, as a custo-  
20           dian or a clearing agency, in con-  
21           nection with the clearance and  
22           settlement of its customers’ trans-  
23           actions in securities;

24           “(cc) effects securities lending  
25           or borrowing transactions with or

1           *on behalf of customers as part of*  
2           *services provided to customers*  
3           *pursuant to division (aa) or (bb)*  
4           *or invests cash collateral pledged*  
5           *in connection with such trans-*  
6           *actions; or*

7                     *“(dd) holds securities pledged*  
8                     *by a customer to another person*  
9                     *or securities subject to purchase or*  
10                    *resale agreements involving a cus-*  
11                    *tomers, or facilitates the pledging*  
12                    *or transfer of such securities by*  
13                    *book entry or as otherwise pro-*  
14                    *vided under applicable law.*

15                    *“(II) EXCEPTION FOR CARRYING*  
16                    *BROKER ACTIVITIES.—The exception to*  
17                    *being considered a broker for a bank*  
18                    *engaged in activities described in sub-*  
19                    *clause (I) shall not apply if the bank,*  
20                    *in connection with such activities, acts*  
21                    *in the United States as a carrying*  
22                    *broker (as such term, and different for-*  
23                    *mulations thereof, are used in section*  
24                    *15(c)(3) and the rules and regulations*  
25                    *thereunder) for any broker or dealer,*

1                   *unless such carrying broker activities*  
2                   *are engaged in with respect to govern-*  
3                   *ment securities (as defined in para-*  
4                   *graph (42) of this subsection).*

5                   “(ix) *BANKING PRODUCTS.*—*The bank*  
6                   *effects transactions in traditional banking*  
7                   *products, as defined in section 206(a) of the*  
8                   *Financial Services Act of 1998.*

9                   “(x) *DE MINIMIS EXCEPTION.*—*The*  
10                   *bank effects, other than in transactions re-*  
11                   *ferred to in clauses (i) through (ix), not*  
12                   *more than 500 transactions in securities in*  
13                   *any calendar year, and such transactions*  
14                   *are not effected by an employee of the bank*  
15                   *who is also an employee of a broker or deal-*  
16                   *er.*

17                   “(C) *BROKER DEALER EXECUTION.*—*The*  
18                   *exception to being considered a broker for a bank*  
19                   *engaged in activities described in clauses (ii),*  
20                   *(iv), and (viii) of subparagraph (B) shall not*  
21                   *apply if the activities described in such provi-*  
22                   *sions result in the trade in the United States of*  
23                   *any security that is a publicly traded security in*  
24                   *the United States, unless—*

1           “(i) the bank directs such trade to a  
2           registered or broker dealer for execution;

3           “(ii) the trade is a cross trade or other  
4           substantially similar trade of a security  
5           that—

6                       “(I) is made by the bank or be-  
7                       tween the bank and an affiliated fidu-  
8                       ciary; and

9                       “(II) is not in contravention of fi-  
10                      duciary principles established under  
11                      applicable Federal or State law; or

12                     “(iii) the trade is conducted in some  
13                     other manner permitted under rules, regula-  
14                     tions, or orders as the Commission may  
15                     prescribe or issue.

16                     “(D) NO EFFECT OF BANK EXEMPTIONS ON  
17                     OTHER COMMISSION AUTHORITY.—The exception  
18                     to being considered a broker for a bank engaged  
19                     in activities described in subparagraphs (B) and  
20                     (C) shall not affect the commission’s authority  
21                     under any other provision of this Act or any  
22                     other securities law.

23                     “(E) FIDUCIARY CAPACITY.—For purposes  
24                     of subparagraph (B)(ii), the term ‘fiduciary ca-  
25                     pacity’ means—

1           “(i) *in the capacity as trustee, execu-*  
2           *tor, administrator, registrar of stocks and*  
3           *bonds, transfer agent, guardian, assignee,*  
4           *receiver, or custodian under a uniform gift*  
5           *to minor act, or as an investment adviser if*  
6           *the bank receives a fee for its investment ad-*  
7           *vice;*

8           “(ii) *in any capacity in which the*  
9           *bank possesses investment discretion on be-*  
10          *half of another; or*

11          “(iii) *in any other similar capacity.*

12          “(F) *EXCEPTION FOR ENTITIES SUBJECT TO*  
13          *SECTION 15(e).—The term ‘broker’ does not in-*  
14          *clude a bank that—*

15                 “(i) *was, immediately prior to the en-*  
16                 *actment of the Financial Services Act of*  
17                 *1998, subject to section 15(e); and*

18                 “(ii) *is subject to such restrictions and*  
19                 *requirements as the Commission considers*  
20                 *appropriate.”.*

21   **SEC. 202. DEFINITION OF DEALER.**

22                 *Section 3(a)(5) of the Securities Exchange Act of 1934*  
23                 *(15 U.S.C. 78c(a)(5)) is amended to read as follows:*

24                 “(5) *DEALER.—*

1           “(A) *IN GENERAL.*—*The term ‘dealer’*  
2           *means any person engaged in the business of*  
3           *buying and selling securities for such person’s*  
4           *own account through a broker or otherwise.*

5           “(B) *EXCEPTION FOR PERSON NOT EN-*  
6           *GAGED IN THE BUSINESS OF DEALING.*—*The*  
7           *term ‘dealer’ does not include a person that buys*  
8           *or sells securities for such person’s own account,*  
9           *either individually or in a fiduciary capacity,*  
10          *but not as a part of a regular business.*

11          “(C) *EXCEPTION FOR CERTAIN BANK AC-*  
12          *TIVITIES.*—*A bank shall not be considered to be*  
13          *a dealer because the bank engages in any of the*  
14          *following activities under the conditions de-*  
15          *scribed:*

16                  “(i) *PERMISSIBLE SECURITIES TRANS-*  
17                  *ACTIONS.*—*The bank buys or sells—*

18                          “(I) *commercial paper, bankers*  
19                          *acceptances, or commercial bills;*

20                          “(II) *exempted securities;*

21                          “(III) *qualified Canadian govern-*  
22                          *ment obligations as defined in section*  
23                          *5136 of the Revised Statutes of the*  
24                          *United States, in conformity with sec-*  
25                          *tion 15C of this title and the rules and*

1                    *regulations thereunder, or obligations*  
2                    *of the North American Development*  
3                    *Bank; or*

4                    *“(IV) any standardized, credit en-*  
5                    *hanced debt security issued by a for-*  
6                    *ign government pursuant to the*  
7                    *March 1989 plan of then Secretary of*  
8                    *the Treasury Brady, used by such for-*  
9                    *ign government to retire outstanding*  
10                   *commercial bank loans.*

11                   *“(ii) INVESTMENT, TRUSTEE, AND FI-*  
12                   *DUCLARY TRANSACTIONS.—The bank buys or*  
13                   *sells securities for investment purposes—*

14                   *“(I) for the bank; or*

15                   *“(II) for accounts for which the*  
16                   *bank acts as a trustee or fiduciary.*

17                   *“(iii) ASSET-BACKED TRANS-*  
18                   *ACTIONS.—The bank engages in the issuance*  
19                   *or sale to qualified investors, through a*  
20                   *grantor trust or otherwise, of securities*  
21                   *backed by or representing an interest in*  
22                   *notes, drafts, acceptances, loans, leases, re-*  
23                   *ceivables, other obligations, or pools of any*  
24                   *such obligations predominantly originated*  
25                   *by the bank, or a syndicate of banks of*

1           *which the bank is a member, or an affiliate*  
2           *of any such bank other than a broker or*  
3           *dealer.*

4           “(iv) *BANKING PRODUCTS.—The bank*  
5           *buys or sells traditional banking products,*  
6           *as defined in section 206(a) of the Finan-*  
7           *cial Services Act of 1998.*

8           “(v) *DERIVATIVE INSTRUMENTS.—The*  
9           *bank issues, buys, or sells any derivative in-*  
10          *strument to which the bank is a party—*

11                   “(I) *to or from a qualified inves-*  
12                   *tor, except that if the instrument pro-*  
13                   *vides for the delivery of one or more se-*  
14                   *curities (other than a derivative in-*  
15                   *strument or government security), the*  
16                   *transaction shall be effected with or*  
17                   *through a registered broker or dealer;*

18                   “(II) *to or from other persons, ex-*  
19                   *cept that if the derivative instrument*  
20                   *provides for the delivery of one or more*  
21                   *securities (other than a derivative in-*  
22                   *strument or government security), or is*  
23                   *a security (other than a government se-*  
24                   *curity), the transaction shall be effected*

1                   *with or through a registered broker or*  
2                   *dealer; or*

3                   “*(III) to or from any person if the*  
4                   *instrument is neither a security nor*  
5                   *provides for the delivery of one or more*  
6                   *securities (other than a derivative in-*  
7                   *strument).*”.

8   **SEC. 203. REGISTRATION FOR SALES OF PRIVATE SECURI-**  
9                   **TIES OFFERINGS.**

10           *Section 15A of the Securities Exchange Act of 1934*  
11           *(15 U.S.C. 78o-3) is amended by inserting after subsection*  
12           *(i) the following new subsection:*

13           “*(j) REGISTRATION FOR SALES OF PRIVATE SECURI-*  
14           *TIES OFFERINGS.—A registered securities association shall*  
15           *create a limited qualification category for any associated*  
16           *person of a member who effects sales as part of a primary*  
17           *offering of securities not involving a public offering, pursu-*  
18           *ant to section 3(b), 4(2), or 4(6) of the Securities Act of*  
19           *1933 and the rules and regulations thereunder, and shall*  
20           *deem qualified in such limited qualification category, with-*  
21           *out testing, any bank employee who, in the six month period*  
22           *preceding the date of enactment of this Act, engaged in ef-*  
23           *fecting such sales.*”.

1 **SEC. 204. SALES PRACTICES AND COMPLAINT PROCE-**  
2 **DURES.**

3 *Section 18 of the Federal Deposit Insurance Act is*  
4 *amended by adding at the end the following new subsection:*

5 *“(s) SALES PRACTICES AND COMPLAINT PROCEDURES*  
6 *WITH RESPECT TO BANK SECURITIES ACTIVITIES.—*

7 *“(1) REGULATIONS REQUIRED.—Each Federal*  
8 *banking agency shall prescribe and publish in final*  
9 *form, not later than 6 months after the date of enact-*  
10 *ment of the Financial Services Act of 1998, regula-*  
11 *tions which apply to retail transactions, solicitations,*  
12 *advertising, or offers of any security by any insured*  
13 *depository institution or any affiliate thereof other*  
14 *than a registered broker or dealer or an individual*  
15 *acting on behalf of such a broker or dealer who is an*  
16 *associated person of such broker or dealer. Such regu-*  
17 *lations shall include—*

18 *“(A) requirements that sales practices com-*  
19 *ply with just and equitable principles of trade*  
20 *that are substantially similar to the Rules of*  
21 *Fair Practice of the National Association of Se-*  
22 *curities Dealers; and*

23 *“(B) requirements prohibiting (i) condi-*  
24 *tioning an extension of credit on the purchase or*  
25 *sale of a security; and (ii) any conduct leading*  
26 *a customer to believe that an extension of credit*

1           *is conditioned upon the purchase or sale of a se-*  
2           *curity.*

3           “(2) *PROCEDURES REQUIRED.*—*The appropriate*  
4           *Federal banking agencies shall jointly establish proce-*  
5           *dures and facilities for receiving and expeditiously*  
6           *processing complaints against any bank or employee*  
7           *of a bank arising in connection with the purchase or*  
8           *sale of a security by a customer, including a com-*  
9           *plaint alleging a violation of the regulations pre-*  
10          *scribed under paragraph (1), but excluding a com-*  
11          *plaint involving an individual acting on behalf of*  
12          *such a broker or dealer who is an associated person*  
13          *of such broker or dealer. The use of any such proce-*  
14          *dures and facilities by such a customer shall be at the*  
15          *election of the customer. Such procedures shall include*  
16          *provisions to refer a complaint alleging fraud to the*  
17          *Securities and Exchange Commission and appro-*  
18          *priate State securities commissions.*

19          “(3) *REQUIRED ACTIONS.*—*The actions required*  
20          *by the Federal banking agencies under paragraph (2)*  
21          *shall include the following:*

22                  “(A) *establishing a group, unit, or bureau*  
23                  *within each such agency to receive such com-*  
24                  *plaints;*

1           “(B) developing and establishing procedures  
2           for investigating, and permitting customers to  
3           investigate, such complaints;

4           “(C) developing and establishing procedures  
5           for informing customers of the rights they may  
6           have in connection with such complaints;

7           “(D) developing and establishing procedures  
8           that allow customers a period of at least 6 years  
9           to make complaints and that do not require cus-  
10          tomers to pay the costs of the proceeding; and

11          “(E) developing and establishing procedures  
12          for resolving such complaints, including proce-  
13          dures for the recovery of losses to the extent ap-  
14          propriate.

15          “(4) CONSULTATION AND JOINT REGULATIONS.—  
16          The Federal banking agencies shall consult with each  
17          other and prescribe joint regulations pursuant to  
18          paragraphs (1) and (2), after consultation with the  
19          Securities and Exchange Commission.

20          “(5) PROCEDURES IN ADDITION TO OTHER REM-  
21          EDIES.—The procedures and remedies provided under  
22          this subsection shall be in addition to, and not in lieu  
23          of, any other remedies available under law.

24          “(6) DEFINITION.—As used in this subsection—

1           “(A) the term ‘security’ has the same mean-  
2           ing as in section 3(a)(10) of the Securities Ex-  
3           change Act of 1934;

4           “(B) the term ‘registered broker or dealer’  
5           has the same meaning as in section 3(a)(48) of  
6           the Securities Exchange Act of 1934; and

7           “(C) the term ‘associated person’ has the  
8           same meaning as in section 3(a)(18) of the Secu-  
9           rities Exchange Act of 1934.”.

10 **SEC. 205. INFORMATION SHARING.**

11        *Section 18 of the Federal Deposit Insurance Act is*  
12 *amended by adding at the end the following new subsection:*

13        “(t) **RECORDKEEPING REQUIREMENTS.**—

14           “(1) **REQUIREMENTS.**—*Each appropriate Fed-*  
15 *eral banking agency, after consultation with and con-*  
16 *sideration of the views of the Commission, shall estab-*  
17 *lish recordkeeping requirements for banks relying on*  
18 *exceptions contained in paragraphs (4) and (5) of*  
19 *section 3(a) of the Securities Exchange Act of 1934.*  
20 *Such recordkeeping requirements shall be sufficient to*  
21 *demonstrate compliance with the terms of such excep-*  
22 *tions and be designed to facilitate compliance with*  
23 *such exceptions. Each appropriate Federal banking*  
24 *agency shall make any such information available to*  
25 *the Commission upon request.*

1           “(2) *DEFINITIONS.*—As used in this subsection  
2           the term ‘Commission’ means the Securities and Ex-  
3           change Commission.”.

4   **SEC. 206. DEFINITION AND TREATMENT OF BANKING PROD-**  
5                                   **UCTS.**

6           (a) *DEFINITION OF TRADITIONAL BANKING PROD-*  
7   *UCT.*—For purposes of paragraphs (4) and (5) of section  
8   3(a) of the Securities Exchange Act of 1934 (15 U.S.C.  
9   78c(a) (4), (5)), the term “traditional banking product”  
10 *means—*

11           (1) *a deposit account, savings account, certificate*  
12           *of deposit, or other deposit instrument issued by a*  
13           *bank;*

14           (2) *a banker’s acceptance;*

15           (3) *a letter of credit issued or loan made by a*  
16           *bank;*

17           (4) *a debit account at a bank arising from a*  
18           *credit card or similar arrangement;*

19           (5) *a participation in a loan which the bank or*  
20           *an affiliate of the bank (other than a broker or dealer)*  
21           *funds, participates in, or owns that is sold—*

22                           (A) *to qualified investors; or*

23                           (B) *to other persons that—*

24                                   (i) *have the opportunity to review and*  
25                                   *assess any material information, including*

1            *information regarding the borrower's credit-*  
2            *worthiness; and*

3                    *(ii) based on such factors as financial*  
4                    *sophistication, net worth, and knowledge*  
5                    *and experience in financial matters, have*  
6                    *the capability to evaluate the information*  
7                    *available, as determined under generally*  
8                    *applicable banking standards or guidelines;*

9            *(6) any derivative instrument, whether or not*  
10           *individually negotiated, involving or relating to—*

11                    *(A) foreign currencies, except options on*  
12                    *foreign currencies that trade on a national secu-*  
13                    *rities exchange;*

14                    *(B) interest rates, except interest rate deriv-*  
15                    *ative instruments that—*

16                            *(i) are based on a security or a group*  
17                            *or index of securities (other than govern-*  
18                            *ment securities or a group or index of gov-*  
19                            *ernment securities);*

20                            *(ii) provide for the delivery of one or*  
21                            *more securities (other than government se-*  
22                            *curities); or*

23                            *(iii) trade on a national securities ex-*  
24                            *change; or*

1           (C) commodities, other rates, indices, or  
2           other assets, except derivative instruments that—

3                   (i) are securities or that are based on  
4                   a group or index of securities (other than  
5                   government securities or a group or index of  
6                   government securities);

7                   (ii) provide for the delivery of one or  
8                   more securities (other than government se-  
9                   curities); or

10                   (iii) trade on a national securities ex-  
11                   change; or

12           (7) any product or instrument that the Board of  
13           Governors of the Federal Reserve System (hereafter in  
14           this subsection referred to as the “Board”), after con-  
15           sultation with the Securities and Exchange Commis-  
16           sion (hereafter in this section referred to as the “Com-  
17           mission”) determines to be a new banking product, by  
18           regulation or order published in the Federal Register.

19           (b) OBJECTION BY THE SEC.—

20                   (1) FILING OF PETITION FOR REVIEW.—The  
21                   Commission may obtain review of any regulation or  
22                   order described in subsection (a)(7) in the United  
23                   States Court of Appeals for the District of Columbia  
24                   Circuit by filing in such court, not later than 60 days  
25                   after the date of publication of the regulation or

1        *order, a written petition requesting that the regula-*  
2        *tion or order be set aside.*

3            (2) *TRANSMITTAL OF PETITION AND RECORD.—*

4        *A copy of a petition described in paragraph (1) shall*  
5        *be transmitted as soon as possible by the Clerk of the*  
6        *Court, to an officer or employee of the Board des-*  
7        *ignated for that purpose. Upon receipt of the petition,*  
8        *the Board shall file in the court the regulation or*  
9        *order under review and any documents referred to*  
10       *therein, and any other relevant materials prescribed*  
11       *by the court.*

12           (3) *EXCLUSIVE JURISDICTION.—On the date of*  
13       *the filing of the petition under paragraph (1), the*  
14       *court has jurisdiction, which becomes exclusive on the*  
15       *filing of the materials set forth in paragraph (2), to*  
16       *affirm and enforce or to set aside the regulation or*  
17       *order.*

18           (4) *STANDARD OF REVIEW.—*

19           (A) *IN GENERAL.—The court shall deter-*  
20       *mine to affirm and enforce or set aside the regu-*  
21       *lation or order of the Board, based on the deter-*  
22       *mination of the court as to whether the subject*  
23       *product or instrument would be more appro-*  
24       *priately regulated under the Federal banking*  
25       *laws or the Federal securities laws, giving equal*

1           *deference to the views of the Board and the Com-*  
2           *mission.*

3           *(B) CONSIDERATIONS.—In making a deter-*  
4           *mination under subparagraph (A), the court*  
5           *shall consider—*

6                     *(i) the nature of the subject product or*  
7                     *instrument;*

8                     *(ii) the history, purpose, extent, and*  
9                     *appropriateness of the regulation of the*  
10                    *product or instrument under the Federal*  
11                    *banking laws; and*

12                    *(iii) the history, purpose, extent, and*  
13                    *appropriateness of the regulation of the*  
14                    *product or instrument under the Federal se-*  
15                    *curities laws.*

16           *(5) JUDICIAL STAY.—The filing of a petition*  
17           *pursuant to paragraph (1) shall operate as a judicial*  
18           *stay of—*

19                    *(A) any Commission requirement that a*  
20                    *bank register as a broker or dealer under section*  
21                    *15 of the Securities Exchange Act of 1934, be-*  
22                    *cause the bank engages in any transaction in, or*  
23                    *buys or sells, the product or instrument that is*  
24                    *the subject of the petition; and*

1           (B) any Commission action against a bank  
2           for a failure to comply with a requirement de-  
3           scribed in subparagraph (A).

4           (c) *CLASSIFICATION LIMITED.*—Classification of a  
5           particular product as a traditional banking product pursu-  
6           ant to this section shall not be construed as finding or im-  
7           plying that such product is or is not a security for any  
8           purpose under the securities laws, or is or is not an account,  
9           agreement, contract, or transaction for any purpose under  
10          the Commodity Exchange Act.

11          (d) *NO LIMITATION ON OTHER AUTHORITY TO CHAL-*  
12          *LENGE.*—Nothing in this section shall affect the right or  
13          authority that the Securities and Exchange Commission,  
14          any appropriate Federal banking agency, or any interested  
15          party has under any other provision of law to object to or  
16          seek judicial review as to whether a product or instrument  
17          is or is not appropriately classified as a “traditional bank-  
18          ing product” under paragraphs (1) through (7) of sub-  
19          section (a).

20          (e) *DEFINITIONS.*—For purposes of this section—

21                  (1) the term “bank” has the same meaning as in  
22                  section 3(a)(6) of the Securities Exchange Act of  
23                  1934;

1           (2) *the term “qualified investor” has the same*  
2 *meaning as in section 3(a)(55) of the Securities Ex-*  
3 *change Act of 1934;*

4           (3) *the term “government securities” has the*  
5 *same meaning as in section 3(a)(42) of the Securities*  
6 *Exchange Act of 1934, and, for purposes of this sub-*  
7 *section, commercial paper, bankers acceptances, and*  
8 *commercial bills shall be treated in the same manner*  
9 *as government securities;*

10          (4) *the term “Federal banking agency” has the*  
11 *same meaning as in section 3(z) of the Federal De-*  
12 *posit Insurance Act; and*

13          (5) *the term “new banking product” means a*  
14 *product or instrument that—*

15                (A) *was not subject to regulation by the Se-*  
16 *curities and Exchange Commission as a security*  
17 *under the Securities Exchange Act of 1934, be-*  
18 *fore the date of enactment of this Act; and*

19                (B) *is not a traditional banking product, as*  
20 *defined in subparagraphs (A) through (F) of*  
21 *paragraph (1).*

1 **SEC. 207. DERIVATIVE INSTRUMENT AND QUALIFIED INVESTOR**  
2 **DEFINED.**

3 *Section 3(a) of the Securities Exchange Act of 1934*  
4 *(15 U.S.C. 78c(a)) is amended by adding at the end the*  
5 *following new paragraphs:*

6 “(54) *DERIVATIVE INSTRUMENT.*—

7 “(A) *DEFINITION.*—*The term ‘derivative in-*  
8 *strument’ means any individually negotiated*  
9 *contract, agreement, warrant, note, or option*  
10 *that is based, in whole or in part, on the value*  
11 *of, any interest in, or any quantitative measure*  
12 *or the occurrence of any event relating to, one or*  
13 *more commodities, securities, currencies, interest*  
14 *or other rates, indices, or other assets, but does*  
15 *not include a traditional banking product, as de-*  
16 *finied in section 206(a) of the Financial Services*  
17 *Act of 1998.*

18 “(B) *CLASSIFICATION LIMITED.*— *Classi-*  
19 *fication of a particular contract as a derivative*  
20 *instrument pursuant to this paragraph shall not*  
21 *be construed as finding or implying that such*  
22 *instrument is or is not a security for any pur-*  
23 *pose under the securities laws, or is or is not an*  
24 *account, agreement, contract, or transaction for*  
25 *any purpose under the Commodity Exchange*  
26 *Act.*

1           “(55) *QUALIFIED INVESTOR*.—

2                   “(A) *DEFINITION*.—*For purposes of this*  
3 *title and section 206(a)(1)(E) of the Financial*  
4 *Services Act of 1998, the term ‘qualified investor’*  
5 *means—*

6                           “(i) *any investment company reg-*  
7 *istered with the Commission under section 8*  
8 *of the Investment Company Act of 1940;*

9                           “(ii) *any issuer eligible for an exclu-*  
10 *sion from the definition of investment com-*  
11 *pany pursuant to section 3(c)(7) of the In-*  
12 *vestment Company Act of 1940;*

13                           “(iii) *any bank (as defined in para-*  
14 *graph (6) of this subsection), savings and*  
15 *loan association (as defined in section 3(b)*  
16 *of the Federal Deposit Insurance Act),*  
17 *broker, dealer, insurance company (as de-*  
18 *fined in section 2(a)(13) of the Securities*  
19 *Act of 1933), or business development com-*  
20 *pany (as defined in section 2(a)(48) of the*  
21 *Investment Company Act of 1940);*

22                           “(iv) *any small business investment*  
23 *company licensed by the United States*  
24 *Small Business Administration under sec-*

1            *tion 301(c) or (d) of the Small Business In-*  
2            *vestment Act of 1958;*

3            *“(v) any State sponsored employee*  
4            *benefit plan, or any other employee benefit*  
5            *plan, within the meaning of the Employee*  
6            *Retirement Income Security Act of 1974,*  
7            *other than an individual retirement ac-*  
8            *count, if the investment decisions are made*  
9            *by a plan fiduciary, as defined in section*  
10           *3(21) of that Act, which is either a bank,*  
11           *savings and loan association, insurance*  
12           *company, or registered investment adviser;*

13           *“(vi) any trust whose purchases of se-*  
14           *curities are directed by a person described*  
15           *in clauses (i) through (v) of this subpara-*  
16           *graph;*

17           *“(vii) any market intermediary ex-*  
18           *empt under section 3(c)(2) of the Investment*  
19           *Company Act of 1940;*

20           *“(viii) any associated person of a*  
21           *broker or dealer other than a natural per-*  
22           *son;*

23           *“(ix) any foreign bank (as defined in*  
24           *section 1(b)(7) of the International Banking*  
25           *Act of 1978);*

1           “(x) the government of any foreign  
2           country;

3           “(xi) any corporation, company, or  
4           partnership that owns and invests on a dis-  
5           cretionary basis, not less than \$10,000,000  
6           in investments;

7           “(xii) any natural person who owns  
8           and invests on a discretionary basis, not  
9           less than \$10,000,000 in investments;

10          “(xiii) any government or political  
11          subdivision, agency, or instrumentality of a  
12          government who owns and invests on a dis-  
13          cretionary basis not less than \$50,000,000  
14          in investments; or

15          “(xiv) any multinational or supra-  
16          national entity or any agency or instru-  
17          mentality thereof.

18          “(B) *ADDITIONAL AUTHORITY.*—*The Com-*  
19          *mission may, by rule or order, define a ‘qualified*  
20          *investor’ as any other person, taking into consid-*  
21          *eration such factors as the financial sophistica-*  
22          *tion of the person, net worth, and knowledge and*  
23          *experience in financial matters.”.*

1 **SEC. 208. GOVERNMENT SECURITIES DEFINED.**

2 *Section 3(a)(42) of the Securities Exchange Act of*  
3 *1934 (15 U.S.C. 78c(a)(42)) is amended—*

4 *(1) by striking “or” at the end of subparagraph*  
5 *(C);*

6 *(2) by striking the period at the end of subpara-*  
7 *graph (D) and inserting “; or”; and*

8 *(3) by adding at the end the following new sub-*  
9 *paragraph:*

10 *“(E) for purposes of section 15C as applied*  
11 *to a bank, a qualified Canadian government ob-*  
12 *ligation as defined in section 5136 of the Revised*  
13 *Statutes.”.*

14 **SEC. 209. EFFECTIVE DATE.**

15 *This subtitle shall take effect at the end of the 270-*  
16 *day period beginning on the date of the enactment of this*  
17 *Act.*

18 **SEC. 210. RULE OF CONSTRUCTION.**

19 *Nothing in this Act shall supersede, affect, or otherwise*  
20 *limit the scope and applicability of the Commodity Ex-*  
21 *change Act (7 U.S.C. 1 et seq.).*

1           **Subtitle B—Bank Investment**  
2                           **Company Activities**

3   **SEC. 211. CUSTODY OF INVESTMENT COMPANY ASSETS BY**  
4                           **AFFILIATED BANK.**

5           (a) *MANAGEMENT COMPANIES.*—Section 17(f) of the  
6 *Investment Company Act of 1940 (15 U.S.C. 80a–17(f))* is  
7 *amended—*

8                   (1) *by redesignating paragraphs (1), (2), and (3)*  
9                   *as subparagraphs (A), (B), and (C), respectively;*

10                   (2) *by striking “(f) Every registered” and insert-*  
11 *ing the following:*

12                   “(f) *CUSTODY OF SECURITIES.*—

13                           “(1) *Every registered*”;

14                   (3) *by redesignating the second, third, fourth,*  
15 *and fifth sentences of such subsection as paragraphs*  
16 *(2) through (5), respectively, and indenting the left*  
17 *margin of such paragraphs appropriately; and*

18                   (4) *by adding at the end the following new para-*  
19 *graph:*

20                           “(6) *SERVICES AS TRUSTEE OR CUSTODIAN.*—

21 *The Commission may adopt rules and regulations,*  
22 *and issue orders, consistent with the protection of in-*  
23 *vestors, prescribing the conditions under which a*  
24 *bank, or an affiliated person of a bank, either of*  
25 *which is an affiliated person, promoter, organizer, or*

1        *sponsor of, or principal underwriter for, a registered*  
2        *management company may serve as custodian of that*  
3        *registered management company.”.*

4        *(b) UNIT INVESTMENT TRUSTS.—Section 26 of the In-*  
5        *vestment Company Act of 1940 (15 U.S.C. 80a–26) is*  
6        *amended—*

7                *(1) by redesignating subsections (b) through (e)*  
8        *as subsections (c) through (f), respectively; and*

9                *(2) by inserting after subsection (a) the following*  
10        *new subsection:*

11        *“(b) The Commission may adopt rules and regula-*  
12        *tions, and issue orders, consistent with the protection of in-*  
13        *vestors, prescribing the conditions under which a bank, or*  
14        *an affiliated person of a bank, either of which is an affili-*  
15        *ated person of a principal underwriter for, or depositor of,*  
16        *a registered unit investment trust, may serve as trustee or*  
17        *custodian under subsection (a)(1).”.*

18        *(c) FIDUCIARY DUTY OF CUSTODIAN.—Section 36(a)*  
19        *of the Investment Company Act of 1940 (15 U.S.C. 80a–*  
20        *35(a)) is amended—*

21                *(1) in paragraph (1), by striking “or” at the*  
22        *end;*

23                *(2) in paragraph (2), by striking the period at*  
24        *the end and inserting “; or”; and*

1           (3) by inserting after paragraph (2) the follow-  
2           ing:

3           “(3) as custodian.”.

4   **SEC. 212. LENDING TO AN AFFILIATED INVESTMENT COM-**  
5           **PANY.**

6           Section 17(a) of the Investment Company Act of 1940  
7   (15 U.S.C. 80a-17(a)) is amended—

8           (1) by striking “or” at the end of paragraph (2);

9           (2) by striking the period at the end of para-  
10          graph (3) and inserting “; or”; and

11          (3) by adding at the end the following new para-  
12          graph:

13               “(4) to loan money or other property to such reg-  
14          istered company, or to any company controlled by  
15          such registered company, in contravention of such  
16          rules, regulations, or orders as the Commission may  
17          prescribe or issue consistent with the protection of in-  
18          vestors.”.

19   **SEC. 213. INDEPENDENT DIRECTORS.**

20          (a) *IN GENERAL.*—Section 2(a)(19)(A) of the Invest-  
21          ment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)(A))  
22          is amended—

23               (1) by striking clause (v) and inserting the fol-  
24          lowing new clause:

1           “(v) any person or any affiliated per-  
2           son of a person (other than a registered in-  
3           vestment company) that, at any time dur-  
4           ing the 6-month period preceding the date  
5           of the determination of whether that person  
6           or affiliated person is an interested person,  
7           has executed any portfolio transactions for,  
8           engaged in any principal transactions with,  
9           or distributed shares for—

10                   “(I) the investment company;

11                   “(II) any other investment com-  
12                   pany having the same investment ad-  
13                   viser as such investment company or  
14                   holding itself out to investors as a re-  
15                   lated company for purposes of invest-  
16                   ment or investor services; or

17                   “(III) any account over which the  
18                   investment company’s investment ad-  
19                   viser has brokerage placement discre-  
20                   tion,”;

21           (2) by redesignating clause (vi) as clause (vii);

22           and

23           (3) by inserting after clause (v) the following  
24           new clause:

1           “(vi) any person or any affiliated per-  
2           son of a person (other than a registered in-  
3           vestment company) that, at any time dur-  
4           ing the 6-month period preceding the date  
5           of the determination of whether that person  
6           or affiliated person is an interested person,  
7           has loaned money or other property to—

8                     “(I) the investment company;

9                     “(II) any other investment com-  
10           pany having the same investment ad-  
11           viser as such investment company or  
12           holding itself out to investors as a re-  
13           lated company for purposes of invest-  
14           ment or investor services; or

15                    “(III) any account for which the  
16           investment company’s investment ad-  
17           viser has borrowing authority.”

18           (b) *CONFORMING AMENDMENT.*—Section 2(a)(19)(B)  
19 of the Investment Company Act of 1940 (15 U.S.C. 80a-  
20 2(a)(19)(B)) is amended—

21                   (1) by striking clause (v) and inserting the fol-  
22           lowing new clause:

23                    “(v) any person or any affiliated per-  
24           son of a person (other than a registered in-  
25           vestment company) that, at any time dur-

1            *ing the 6-month period preceding the date*  
2            *of the determination of whether that person*  
3            *or affiliated person is an interested person,*  
4            *has executed any portfolio transactions for,*  
5            *engaged in any principal transactions with,*  
6            *or distributed shares for—*

7                    *“(I) any investment company for*  
8                    *which the investment adviser or prin-*  
9                    *cipal underwriter serves as such;*

10                   *“(II) any investment company*  
11                   *holding itself out to investors, for pur-*  
12                   *poses of investment or investor services,*  
13                   *as a company related to any invest-*  
14                   *ment company for which the invest-*  
15                   *ment adviser or principal underwriter*  
16                   *serves as such; or*

17                   *“(III) any account over which the*  
18                   *investment adviser has brokerage place-*  
19                   *ment discretion,”;*

20            *(2) by redesignating clause (vi) as clause (vii);*

21            *and*

22            *(3) by inserting after clause (v) the following*  
23            *new clause:*

24                    *“(vi) any person or any affiliated per-*  
25                    *son of a person (other than a registered in-*

1           vestment company) that, at any time dur-  
2           ing the 6-month period preceding the date  
3           of the determination of whether that person  
4           or affiliated person is an interested person,  
5           has loaned money or other property to—

6                   “(I) any investment company for  
7                   which the investment adviser or prin-  
8                   cipal underwriter serves as such;

9                   “(II) any investment company  
10                  holding itself out to investors, for pur-  
11                  poses of investment or investor services,  
12                  as a company related to any invest-  
13                  ment company for which the invest-  
14                  ment adviser or principal underwriter  
15                  serves as such; or

16                  “(III) any account for which the  
17                  investment adviser has borrowing au-  
18                  thority.”.

19           (c) *AFFILIATION OF DIRECTORS.*—Section 10(c) of the  
20 *Investment Company Act of 1940 (15 U.S.C. 80a–10(c))* is  
21 *amended by striking “bank, except” and inserting “bank*  
22 *(together with its affiliates and subsidiaries) or any one*  
23 *bank holding company (together with its affiliates and sub-*  
24 *sidiaries) (as such terms are defined in section 2 of the*  
25 *Bank Holding Company Act of 1956), except”.*

1           (d) *EFFECTIVE DATE.*—*The amendments made by this*  
2 *section shall take effect at the end of the 1-year period begin-*  
3 *ning on the date of enactment of this subtitle.*

4 **SEC. 214. ADDITIONAL SEC DISCLOSURE AUTHORITY.**

5           *Section 35(a) of the Investment Company Act of 1940*  
6 *(15 U.S.C. 80a–34(a)) is amended to read as follows:*

7           “(a) *MISREPRESENTATION OF GUARANTEES.*—

8                   “(1) *IN GENERAL.*—*It shall be unlawful for any*  
9 *person, issuing or selling any security of which a reg-*  
10 *istered investment company is the issuer, to represent*  
11 *or imply in any manner whatsoever that such secu-*  
12 *rity or company—*

13                           “(A) *has been guaranteed, sponsored, rec-*  
14 *ommended, or approved by the United States, or*  
15 *any agency, instrumentality or officer of the*  
16 *United States;*

17                           “(B) *has been insured by the Federal De-*  
18 *posit Insurance Corporation; or*

19                           “(C) *is guaranteed by or is otherwise an ob-*  
20 *ligation of any bank or insured depository insti-*  
21 *tution.*

22                   “(2) *DISCLOSURES.*—*Any person issuing or sell-*  
23 *ing the securities of a registered investment company*  
24 *that is advised by, or sold through, a bank shall*  
25 *prominently disclose that an investment in the com-*

1       pany is not insured by the Federal Deposit Insurance  
2       Corporation or any other government agency. The  
3       Commission may adopt rules and regulations, and  
4       issue orders, consistent with the protection of inves-  
5       tors, prescribing the manner in which the disclosure  
6       under this paragraph shall be provided.

7               “(3) *DEFINITIONS.*—The terms ‘insured deposi-  
8       tory institution’ and ‘appropriate Federal banking  
9       agency’ have the same meanings as in section 3 of the  
10       Federal Deposit Insurance Act.”.

11 **SEC. 215. DEFINITION OF BROKER UNDER THE INVEST-**  
12                               **MENT COMPANY ACT OF 1940.**

13       Section 2(a)(6) of the Investment Company Act of  
14       1940 (15 U.S.C. 80a-2(a)(6)) is amended to read as follows:

15               “(6) The term ‘broker’ has the same meaning as  
16       in section 3 of the Securities Exchange Act of 1934,  
17       except that such term does not include any person  
18       solely by reason of the fact that such person is an un-  
19       derwriter for one or more investment companies.”.

20 **SEC. 216. DEFINITION OF DEALER UNDER THE INVESTMENT**  
21                               **COMPANY ACT OF 1940.**

22       Section 2(a)(11) of the Investment Company Act of  
23       1940 (15 U.S.C. 80a-2(a)(11)) is amended to read as fol-  
24       lows:

1           “(11) The term ‘dealer’ has the same meaning as  
2           in section 3 of the Securities Exchange Act of 1934,  
3           but does not include an insurance company or invest-  
4           ment company.”.

5   **SEC. 217. REMOVAL OF THE EXCLUSION FROM THE DEFINI-**  
6                           **TION OF INVESTMENT ADVISER FOR BANKS**  
7                           **THAT ADVISE INVESTMENT COMPANIES.**

8           (a) *INVESTMENT ADVISER.*—Section 202(a)(11) of the  
9   *Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11))*  
10   *is amended in subparagraph (A), by striking “investment*  
11   *company” and inserting “investment company, except that*  
12   *the term ‘investment adviser’ includes any bank or bank*  
13   *holding company to the extent that such bank or bank hold-*  
14   *ing company serves or acts as an investment adviser to a*  
15   *registered investment company, but if, in the case of a bank,*  
16   *such services or actions are performed through a separately*  
17   *identifiable department or division, the department or divi-*  
18   *sion, and not the bank itself, shall be deemed to be the in-*  
19   *vestment adviser”.*

20           (b) *SEPARATELY IDENTIFIABLE DEPARTMENT OR DI-*  
21   *VISION.*—Section 202(a) of the *Investment Advisers Act of*  
22   *1940 (15 U.S.C. 80b–2(a)) is amended by adding at the*  
23   *end the following:*

24                           “(26) The term ‘separately identifiable depart-

25                           ment or division’ of a bank means a unit—

1           “(A) that is under the direct supervision of  
2           an officer or officers designated by the board of  
3           directors of the bank as responsible for the day-  
4           to-day conduct of the bank’s investment adviser  
5           activities for one or more investment companies,  
6           including the supervision of all bank employees  
7           engaged in the performance of such activities;  
8           and

9           “(B) for which all of the records relating to  
10          its investment adviser activities are separately  
11          maintained in or extractable from such unit’s  
12          own facilities or the facilities of the bank, and  
13          such records are so maintained or otherwise ac-  
14          cessible as to permit independent examination  
15          and enforcement by the Commission of this Act  
16          or the Investment Company Act of 1940 and  
17          rules and regulations promulgated under this  
18          Act or the Investment Company Act of 1940.”.

19 **SEC. 218. DEFINITION OF BROKER UNDER THE INVEST-**  
20 **MENT ADVISERS ACT OF 1940.**

21          Section 202(a)(3) of the Investment Advisers Act of  
22          1940 (15 U.S.C. 80b–2(a)(3)) is amended to read as follows:

23                 “(3) The term ‘broker’ has the same meaning as  
24                 in section 3 of the Securities Exchange Act of 1934.”.

1 **SEC. 219. DEFINITION OF DEALER UNDER THE INVESTMENT**  
2 **ADVISERS ACT OF 1940.**

3 *Section 202(a)(7) of the Investment Advisers Act of*  
4 *1940 (15 U.S.C. 80b-2(a)(7)) is amended to read as follows:*

5 *“(7) The term ‘dealer’ has the same meaning as*  
6 *in section 3 of the Securities Exchange Act of 1934,*  
7 *but does not include an insurance company or invest-*  
8 *ment company.”.*

9 **SEC. 220. INTERAGENCY CONSULTATION.**

10 *The Investment Advisers Act of 1940 (15 U.S.C. 80b-*  
11 *1 et seq.) is amended by inserting after section 210 the fol-*  
12 *lowing new section:*

13 **“SEC. 210A. CONSULTATION.**

14 *“(a) EXAMINATION RESULTS AND OTHER INFORMA-*  
15 *TION.—*

16 *“(1) The appropriate Federal banking agency*  
17 *shall provide the Commission upon request the results*  
18 *of any examination, reports, records, or other infor-*  
19 *mation to which such agency may have access with*  
20 *respect to the investment advisory activities—*

21 *“(A) of any—*

22 *“(i) bank holding company;*

23 *“(ii) bank; or*

24 *“(iii) separately identifiable depart-*  
25 *ment or division of a bank, that is reg-*  
26 *istered under section 203 of this title; and*

1           “(B) *in the case of a bank holding company*  
2           *or bank that has a subsidiary or a separately*  
3           *identifiable department or division registered*  
4           *under that section, of such bank or bank holding*  
5           *company.*

6           “(2) *The Commission shall provide to the appro-*  
7           *priate Federal banking agency upon request the re-*  
8           *sults of any examination, reports, records, or other*  
9           *information with respect to the investment advisory*  
10          *activities of any bank holding company, bank, or sep-*  
11          *arately identifiable department or division of a bank,*  
12          *any of which is registered under section 203 of this*  
13          *title.*

14          “(b) *EFFECT ON OTHER AUTHORITY.—Nothing in this*  
15          *section shall limit in any respect the authority of the appro-*  
16          *priate Federal banking agency with respect to such bank*  
17          *holding company, bank, or department or division under*  
18          *any provision of law.*

19          “(c) *DEFINITION.—For purposes of this section, the*  
20          *term ‘appropriate Federal banking agency’ has the same*  
21          *meaning as in section 3 of the Federal Deposit Insurance*  
22          *Act.’.*

23          **SEC. 221. TREATMENT OF BANK COMMON TRUST FUNDS.**

24          “(a) *SECURITIES ACT OF 1933.—Section 3(a)(2) of the*  
25          *Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is amended*

1 *by striking “or any interest or participation in any com-*  
2 *mon trust fund or similar fund maintained by a bank ex-*  
3 *clusively for the collective investment and reinvestment of*  
4 *assets contributed thereto by such bank in its capacity as*  
5 *trustee, executor, administrator, or guardian” and insert-*  
6 *ing “or any interest or participation in any common trust*  
7 *fund or similar fund that is excluded from the definition*  
8 *of the term ‘investment company’ under section 3(c)(3) of*  
9 *the Investment Company Act of 1940”.*

10 (b) *SECURITIES EXCHANGE ACT OF 1934.—Section*  
11 *3(a)(12)(A)(iii) of the Securities Exchange Act of 1934 (15*  
12 *U.S.C. 78c(a)(12)(A)(iii)) is amended to read as follows:*

13 *“(iii) any interest or participation in any*  
14 *common trust fund or similar fund that is ex-*  
15 *cluded from the definition of the term ‘invest-*  
16 *ment company’ under section 3(c)(3) of the In-*  
17 *vestment Company Act of 1940;”.*

18 (c) *INVESTMENT COMPANY ACT OF 1940.—Section*  
19 *3(c)(3) of the Investment Company Act of 1940 (15 U.S.C.*  
20 *80a–3(c)(3)) is amended by inserting before the period the*  
21 *following: “, if—*

22 *“(A) such fund is employed by the bank*  
23 *solely as an aid to the administration of trusts,*  
24 *estates, or other accounts created and main-*  
25 *tained for a fiduciary purpose;*

1           “(B) except in connection with the ordinary  
2           advertising of the bank’s fiduciary services, in-  
3           terests in such fund are not—

4                     “(i) advertised; or

5                     “(ii) offered for sale to the general pub-  
6           lic; and

7           “(C) fees and expenses charged by such fund  
8           are not in contravention of fiduciary principles  
9           established under applicable Federal or State  
10          law”.

11 **SEC. 222. INVESTMENT ADVISERS PROHIBITED FROM HAV-**  
12 **ING CONTROLLING INTEREST IN REG-**  
13 **ISTERED INVESTMENT COMPANY.**

14          Section 15 of the Investment Company Act of 1940 (15  
15 U.S.C. 80a–15) is amended by adding at the end the follow-  
16 ing new subsection:

17          “(g) **CONTROLLING INTEREST IN INVESTMENT COM-**  
18 **PANY PROHIBITED.**—

19                 “(1) **IN GENERAL.**—If an investment adviser to  
20          a registered investment company, or an affiliated per-  
21          son of that investment adviser, holds a controlling in-  
22          terest in that registered investment company in a  
23          trustee or fiduciary capacity, such person shall—

24                     “(A) if it holds the shares in a trustee or fi-  
25          duciary capacity with respect to any employee

1           *benefit plan subject to the Employee Retirement*  
2           *Income Security Act of 1974, transfer the power*  
3           *to vote the shares of the investment company*  
4           *through to another person acting in a fiduciary*  
5           *capacity with respect to the plan who is not an*  
6           *affiliated person of that investment adviser or*  
7           *any affiliated person thereof; or*

8           *“(B) if it holds the shares in a trustee or fi-*  
9           *duciary capacity with respect to any person or*  
10          *entity other than an employee benefit plan sub-*  
11          *ject to the Employee Retirement Income Security*  
12          *Act of 1974—*

13           *“(i) transfer the power to vote the*  
14           *shares of the investment company through*  
15           *to—*

16           *“(I) the beneficial owners of the*  
17           *shares;*

18           *“(II) another person acting in a*  
19           *fiduciary capacity who is not an affili-*  
20           *ated person of that investment adviser*  
21           *or any affiliated person thereof; or*

22           *“(III) any person authorized to*  
23           *receive statements and information*  
24           *with respect to the trust who is not an*

1                   *affiliated person of that investment ad-*  
2                   *viser or any affiliated person thereof;*

3                   “(ii) *vote the shares of the investment*  
4                   *company held by it in the same proportion*  
5                   *as shares held by all other shareholders of*  
6                   *the investment company; or*

7                   “(iii) *vote the shares of the investment*  
8                   *company as otherwise permitted under such*  
9                   *rules, regulations, or orders as the Commis-*  
10                  *sion may prescribe or issue consistent with*  
11                  *the protection of investors.*

12                  “(2) *EXEMPTION.—Paragraph (1) shall not*  
13                  *apply to any investment adviser to a registered in-*  
14                  *vestment company, or any affiliated person of that*  
15                  *investment adviser, that holds shares of the invest-*  
16                  *ment company in a trustee or fiduciary capacity if*  
17                  *that registered investment company consists solely of*  
18                  *assets held in such capacities.*

19                  “(3) *SAFE HARBOR.—No investment adviser to a*  
20                  *registered investment company or any affiliated per-*  
21                  *son of such investment adviser shall be deemed to have*  
22                  *acted unlawfully or to have breached a fiduciary duty*  
23                  *under State or Federal law solely by reason of acting*  
24                  *in accordance with clause (i), (ii), or (iii) of para-*  
25                  *graph (1)(B).”.*

1 **SEC. 223. CONFORMING CHANGE IN DEFINITION.**

2 *Section 2(a)(5) of the Investment Company Act of*  
3 *1940 (15 U.S.C. 80a-2(a)(5)) is amended by striking “(A)*  
4 *a banking institution organized under the laws of the*  
5 *United States” and inserting “(A) a depository institution*  
6 *(as defined in section 3 of the Federal Deposit Insurance*  
7 *Act) or a branch or agency of a foreign bank (as such terms*  
8 *are defined in section 1(b) of the International Banking Act*  
9 *of 1978)”.*

10 **SEC. 224. CONFORMING AMENDMENT.**

11 *Section 202 of the Investment Advisers Act of 1940 (15*  
12 *U.S.C. 80b-2) is amended by adding at the end the follow-*  
13 *ing new subsection:*

14 *“(c) CONSIDERATION OF PROMOTION OF EFFICIENCY,*  
15 *COMPETITION, AND CAPITAL FORMATION.—Whenever pur-*  
16 *suant to this title the Commission is engaged in rulemaking*  
17 *and is required to consider or determine whether an action*  
18 *is necessary or appropriate in the public interest, the Com-*  
19 *mission shall also consider, in addition to the protection*  
20 *of investors, whether the action will promote efficiency, com-*  
21 *petition, and capital formation.”.*

22 **SEC. 225. EFFECTIVE DATE.**

23 *This subtitle shall take effect 90 days after the date*  
24 *of the enactment of this Act.*

1 **Subtitle C—Securities and Ex-**  
 2 **change Commission Supervision**  
 3 **of Investment Bank Holding**  
 4 **Companies**

5 **SEC. 231. SUPERVISION OF INVESTMENT BANK HOLDING**  
 6 **COMPANIES BY THE SECURITIES AND EX-**  
 7 **CHANGE COMMISSION.**

8 (a) *AMENDMENT.*—Section 17 of the Securities Ex-  
 9 change Act of 1934 (15 U.S.C. 78q) is amended—

10 (1) *by redesignating subsection (i) as subsection*  
 11 *(l); and*

12 (2) *by inserting after subsection (h) the following*  
 13 *new subsections:*

14 “(i) *INVESTMENT BANK HOLDING COMPANIES.*—

15 “(1) *ELECTIVE SUPERVISION OF AN INVESTMENT*  
 16 *BANK HOLDING COMPANY NOT HAVING A BANK OR*  
 17 *SAVINGS ASSOCIATION AFFILIATE.*—

18 “(A) *IN GENERAL.*—*An investment bank*  
 19 *holding company that is not—*

20 “(i) *an affiliate of a wholesale finan-*  
 21 *cial institution, an insured bank (other*  
 22 *than an institution described in subpara-*  
 23 *graph (D), (F), or (G) of section 2(c)(2), or*  
 24 *held under section 4(f), of the Bank Holding*

1            *Company Act of 1956), or a savings asso-*  
2            *ciation;*

3            *“(ii) a foreign bank, foreign company,*  
4            *or company that is described in section 8(a)*  
5            *of the International Banking Act of 1978;*  
6            *or*

7            *“(iii) a foreign bank that controls, di-*  
8            *rectly or indirectly, a corporation chartered*  
9            *under section 25A of the Federal Reserve*  
10           *Act,*

11           *may elect to become supervised by filing with the*  
12           *Commission a notice of intention to become su-*  
13           *pervised, pursuant to subparagraph (B) of this*  
14           *paragraph. Any investment bank holding com-*  
15           *pany filing such a notice shall be supervised in*  
16           *accordance with this section and comply with the*  
17           *rules promulgated by the Commission applicable*  
18           *to supervised investment bank holding compa-*  
19           *nies.*

20           *“(B) NOTIFICATION OF STATUS AS A SUPER-*  
21           *vised INVESTMENT BANK HOLDING COMPANY.—*

22           *An investment bank holding company that elects*  
23           *under subparagraph (A) to become supervised by*  
24           *the Commission shall file with the Commission a*  
25           *written notice of intention to become supervised*

1           *by the Commission in such form and containing*  
2           *such information and documents concerning such*  
3           *investment bank holding company as the Com-*  
4           *mission, by rule, may prescribe as necessary or*  
5           *appropriate in furtherance of the purposes of*  
6           *this section. Unless the Commission finds that*  
7           *such supervision is not necessary or appropriate*  
8           *in furtherance of the purposes of this section,*  
9           *such supervision shall become effective 45 days*  
10          *after the date of receipt of such written notice*  
11          *by the Commission, or within such shorter time*  
12          *period as the Commission, by rule or order, may*  
13          *determine.*

14           “(2) *ELECTION NOT TO BE SUPERVISED BY THE*  
15          *COMMISSION AS AN INVESTMENT BANK HOLDING COM-*  
16          *PANY.—*

17           “(A) *VOLUNTARY WITHDRAWAL.—A super-*  
18          *vised investment bank holding company that is*  
19          *supervised pursuant to paragraph (1) may, upon*  
20          *such terms and conditions as the Commission*  
21          *deems necessary or appropriate, elect not to be*  
22          *supervised by the Commission by filing a written*  
23          *notice of withdrawal from Commission super-*  
24          *vision. Such notice shall not become effective*  
25          *until one year after receipt by the Commission,*

1            *or such shorter or longer period as the Commis-*  
2            *sion deems necessary or appropriate to ensure ef-*  
3            *fective supervision of the material risks to the su-*  
4            *pervised investment bank holding company and*  
5            *to the affiliated broker or dealer, or to prevent*  
6            *evasion of the purposes of this section.*

7            *“(B) DISCONTINUATION OF COMMISSION SU-*  
8            *PERVISION.—If the Commission finds that any*  
9            *supervised investment bank holding company*  
10           *that is supervised pursuant to paragraph (1) is*  
11           *no longer in existence or has ceased to be an in-*  
12           *vestment bank holding company, or if the Com-*  
13           *mission finds that continued supervision of such*  
14           *a supervised investment bank holding company*  
15           *is not consistent with the purposes of this sec-*  
16           *tion, the Commission may discontinue the super-*  
17           *vision pursuant to a rule or order, if any, pro-*  
18           *mulgated by the Commission under this section.*

19           *“(3) SUPERVISION OF INVESTMENT BANK HOLD-*  
20           *ING COMPANIES.—*

21           *“(A) RECORDKEEPING AND REPORTING.—*

22           *“(i) IN GENERAL.—Every supervised*  
23           *investment bank holding company and each*  
24           *affiliate thereof shall make and keep for pre-*  
25           *scribed periods such records, furnish copies*

1           *thereof, and make such reports, as the Com-*  
2           *mission may require by rule, in order to*  
3           *keep the Commission informed as to—*

4                     *“(I) the company’s or affiliate’s*  
5                     *activities, financial condition, policies,*  
6                     *systems for monitoring and controlling*  
7                     *financial and operational risks, and*  
8                     *transactions and relationships between*  
9                     *any broker or dealer affiliate of the su-*  
10                    *pervised investment bank holding com-*  
11                    *pany; and*

12                    *“(II) the extent to which the com-*  
13                    *pany or affiliate has complied with the*  
14                    *provisions of this Act and regulations*  
15                    *prescribed and orders issued under this*  
16                    *Act.*

17                    *“(ii) FORM AND CONTENTS.—Such*  
18                    *records and reports shall be prepared in*  
19                    *such form and according to such specifica-*  
20                    *tions (including certification by an inde-*  
21                    *pendent public accountant), as the Commis-*  
22                    *sion may require and shall be provided*  
23                    *promptly at any time upon request by the*  
24                    *Commission. Such records and reports may*  
25                    *include—*

1                   “(I) a balance sheet and income  
2                   statement;

3                   “(II) an assessment of the consoli-  
4                   dated capital of the supervised invest-  
5                   ment bank holding company;

6                   “(III) an independent auditor’s  
7                   report attesting to the supervised in-  
8                   vestment bank holding company’s com-  
9                   pliance with its internal risk manage-  
10                  ment and internal control objectives;  
11                  and

12                  “(IV) reports concerning the ex-  
13                  tent to which the company or affiliate  
14                  has complied with the provisions of  
15                  this title and any regulations pre-  
16                  scribed and orders issued under this  
17                  title.

18                  “(B) USE OF EXISTING REPORTS.—

19                  “(i) IN GENERAL.—The Commission  
20                  shall, to the fullest extent possible, accept re-  
21                  ports in fulfillment of the requirements  
22                  under this paragraph that the supervised  
23                  investment bank holding company or its af-  
24                  filiates have been required to provide to an-

1 *other appropriate regulatory agency or self-*  
2 *regulatory organization.*

3 “(ii) *AVAILABILITY.*—*A supervised in-*  
4 *vestment bank holding company or an affil-*  
5 *iate of such company shall provide to the*  
6 *Commission, at the request of the Commis-*  
7 *sion, any report referred to in clause (i).*

8 “(C) *EXAMINATION AUTHORITY.*—

9 “(i) *FOCUS OF EXAMINATION AUTHOR-*  
10 *ITY.*—*The Commission may make examina-*  
11 *tions of any supervised investment bank*  
12 *holding company and any affiliate of such*  
13 *company in order to—*

14 “(I) *inform the Commission re-*  
15 *garding—*

16 “(aa) *the nature of the oper-*  
17 *ations and financial condition of*  
18 *the supervised investment bank*  
19 *holding company and its affili-*  
20 *ates;*

21 “(bb) *the financial and oper-*  
22 *ational risks within the super-*  
23 *vised investment bank holding*  
24 *company that may affect any*  
25 *broker or dealer controlled by such*

1 supervised investment bank hold-  
2 ing company; and

3 “(cc) the systems of the su-  
4 pervised investment bank holding  
5 company and its affiliates for  
6 monitoring and controlling those  
7 risks; and

8 “(II) monitor compliance with the  
9 provisions of this subsection, provisions  
10 governing transactions and relation-  
11 ships between any broker or dealer af-  
12 filiated with the supervised investment  
13 bank holding company and any of the  
14 company’s other affiliates, and appli-  
15 cable provisions of subchapter II of  
16 chapter 53, title 31, United States  
17 Code (commonly referred to as the  
18 ‘Bank Secrecy Act’) and regulations  
19 thereunder.

20 “(ii) *RESTRICTED FOCUS OF EXAMINA-*  
21 *TIONS.—The Commission shall limit the*  
22 *focus and scope of any examination of a su-*  
23 *pervised investment bank holding company*  
24 *to—*

25 “(I) the company; and

1           “(II) any affiliate of the company  
2           that, because of its size, condition, or  
3           activities, the nature or size of the  
4           transactions between such affiliate and  
5           any affiliated broker or dealer, or the  
6           centralization of functions within the  
7           holding company system, could, in the  
8           discretion of the Commission, have a  
9           materially adverse effect on the oper-  
10          ational or financial condition of the  
11          broker or dealer.

12           “(iii) DEFERENCE TO OTHER EXAMI-  
13          NATIONS.—For purposes of this subpara-  
14          graph, the Commission shall, to the fullest  
15          extent possible, use the reports of examina-  
16          tion of an institution described in subpara-  
17          graph (D), (F), or (G) of section 2(c)(2), or  
18          held under section 4(f), of the Bank Holding  
19          Company Act of 1956 made by the appro-  
20          priate regulatory agency, or of a licensed  
21          insurance company made by the appro-  
22          priate State insurance regulator.

23          “(4) HOLDING COMPANY CAPITAL.—

24           “(A) AUTHORITY.—If the Commission finds  
25          that it is necessary to adequately supervise in-

1           *vestment bank holding companies and their*  
2           *broker or dealer affiliates consistent with the*  
3           *purposes of this subsection, the Commission may*  
4           *adopt capital adequacy rules for supervised in-*  
5           *vestment bank holding companies.*

6           “(B) *METHOD OF CALCULATION.*—*In devel-*  
7           *oping rules under this paragraph:*

8                   “(i) *DOUBLE LEVERAGE.*—*The Com-*  
9                   *mission shall consider the use by the super-*  
10                  *vised investment bank holding company of*  
11                  *debt and other liabilities to fund capital in-*  
12                  *vestments in affiliates.*

13                  “(ii) *NO UNWEIGHTED CAPITAL*  
14                  *RATIO.*—*The Commission shall not impose*  
15                  *under this section a capital ratio that is not*  
16                  *based on appropriate risk-weighting consid-*  
17                  *erations.*

18                  “(iii) *NO CAPITAL REQUIREMENT ON*  
19                  *REGULATED ENTITIES.*—*The Commission*  
20                  *shall not, by rule, regulation, guideline,*  
21                  *order or otherwise, impose any capital ade-*  
22                  *quacy provision on a nonbanking affiliate*  
23                  *(other than a broker or dealer) that is in*  
24                  *compliance with applicable capital require-*

1                   *ments of another Federal regulatory author-*  
2                   *ity or State insurance authority.*

3                   “(iv) *APPROPRIATE EXCLUSIONS.—The*  
4                   *Commission shall take full account of the*  
5                   *applicable capital requirements of another*  
6                   *Federal regulatory authority or State insur-*  
7                   *ance regulator.*

8                   “(C) *INTERNAL RISK MANAGEMENT MOD-*  
9                   *ELS.—The Commission may incorporate inter-*  
10                  *nal risk management models into its capital ade-*  
11                  *quacy rules for supervised investment bank hold-*  
12                  *ing companies.*

13                  “(5) *FUNCTIONAL REGULATION OF BANKING AND*  
14                  *INSURANCE ACTIVITIES OF SUPERVISED INVESTMENT*  
15                  *BANK HOLDING COMPANIES.—The Commission shall*  
16                  *defer to—*

17                  “(A) *the appropriate regulatory agency*  
18                  *with regard to all interpretations of, and the en-*  
19                  *forcement of, applicable banking laws relating to*  
20                  *the activities, conduct, ownership, and oper-*  
21                  *ations of banks, and institutions described in*  
22                  *subparagraph (D), (F), and (G) of section*  
23                  *2(c)(2), or held under section 4(f), of the Bank*  
24                  *Holding Company Act of 1956; and*

1           “(B) the appropriate State insurance regu-  
2           lators with regard to all interpretations of, and  
3           the enforcement of, applicable State insurance  
4           laws relating to the activities, conduct, and oper-  
5           ations of insurance companies and insurance  
6           agents.

7           “(6) *DEFINITIONS.*—For purposes of this sub-  
8           section and subsection (j)—

9           “(A) the term ‘investment bank holding  
10          company’ means—

11           “(i) any person other than a natural  
12          person that owns or controls one or more  
13          brokers or dealers; and

14           “(ii) the associated persons of the in-  
15          vestment bank holding company;

16           “(B) the term ‘supervised investment bank  
17          holding company’ means any investment bank  
18          holding company that is supervised by the Com-  
19          mission pursuant to this subsection;

20           “(C) the terms ‘affiliate’, ‘bank’, ‘bank hold-  
21          ing company’, ‘company’, ‘control’, and ‘savings  
22          association’ have the same meanings as in sec-  
23          tion 2 of the Bank Holding Company Act of  
24          1956;

1           “(D) the term ‘insured bank’ has the same  
2 meaning as in section 3 of the Federal Deposit  
3 Insurance Act;

4           “(E) the term ‘foreign bank’ has the same  
5 meaning as in section 1(b)(7) of the Inter-  
6 national Banking Act of 1978; and

7           “(F) the terms ‘person associated with an  
8 investment bank holding company’ and ‘associ-  
9 ated person of an investment bank holding com-  
10 pany’ mean any person directly or indirectly  
11 controlling, controlled by, or under common con-  
12 trol with, an investment bank holding company.

13       “(j) COMMISSION BACKUP AUTHORITY.—

14           “(1) AUTHORITY.—The Commission may make  
15 inspections of any wholesale financial holding com-  
16 pany that—

17           “(A) controls a wholesale financial institu-  
18 tion;

19           “(B) is not a foreign bank; and

20           “(C) does not control an insured bank  
21 (other than an institution permitted under sub-  
22 paragraph (D), (F), or (G) of section 2(c)(2), or  
23 held under section 4(f), of the Bank Holding  
24 Company Act of 1956) or a savings association,

1       *and any affiliate of such company, for the purpose of*  
2       *monitoring and enforcing compliance by the wholesale*  
3       *financial holding company with the Federal securities*  
4       *laws.*

5               “(2) *LIMITATION.*—*The Commission shall limit*  
6       *the focus and scope of any inspection under para-*  
7       *graph (1) to those transactions, policies, procedures,*  
8       *or records that are reasonably necessary to monitor*  
9       *and enforce compliance by the wholesale financial*  
10       *holding company or any affiliate with the Federal se-*  
11       *curities laws.*

12               “(3) *DEFERENCE TO EXAMINATIONS.*—*To the*  
13       *fullest extent possible, the Commission shall use, for*  
14       *the purposes of this subsection, the reports of exami-*  
15       *nations—*

16                       “(A) *made by the Board of Governors of the*  
17                       *Federal Reserve System of any wholesale finan-*  
18                       *cial holding company that is supervised by the*  
19                       *Board;*

20                       “(B) *made by or on behalf of any State reg-*  
21                       *ulatory agency responsible for the supervision of*  
22                       *an insurance company of any licensed insurance*  
23                       *company; and*

24                       “(C) *made by any Federal or State banking*  
25                       *agency of any bank or institution described in*

1           subparagraph (D), (F), or (G) of section 2(c)(2),  
2           or held under section 4(f), of the Bank Holding  
3           Company Act of 1956.

4           “(4) NOTICE.—To the fullest extent possible, the  
5           Commission shall notify the appropriate regulatory  
6           agency prior to conducting an inspection of a whole-  
7           sale financial institution or institution described in  
8           subparagraph (D), (F), or (G) of section 2(c)(2), or  
9           held under section 4(f), of the Bank Holding Com-  
10          pany Act of 1956.

11          “(k) AUTHORITY TO LIMIT DISCLOSURE OF INFORMA-  
12          TION.—Notwithstanding any other provision of law, the  
13          Commission shall not be compelled to disclose any informa-  
14          tion required to be reported under subsection (h) or (i) or  
15          any information supplied to the Commission by any domes-  
16          tic or foreign regulatory agency that relates to the financial  
17          or operational condition of any associated person of a  
18          broker or dealer, investment bank holding company, or any  
19          affiliate of an investment bank holding company. Nothing  
20          in this subsection shall authorize the Commission to with-  
21          hold information from Congress, or prevent the Commission  
22          from complying with a request for information from any  
23          other Federal department or agency or any self-regulatory  
24          organization requesting the information for purposes with-  
25          in the scope of its jurisdiction, or complying with an order

1 of a court of the United States in an action brought by  
2 the United States or the Commission. For purposes of sec-  
3 tion 552 of title 5, United States Code, this subsection shall  
4 be considered a statute described in subsection (b)(3)(B) of  
5 such section 552. In prescribing regulations to carry out  
6 the requirements of this subsection, the Commission shall  
7 designate information described in or obtained pursuant to  
8 subparagraphs (A), (B), and (C) of subsection (i)(5) as con-  
9 fidential information for purposes of section 24(b)(2) of this  
10 title.”.

11 (b) CONFORMING AMENDMENTS.—

12 (1) Section 3(a)(34) of the Securities Exchange  
13 Act of 1934 (15 U.S.C. 78c(a)(34)) is amended by  
14 adding at the end the following new subparagraphs:

15 “(H) When used with respect to an institu-  
16 tion described in subparagraph (D), (F), or (G)  
17 of section 2(c)(2), or held under section 4(f), of  
18 the Bank Holding Company Act of 1956—

19 “(i) the Comptroller of the Currency,  
20 in the case of a national bank or a bank in  
21 the District of Columbia examined by the  
22 Comptroller of the Currency;

23 “(ii) the Board of Governors of the  
24 Federal Reserve System, in the case of a  
25 State member bank of the Federal Reserve

1            *System or any corporation chartered under*  
2            *section 25A of the Federal Reserve Act;*

3            *“(iii) the Federal Deposit Insurance*  
4            *Corporation, in the case of any other bank*  
5            *the deposits of which are insured in accord-*  
6            *ance with the Federal Deposit Insurance*  
7            *Act; or*

8            *“(iv) the Commission in the case of all*  
9            *other such institutions.”.*

10            (2) *Section 1112(e) of the Right to Financial*  
11            *Privacy Act of 1978 (12 U.S.C. 3412(e)) is amend-*  
12            *ed—*

13            (A) *by striking “this title” and inserting*  
14            *“law”; and*

15            (B) *by inserting “, examination reports”*  
16            *after “financial records”.*

17            ***Subtitle D—Studies***

18            ***SEC. 241. STUDY OF METHODS TO INFORM INVESTORS AND***

19            ***CONSUMERS OF UNINSURED PRODUCTS.***

20            *Not later than 1 year after the date of enactment of*  
21            *this Act, the Comptroller General of the United States shall*  
22            *submit a report to the Congress regarding the efficacy, costs,*  
23            *and benefits of requiring that any depository institution*  
24            *that accepts federally insured deposits and that, directly or*  
25            *through a contractual or other arrangement with a broker,*

1 *dealer, or agent, buys from, sells to, or effects transactions*  
2 *for retail investors in securities or consumers of insurance*  
3 *to inform such investors and consumers through the use of*  
4 *a logo or seal that the security or insurance is not insured*  
5 *by the Federal Deposit Insurance Corporation.*

6 **SEC. 242. STUDY OF LIMITATION ON FEES ASSOCIATED**  
7 **WITH ACQUIRING FINANCIAL PRODUCTS.**

8 *Not later than 1 year after the date of enactment of*  
9 *this Act, the Comptroller General of the United States shall*  
10 *submit a report to the Congress regarding the efficacy and*  
11 *benefits of uniformly limiting any commissions, fees, mark-*  
12 *ups, or other costs incurred by customers in the acquisition*  
13 *of financial products.*

14 **TITLE III—INSURANCE**  
15 **Subtitle A—State Regulation of**  
16 **Insurance**

17 **SEC. 301. STATE REGULATION OF THE BUSINESS OF INSUR-**  
18 **ANCE.**

19 *The Act entitled “An Act to express the intent of the*  
20 *Congress with reference to the regulation of the business of*  
21 *insurance” and approved March 9, 1945 (15 U.S.C. 1011*  
22 *et seq.), commonly referred to as the “McCarran-Ferguson*  
23 *Act”) remains the law of the United States.*

1 **SEC. 302. MANDATORY INSURANCE LICENSING REQUIRE-**  
2 **MENTS.**

3 *No person or entity shall provide insurance in a State*  
4 *as principal or agent unless such person or entity is li-*  
5 *censed as required by the appropriate insurance regulator*  
6 *of such State in accordance with the relevant State insur-*  
7 *ance law, subject to section 104 of this Act.*

8 **SEC. 303. FUNCTIONAL REGULATION OF INSURANCE.**

9 *The insurance sales activity of any person or entity*  
10 *shall be functionally regulated by the States, subject to sec-*  
11 *tion 104 of this Act.*

12 **SEC. 304. INSURANCE UNDERWRITING IN NATIONAL BANKS.**

13 *(a) IN GENERAL.—Except as provided in section 306,*  
14 *a national bank and the subsidiaries of a national bank*  
15 *may not provide insurance in a State as principal except*  
16 *that this prohibition shall not apply to authorized products.*

17 *(b) AUTHORIZED PRODUCTS.—For the purposes of this*  
18 *section, a product is authorized if—*

19 *(1) as of January 1, 1997, the Comptroller of the*  
20 *Currency had determined in writing that national*  
21 *banks may provide such product as principal, or na-*  
22 *tional banks were in fact lawfully providing such*  
23 *product as principal;*

24 *(2) no court of relevant jurisdiction had, by final*  
25 *judgment, overturned a determination of the Comp-*

1 *troller of the Currency that national banks may pro-*  
2 *vide such product as principal; and*

3 *(3) the product is not title insurance, or an an-*  
4 *nuity contract the income of which is subject to tax*  
5 *treatment under section 72 of the Internal Revenue*  
6 *Code of 1986.*

7 *(c) DEFINITION.—For purposes of this section, the*  
8 *term “insurance” means—*

9 *(1) any product regulated as insurance as of*  
10 *January 1, 1997, in accordance with the relevant*  
11 *State insurance law, in the State in which the prod-*  
12 *uct is provided;*

13 *(2) any product first offered after January 1,*  
14 *1997, which—*

15 *(A) a State insurance regulator determines*  
16 *shall be regulated as insurance in the State in*  
17 *which the product is provided because the prod-*  
18 *uct insures, guarantees, or indemnifies against*  
19 *liability, loss of life, loss of health, or loss*  
20 *through damage to or destruction of property,*  
21 *including, but not limited to, surety bonds, life*  
22 *insurance, health insurance, title insurance, and*  
23 *property and casualty insurance (such as pri-*  
24 *vate passenger or commercial automobile, home-*  
25 *owners, mortgage, commercial multiperil, general*

1           *liability, professional liability, workers' com-*  
2           *ensation, fire and allied lines, farm owners*  
3           *multiperil, aircraft, fidelity, surety, medical*  
4           *malpractice, ocean marine, inland marine, and*  
5           *boiler and machinery insurance); and*

6                   *(B) is not a product or service of a bank*  
7           *that is—*

8                           *(i) a deposit product;*

9                           *(ii) a loan, discount, letter of credit, or*  
10           *other extension of credit;*

11                          *(iii) a trust or other fiduciary service;*

12                          *(iv) a qualified financial contract (as*  
13           *defined in or determined pursuant to sec-*  
14           *tion 11(e)(8)(D)(i) of the Federal Deposit*  
15           *Insurance Act); or*

16                          *(v) a financial guaranty, except that*  
17           *this subparagraph (B) shall not apply to a*  
18           *product that includes an insurance compo-*  
19           *nent such that if the product is offered or*  
20           *proposed to be offered by the bank as prin-*  
21           *cipal—*

22                            *(I) it would be treated as a life*  
23           *insurance contract under section 7702*  
24           *of the Internal Revenue Code of 1986;*  
25           *or*

1                   (II) *in the event that the product*  
2                   *is not a letter of credit or other similar*  
3                   *extension of credit, a qualified finan-*  
4                   *cial contract, or a financial guaranty,*  
5                   *it would qualify for treatment for*  
6                   *losses incurred with respect to such*  
7                   *product under section 832(b)(5) of the*  
8                   *Internal Revenue Code of 1986, if the*  
9                   *bank were subject to tax as an insur-*  
10                  *ance company under section 831 of*  
11                  *that Code; or*

12                  (3) *any annuity contract, the income on which*  
13                  *is subject to tax treatment under section 72 of the In-*  
14                  *ternal Revenue Code of 1986.*

15 **SEC. 305. TITLE INSURANCE ACTIVITIES OF NATIONAL**  
16                                   **BANKS AND THEIR AFFILIATES.**

17                  (a) *AUTHORITY.*—*Notwithstanding any other provi-*  
18                  *sion of this Act or any other law, no national bank, and*  
19                  *no subsidiary of a national bank, may engage in any activ-*  
20                  *ity involving the underwriting of title insurance, other than*  
21                  *title insurance underwriting activities in which such na-*  
22                  *tional bank or subsidiary was actively and lawfully en-*  
23                  *gaged before the date of the enactment of this Act.*

24                  (b) *INSURANCE AFFILIATE.*—*In the case of a national*  
25                  *bank which has an affiliate which provides insurance as*

1 *principal and is not a subsidiary of the bank, the national*  
2 *bank and any subsidiary of the national bank may not en-*  
3 *gage in any activity involving the underwriting of title in-*  
4 *surance pursuant to subsection (a).*

5 (c) *INSURANCE SUBSIDIARY.*—*In the case of a na-*  
6 *tional bank which has a subsidiary which provides insur-*  
7 *ance as principal and has no affiliate which provides insur-*  
8 *ance as principal and is not a subsidiary, the national*  
9 *bank may not engage in any activity involving the under-*  
10 *writing of title insurance pursuant to subsection (a).*

11 (d) *“AFFILIATE” AND “SUBSIDIARY” DEFINED.*—*For*  
12 *purposes of this section, the terms “affiliate” and “subsidi-*  
13 *ary” have the same meanings as in section 2 of the Bank*  
14 *Holding Company Act of 1956.*

15 **SEC. 306. EXPEDITED AND EQUALIZED DISPUTE RESOLU-**  
16 **TION FOR FINANCIAL REGULATORS.**

17 (a) *FILING IN COURT OF APPEAL.*—*In the case of a*  
18 *regulatory conflict between a State insurance regulator and*  
19 *a Federal regulator as to whether any product is or is not*  
20 *insurance as defined in section 304(c) of this Act, or wheth-*  
21 *er a State statute, regulation, order, or interpretation re-*  
22 *garding any insurance sales or solicitation activity is prop-*  
23 *erly treated as preempted under Federal law, either regu-*  
24 *lator may seek expedited judicial review of such determina-*  
25 *tion by the United States Court of Appeals for the circuit*

1 *in which the State is located or in the United States Court*  
2 *of Appeals for the District of Columbia Circuit by filing*  
3 *a petition for review in such court.*

4 (b) *EXPEDITED REVIEW.*—*The United States court of*  
5 *appeals in which a petition for review is filed in accordance*  
6 *with paragraph (1) shall complete all action on such peti-*  
7 *tion, including rendering a judgment, before the end of the*  
8 *60-day period beginning on the date such petition is filed,*  
9 *unless all parties to such proceeding agree to any extension*  
10 *of such period.*

11 (c) *SUPREME COURT REVIEW.*—*Any request for certio-*  
12 *rari to the Supreme Court of the United States of any judg-*  
13 *ment of a United States court of appeals with respect to*  
14 *a petition for review under this section shall be filed with*  
15 *the United States Supreme Court as soon as practicable*  
16 *after such judgment is issued.*

17 (d) *STATUTE OF LIMITATION.*—*No action may be filed*  
18 *under this section challenging an order, ruling, determina-*  
19 *tion, or other action of a Federal financial regulator or*  
20 *State insurance regulator after the later of—*

21 (1) *the end of the 12-month period beginning on*  
22 *the date the first public notice is made of such order,*  
23 *ruling, or determination in its final form; or*

1           (2) *the end of the 6-month period beginning on*  
2           *the date such order, ruling, or determination takes ef-*  
3           *fect.*

4           (e) *STANDARD OF REVIEW.—The court shall decide an*  
5           *action filed under this section based on its review on the*  
6           *merits of all questions presented under State and Federal*  
7           *law, including the nature of the product or activity and*  
8           *the history and purpose of its regulation under State and*  
9           *Federal law, without unequal deference.*

10 **SEC. 307. CONSUMER PROTECTION REGULATIONS.**

11           *The Federal Deposit Insurance Act (12 U.S.C. 1811*  
12           *et seq.) is amended by adding at the end the following new*  
13           *section:*

14 **“SEC. 45. CONSUMER PROTECTION REGULATIONS.**

15           “(a) *REGULATIONS REQUIRED.—*

16                   “(1) *IN GENERAL.—The Federal banking agen-*  
17                   *cies shall prescribe and publish in final form, before*  
18                   *the end of the 1-year period beginning on the date of*  
19                   *the enactment of this Act, consumer protection regula-*  
20                   *tions (which the agencies jointly determine to be ap-*  
21                   *propriate) that—*

22                           “(A) *apply to retail sales practices, sollicita-*  
23                           *tions, advertising, or offers of any insurance*  
24                           *product by any insured depository institution or*  
25                           *wholesale financial institution or any person*

1           *who is engaged in such activities at an office of*  
2           *the institution or on behalf of the institution;*  
3           *and*

4           “(B) *are consistent with the requirements of*  
5           *this Act and provide such additional protections*  
6           *for consumers to whom such sales, solicitations,*  
7           *advertising, or offers are directed as the agency*  
8           *determines to be appropriate.*

9           “(2) *APPLICABILITY TO SUBSIDIARIES.—The reg-*  
10          *ulations prescribed pursuant to paragraph (1) shall*  
11          *extend such protections to any subsidiaries of an in-*  
12          *insured depository institution, as deemed appropriate*  
13          *by the regulators referred to in paragraph (3), where*  
14          *such extension is determined to be necessary to ensure*  
15          *the consumer protections provided by this section.*

16          “(3) *CONSULTATION AND JOINT REGULATIONS.—*  
17          *The Federal banking agencies shall consult with each*  
18          *other and prescribe joint regulations pursuant to*  
19          *paragraph (1), after consultation with the State in-*  
20          *surance regulators, as appropriate.*

21          “(b) *SALES PRACTICES.—The regulations prescribed*  
22          *pursuant to subsection (a) shall include anticoercion rules*  
23          *applicable to the sale of insurance products which prohibit*  
24          *an insured depository institution from engaging in any*  
25          *practice that would lead a consumer to believe an extension*

1 *of credit, in violation of section 106(b) of the Bank Holding*  
2 *Company Act Amendments of 1970, is conditional upon—*

3           “(1) *the purchase of an insurance product from*  
4 *the institution or any of its affiliates or subsidiaries;*  
5 *or*

6           “(2) *an agreement by the consumer not to ob-*  
7 *tain, or a prohibition on the consumer from obtain-*  
8 *ing, an insurance product from an unaffiliated en-*  
9 *tity.*

10          “(c) *DISCLOSURES AND ADVERTISING.—The regula-*  
11 *tions prescribed pursuant to subsection (a) shall include the*  
12 *following provisions relating to disclosures and advertising*  
13 *in connection with the initial purchase of an insurance*  
14 *product:*

15           “(1) *DISCLOSURES.—*

16           “(A) *IN GENERAL.—Requirements that the*  
17 *following disclosures be made orally and in writ-*  
18 *ing before the completion of the initial sale and,*  
19 *in the case of clause (iv), at the time of applica-*  
20 *tion for an extension of credit:*

21           “(i) *UNINSURED STATUS.—As appro-*  
22 *priate, the product is not insured by the*  
23 *Federal Deposit Insurance Corporation, the*  
24 *United States Government, or the insured*  
25 *depository institution.*

1                   “(ii) *INVESTMENT RISK.*—*In the case*  
2                   *of a variable annuity or other insurance*  
3                   *product which involves an investment risk,*  
4                   *that there is an investment risk associated*  
5                   *with the product, including possible loss of*  
6                   *value.*

7                   “(iii) *COERCION.*—*The approval of an*  
8                   *extension of credit may not be conditioned*  
9                   *on—*

10                   “(I) *the purchase of an insurance*  
11                   *product from the institution in which*  
12                   *the application for credit is pending or*  
13                   *any of its affiliates or subsidiaries; or*

14                   “(II) *an agreement by the con-*  
15                   *sumer not to obtain, or a prohibition*  
16                   *on the consumer from obtaining, an*  
17                   *insurance product from an unaffiliated*  
18                   *entity.*

19                   “(B) *MAKING DISCLOSURE READILY UNDER-*  
20                   *STANDABLE.*—*Regulations prescribed under sub-*  
21                   *paragraph (A) shall encourage the use of disclo-*  
22                   *sure that is conspicuous, simple, direct, and*  
23                   *readily understandable, such as the following:*

24                   “(i) *‘NOT FDIC–INSURED’.*

1                   “(ii) ‘NOT GUARANTEED BY THE  
2                   BANK’.

3                   “(iii) ‘MAY GO DOWN IN VALUE’.

4                   “(C) ADJUSTMENTS FOR ALTERNATIVE  
5                   METHODS OF PURCHASE.—In prescribing the re-  
6                   quirements under subparagraphs (A) and (D),  
7                   necessary adjustments shall be made for purchase  
8                   in person, by telephone, or by electronic media to  
9                   provide for the most appropriate and complete  
10                  form of disclosure and acknowledgments.

11                  “(D) CONSUMER ACKNOWLEDGMENT.—A re-  
12                  quirement that an insured depository institution  
13                  shall require any person selling an insurance  
14                  product at any office of, or on behalf of, the in-  
15                  stitution to obtain, at the time a consumer re-  
16                  ceives the disclosures required under this para-  
17                  graph or at the time of the initial purchase by  
18                  the consumer of such product, an acknowledg-  
19                  ment by such consumer of the receipt of the dis-  
20                  closure required under this subsection with re-  
21                  spect to such product.

22                  “(2) PROHIBITION ON MISREPRESENTATIONS.—A  
23                  prohibition on any practice, or any advertising, at  
24                  any office of, or on behalf of, the insured depository  
25                  institution, or any subsidiary as appropriate, which

1       *could mislead any person or otherwise cause a reason-*  
2       *able person to reach an erroneous belief with respect*  
3       *to—*

4               “(A) *the uninsured nature of any insurance*  
5               *product sold, or offered for sale, by the institu-*  
6               *tion or any subsidiary of the institution; or*

7               “(B) *in the case of a variable annuity or*  
8               *other insurance product that involves an invest-*  
9               *ment risk, the investment risk associated with*  
10              *any such product.*

11       “(d) *SEPARATION OF BANKING AND NONBANKING AC-*  
12       *TIVITIES.—*

13              “(1) *REGULATIONS REQUIRED.—The regulations*  
14              *prescribed pursuant to subsection (a) shall include*  
15              *such provisions as the Federal banking agencies con-*  
16              *sider appropriate to ensure that the routine accept-*  
17              *ance of deposits is kept, to the extent practicable,*  
18              *physically segregated from insurance product activity.*

19              “(2) *REQUIREMENTS.—Regulations prescribed*  
20              *pursuant to paragraph (1) shall include the following*  
21              *requirements:*

22                      “(A) *SEPARATE SETTING.—A clear delineation*  
23                      *of the setting in which, and the cir-*  
24                      *cumstances under which, transactions involving*  
25                      *insurance products should be conducted in a lo-*

1            *cation physically segregated from an area where*  
2            *retail deposits are routinely accepted.*

3            “(B) *REFERRALS.*—Standards which per-  
4            mit any person accepting deposits from the pub-  
5            lic in an area where such transactions are rou-  
6            tinely conducted in an insured depository insti-  
7            tution to refer a customer who seeks to purchase  
8            any insurance product to a qualified person who  
9            sells such product, only if the person making the  
10           referral receives no more than a one-time nomi-  
11           nal fee of a fixed dollar amount for each referral  
12           that does not depend on whether the referral re-  
13           sults in a transaction.

14           “(C) *QUALIFICATION AND LICENSING RE-*  
15           *QUIREMENTS.*—Standards prohibiting any in-  
16           sured depository institution from permitting any  
17           person to sell or offer for sale any insurance  
18           product in any part of any office of the institu-  
19           tion, or on behalf of the institution, unless such  
20           person is appropriately qualified and licensed.

21           “(e) *DOMESTIC VIOLENCE DISCRIMINATION PROHIBI-*  
22           *TION.*—

23           “(1) *IN GENERAL.*—In the case of an applicant  
24           for, or an insured under, any insurance product de-  
25           scribed in paragraph (2), the status of the applicant

1        *or insured as a victim of domestic violence, or as a*  
2        *provider of services to victims of domestic violence,*  
3        *shall not be considered as a criterion in any decision*  
4        *with regard to insurance underwriting, pricing, re-*  
5        *newal, or scope of coverage of insurance policies, or*  
6        *payment of insurance claims, except as required or*  
7        *expressly permitted under State law.*

8            *“(2) SCOPE OF APPLICATION.—The prohibition*  
9        *contained in paragraph (1) shall apply to any insur-*  
10       *ance product which is sold or offered for sale, as prin-*  
11       *cipal, agent, or broker, by any insured depository in-*  
12       *stitution or any person who is engaged in such activi-*  
13       *ties at an office of the institution or on behalf of the*  
14       *institution.*

15           *“(3) SENSE OF THE CONGRESS.—It is the sense*  
16       *of the Congress that, by the end of the 30-month pe-*  
17       *riod beginning on the date of the enactment of this*  
18       *Act, the States should enact prohibitions against dis-*  
19       *crimination with respect to insurance products that*  
20       *are at least as strict as the prohibitions contained in*  
21       *paragraph (1).*

22           *“(4) DOMESTIC VIOLENCE DEFINED.—For pur-*  
23       *poses of this subsection, the term ‘domestic violence’*  
24       *means the occurrence of 1 or more of the following*

1       *acts by a current or former family member, household*  
2       *member, intimate partner, or caretaker:*

3               “(A) *Attempting to cause or causing or*  
4               *threatening another person physical harm, severe*  
5               *emotional distress, psychological trauma, rape,*  
6               *or sexual assault.*

7               “(B) *Engaging in a course of conduct or re-*  
8               *peatedly committing acts toward another person,*  
9               *including following the person without proper*  
10              *authority, under circumstances that place the*  
11              *person in reasonable fear of bodily injury or*  
12              *physical harm.*

13              “(C) *Subjecting another person to false im-*  
14              *prisonment.*

15              “(D) *Attempting to cause or cause damage*  
16              *to property so as to intimidate or attempt to*  
17              *control the behavior of another person.*

18       “(f) *CONSUMER GRIEVANCE PROCESS.—The Federal*  
19       *banking agencies shall jointly establish a consumer com-*  
20       *plaint mechanism, for receiving and expeditiously address-*  
21       *ing consumer complaints alleging a violation of regulations*  
22       *issued under the section, which shall—*

23              “(1) *establish a group within each regulatory*  
24              *agency to receive such complaints;*

1           “(2) develop procedures for investigating such  
2       complaints;

3           “(3) develop procedures for informing consumers  
4       of rights they may have in connection with such com-  
5       plaints; and

6           “(4) develop procedures for addressing concerns  
7       raised by such complaints, as appropriate, including  
8       procedures for the recovery of losses to the extent ap-  
9       propriate.

10       “(g) *EFFECT ON OTHER AUTHORITY.*—

11           “(1) *IN GENERAL.*—No provision of this section  
12       shall be construed as granting, limiting, or otherwise  
13       affecting—

14           “(A) any authority of the Securities and  
15       Exchange Commission, any self-regulatory orga-  
16       nization, the Municipal Securities Rulemaking  
17       Board, or the Secretary of the Treasury under  
18       any Federal securities law; or

19           “(B) except as provided in paragraph (2),  
20       any authority of any State insurance commis-  
21       sioner or other State authority under any State  
22       law.

23       “(2) *COORDINATION WITH STATE LAW.*—

24           “(A) *IN GENERAL.*—Except as provided in  
25       subparagraph (B), regulations prescribed by a

1           *Federal banking agency under this section shall*  
2           *not apply to retail sales, solicitations, advertis-*  
3           *ing, or offers of any insurance product by any*  
4           *insured depository institution or wholesale fi-*  
5           *nancial institution or to any person who is en-*  
6           *gaged in such activities at an office of such insti-*  
7           *tution or on behalf of the institution, in a State*  
8           *where the State has in effect statutes, regulations,*  
9           *orders, or interpretations, that are inconsistent*  
10          *with or contrary to the regulations prescribed by*  
11          *the Federal banking agencies.*

12                 “(B) *PREEMPTION.*—*If, with respect to any*  
13                 *provision of the regulations prescribed under this*  
14                 *section, the Board of Governors of the Federal*  
15                 *Reserve System, the Comptroller of the Currency,*  
16                 *and the Board of Directors of the Federal De-*  
17                 *posit Insurance Corporation determine jointly*  
18                 *that the protection afforded by such provision for*  
19                 *consumers is greater than the protection pro-*  
20                 *vided by a comparable provision of the statutes,*  
21                 *regulations, orders, or interpretations referred to*  
22                 *in subparagraph (A) of any State, such provi-*  
23                 *sion of the regulations prescribed under this sec-*  
24                 *tion shall supersede the comparable provision of*

1           such State statute, regulation, order, or interpre-  
2           tation.

3           “(h) *INSURANCE PRODUCT DEFINED.*—For purposes  
4 of this section, the term ‘insurance product’ includes an an-  
5 nuity contract the income of which is subject to tax treat-  
6 ment under section 72 of the Internal Revenue Code of  
7 1986.”.

8 **SEC. 308. CERTAIN STATE AFFILIATION LAWS PREEMPTED**  
9                                   **FOR INSURANCE COMPANIES AND AFFILI-**  
10                                   **ATES.**

11           *Except as provided in section 104(a)(2), no State may,*  
12 *by law, regulation, order, interpretation, or otherwise—*

13                   (1) *prevent or significantly interfere with the*  
14 *ability of any insurer, or any affiliate of an insurer*  
15 *(whether such affiliate is organized as a stock com-*  
16 *pany, mutual holding company, or otherwise), to be-*  
17 *come a financial holding company or to acquire con-*  
18 *trol of an insured depository institution;*

19                   (2) *limit the amount of an insurer’s assets that*  
20 *may be invested in the voting securities of an insured*  
21 *depository institution (or any company which con-*  
22 *trols such institution), except that the laws of an in-*  
23 *surer’s State of domicile may limit the amount of*  
24 *such investment to an amount that is not less than*  
25 *5 percent of the insurer’s admitted assets; or*



1           (1) *establish uniform criteria regarding the in-*  
2 *tegrity, personal qualifications, education, training,*  
3 *and experience of licensed insurance producers, in-*  
4 *cluding the qualification and training of sales person-*  
5 *nel in ascertaining the appropriateness of a particu-*  
6 *lar insurance product for a prospective customer;*

7           (2) *establish uniform continuing education re-*  
8 *quirements for licensed insurance producers;*

9           (3) *establish uniform ethics course requirements*  
10 *for licensed insurance producers in conjunction with*  
11 *the continuing education requirements under para-*  
12 *graph (2);*

13           (4) *establish uniform criteria to ensure that an*  
14 *insurance product, including any annuity contract,*  
15 *sold to a consumer is suitable and appropriate for the*  
16 *consumer based on financial information disclosed by*  
17 *the consumer; and*

18           (5) *do not impose any requirement upon any in-*  
19 *surance producer to be licensed or otherwise qualified*  
20 *to do business as a nonresident that has the effect of*  
21 *limiting or conditioning that producer's activities be-*  
22 *cause of its residence or place of operations, except*  
23 *that counter-signature requirements imposed on non-*  
24 *resident producers shall not be deemed to have the ef-*  
25 *fect of limiting or conditioning a producer's activities*

1       *because of its residence or place of operations under*  
2       *this section.*

3       (c) *RECIPROCITY REQUIRED.*—*States shall be deemed*  
4       *to have established the reciprocity required to satisfy sub-*  
5       *section (a)(2) if the following conditions are met:*

6           (1) *ADMINISTRATIVE LICENSING PROCEDURES.*—  
7       *At least a majority of the States permit a producer*  
8       *that has a resident license for selling or soliciting the*  
9       *purchase of insurance in its home State to receive a*  
10       *license to sell or solicit the purchase of insurance in*  
11       *such majority of States as a nonresident to the same*  
12       *extent that such producer is permitted to sell or solicit*  
13       *the purchase of insurance in its State, if the produc-*  
14       *er's home State also awards such licenses on such a*  
15       *reciprocal basis, without satisfying any additional re-*  
16       *quirements other than submitting—*

17                   (A) *a request for licensure;*

18                   (B) *the application for licensure that the*  
19       *producer submitted to its home State;*

20                   (C) *proof that the producer is licensed and*  
21       *in good standing in its home State; and*

22                   (D) *the payment of any requisite fee to the*  
23       *appropriate authority.*

24           (2) *CONTINUING EDUCATION REQUIREMENTS.*—*A*  
25       *majority of the States accept an insurance producer's*

1       *satisfaction of its home State's continuing education*  
2       *requirements for licensed insurance producers to sat-*  
3       *isfy the States' own continuing education require-*  
4       *ments if the producer's home State also recognizes the*  
5       *satisfaction of continuing education requirements on*  
6       *such a reciprocal basis.*

7               (3) *NO LIMITING NONRESIDENT REQUIRE-*  
8       *MENTS.—A majority of the States do not impose any*  
9       *requirement upon any insurance producer to be li-*  
10       *censed or otherwise qualified to do business as a non-*  
11       *resident that has the effect of limiting or conditioning*  
12       *that producer's activities because of its residence or*  
13       *place of operations, except that countersignature re-*  
14       *quirements imposed on nonresident producers shall*  
15       *not be deemed to have the effect of limiting or condi-*  
16       *tioning a producer's activities because of its residence*  
17       *or place of operations under this section.*

18               (4) *RECIPROCAL RECIPROCITY.—Each of the*  
19       *States that satisfies paragraphs (1), (2), and (3)*  
20       *grants reciprocity to residents of all of the other*  
21       *States that satisfy such paragraphs.*

22       (d) *DETERMINATION.—*

23               (1) *NAIC DETERMINATION.—At the end of the 3-*  
24       *year period beginning on the date of the enactment of*  
25       *this Act, the National Association of Insurance Com-*

1       missioners shall determine, in consultation with the  
2       insurance commissioners or chief insurance regu-  
3       latory officials of the States, whether the uniformity  
4       or reciprocity required by subsections (b) and (c) has  
5       been achieved.

6               (2) *JUDICIAL REVIEW.*—The appropriate United  
7       States district court shall have exclusive jurisdiction  
8       over any challenge to the National Association of In-  
9       surance Commissioners' determination under this sec-  
10      tion and such court shall apply the standards set  
11      forth in section 706 of title 5, United States Code,  
12      when reviewing any such challenge.

13             (e) *CONTINUED APPLICATION.*—If, at any time, the  
14      uniformity or reciprocity required by subsections (b) and  
15      (c) no longer exists, the provisions of this subtitle shall take  
16      effect 2 years after that date, unless the uniformity or reci-  
17      procity required by those provisions is satisfied before the  
18      expiration of that 2-year period.

19             (f) *SAVINGS PROVISION.*—No provision of this section  
20      shall be construed as requiring that any law, regulation,  
21      provision, or action of any State which purports to regulate  
22      insurance producers, including any such law, regulation,  
23      provision, or action which purports to regulate unfair trade  
24      practices or establish consumer protections, including  
25      countersignature laws, be altered or amended in order to

1 *satisfy the uniformity or reciprocity required by subsections*  
 2 *(b) and (c), unless any such law, regulation, provision, or*  
 3 *action is inconsistent with a specific requirement of any*  
 4 *such subsection and then only to the extent of such incon-*  
 5 *sistency.*

6 *(g) UNIFORM LICENSING.—Nothing in this section*  
 7 *shall be construed to require any State to adopt new or ad-*  
 8 *ditional licensing requirements to achieve the uniformity*  
 9 *necessary to satisfy subsection (a)(1).*

10 **SEC. 322. NATIONAL ASSOCIATION OF REGISTERED AGENTS**  
 11 **AND BROKERS.**

12 *(a) ESTABLISHMENT.—There is established the Na-*  
 13 *tional Association of Registered Agents and Brokers (here-*  
 14 *after in this subtitle referred to as the “Association”).*

15 *(b) STATUS.—The Association shall—*

16 *(1) be a nonprofit corporation;*

17 *(2) have succession until dissolved by an Act of*  
 18 *Congress;*

19 *(3) not be an agent or instrumentality of the*  
 20 *United States Government; and*

21 *(4) except as otherwise provided in this Act, be*  
 22 *subject to, and have all the powers conferred upon a*  
 23 *nonprofit corporation by the District of Columbia*  
 24 *Nonprofit Corporation Act (D.C. Code, sec. 29y–1001*  
 25 *et seq.).*

1 **SEC. 323. PURPOSE.**

2 *The purpose of the Association shall be to provide a*  
3 *mechanism through which uniform licensing, appointment,*  
4 *continuing education, and other insurance producer sales*  
5 *qualification requirements and conditions can be adopted*  
6 *and applied on a multistate basis, while preserving the*  
7 *right of States to license, supervise, and discipline insur-*  
8 *ance producers and to prescribe and enforce laws and regu-*  
9 *lations with regard to insurance-related consumer protec-*  
10 *tion and unfair trade practices.*

11 **SEC. 324. RELATIONSHIP TO THE FEDERAL GOVERNMENT.**

12 *The Association shall be subject to the supervision and*  
13 *oversight of the National Association of Insurance Commis-*  
14 *sioners (hereafter in this subtitle referred to as the “NAIC”).*

15 **SEC. 325. MEMBERSHIP.**

16 (a) *ELIGIBILITY.—*

17 (1) *IN GENERAL.—Any State-licensed insurance*  
18 *producer shall be eligible to become a member in the*  
19 *Association.*

20 (2) *INELIGIBILITY FOR SUSPENSION OR REVOCA-*  
21 *TION OF LICENSE.—Notwithstanding paragraph (1),*  
22 *a State-licensed insurance producer shall not be eligi-*  
23 *ble to become a member if a State insurance regulator*  
24 *has suspended or revoked such producer’s license in*  
25 *that State during the 3-year period preceding the date*  
26 *on which such producer applies for membership.*

1           (3) *RESUMPTION OF ELIGIBILITY.*—Paragraph  
2           (2) shall cease to apply to any insurance producer  
3           if—

4                   (A) the State insurance regulator renews the  
5           license of such producer in the State in which the  
6           license was suspended or revoked; or

7                   (B) the suspension or revocation is subse-  
8           quently overturned.

9           (b) *AUTHORITY TO ESTABLISH MEMBERSHIP CRI-*  
10          *TERIA.*—The Association shall have the authority to estab-  
11          lish membership criteria that—

12                   (1) bear a reasonable relationship to the pur-  
13          poses for which the Association was established; and

14                   (2) do not unfairly limit the access of smaller  
15          agencies to the Association membership.

16          (c) *ESTABLISHMENT OF CLASSES AND CATEGORIES.*—

17                   (1) *CLASSES OF MEMBERSHIP.*—The Association  
18          may establish separate classes of membership, with  
19          separate criteria, if the Association reasonably deter-  
20          mines that performance of different duties requires  
21          different levels of education, training, or experience.

22                   (2) *CATEGORIES.*—The Association may estab-  
23          lish separate categories of membership for individuals  
24          and for other persons. The establishment of any such  
25          categories of membership shall be based either on the

1       *types of licensing categories that exist under State*  
2       *laws or on the aggregate amount of business handled*  
3       *by an insurance producer. No special categories of*  
4       *membership, and no distinct membership criteria,*  
5       *shall be established for members which are insured de-*  
6       *pository institutions or wholesale financial institu-*  
7       *tions or for their employees, agents, or affiliates.*

8       *(d) MEMBERSHIP CRITERIA.—*

9               *(1) IN GENERAL.—The Association may establish*  
10       *criteria for membership which shall include standards*  
11       *for integrity, personal qualifications, education,*  
12       *training, and experience.*

13              *(2) MINIMUM STANDARD.—In establishing cri-*  
14       *teria under paragraph (1), the Association shall con-*  
15       *sider the highest levels of insurance producer quali-*  
16       *fications established under the licensing laws of the*  
17       *States.*

18       *(e) EFFECT OF MEMBERSHIP.—Membership in the As-*  
19       *sociation shall entitle the member to licensure in each State*  
20       *for which the member pays the requisite fees, including li-*  
21       *censing fees and, where applicable, bonding requirements,*  
22       *set by such State.*

23       *(f) ANNUAL RENEWAL.—Membership in the Associa-*  
24       *tion shall be renewed on an annual basis.*

1       (g) *CONTINUING EDUCATION.*—*The Association shall*  
2 *establish, as a condition of membership, continuing edu-*  
3 *cation requirements which shall be comparable to or greater*  
4 *than the continuing education requirements under the li-*  
5 *censing laws of a majority of the States.*

6       (h) *SUSPENSION AND REVOCATION.*—*The Association*  
7 *may—*

8           (1) *inspect and examine the records and offices*  
9 *of the members of the Association to determine com-*  
10 *pliance with the criteria for membership established*  
11 *by the Association; and*

12           (2) *suspend or revoke the membership of an in-*  
13 *surance producer if—*

14                   (A) *the producer fails to meet the applicable*  
15 *membership criteria of the Association; or*

16                   (B) *the producer has been subject to dis-*  
17 *ciplinary action pursuant to a final adjudica-*  
18 *tory proceeding under the jurisdiction of a State*  
19 *insurance regulator, and the Association con-*  
20 *cludes that retention of membership in the Asso-*  
21 *ciation would not be in the public interest.*

22       (i) *OFFICE OF CONSUMER COMPLAINTS.*—

23           (1) *IN GENERAL.*—*The Association shall establish*  
24 *an office of consumer complaints that shall—*

1           (A) receive and investigate complaints from  
2 both consumers and State insurance regulators  
3 related to members of the Association; and

4           (B) recommend to the Association any dis-  
5 ciplinary actions that the office considers appro-  
6 priate, to the extent that any such recommenda-  
7 tion is not inconsistent with State law.

8           (2) *RECORDS AND REFERRALS.*—The office of  
9 consumer complaints of the Association shall—

10           (A) maintain records of all complaints re-  
11 ceived in accordance with paragraph (1) and  
12 make such records available to the NAIC and to  
13 each State insurance regulator for the State of  
14 residence of the consumer who filed the com-  
15 plaint; and

16           (B) refer, when appropriate, any such com-  
17 plaint to any appropriate State insurance regu-  
18 lator.

19           (3) *TELEPHONE AND OTHER ACCESS.*—The office  
20 of consumer complaints shall maintain a toll-free tele-  
21 phone number for the purpose of this subsection and,  
22 as practicable, other alternative means of communica-  
23 tion with consumers, such as an Internet home page.

1 **SEC. 326. BOARD OF DIRECTORS.**

2 (a) *ESTABLISHMENT.*—*There is established the board*  
3 *of directors of the Association (hereafter in this subtitle re-*  
4 *ferred to as the “Board”) for the purpose of governing and*  
5 *supervising the activities of the Association and the mem-*  
6 *bers of the Association.*

7 (b) *POWERS.*—*The Board shall have such powers and*  
8 *authority as may be specified in the bylaws of the Associa-*  
9 *tion.*

10 (c) *COMPOSITION.*—

11 (1) *MEMBERS.*—*The Board shall be composed of*  
12 *7 members appointed by the NAIC.*

13 (2) *REQUIREMENT.*—*At least 4 of the members of*  
14 *the Board shall have significant experience with the*  
15 *regulation of commercial lines of insurance in at least*  
16 *1 of the 20 States in which the greatest total dollar*  
17 *amount of commercial-lines insurance is placed in the*  
18 *United States.*

19 (3) *INITIAL BOARD MEMBERSHIP.*—

20 (A) *IN GENERAL.*—*If, by the end of the 2-*  
21 *year period beginning on the date of enactment*  
22 *of this Act, the NAIC has not appointed the ini-*  
23 *tial 7 members of the Board of the Association,*  
24 *the initial Board shall consist of the 7 State in-*  
25 *surance regulators of the 7 States with the great-*

1           *est total dollar amount of commercial-lines in-*  
2           *surance in place as of the end of such period.*

3           (B) *ALTERNATE COMPOSITION.*—*If any of*  
4           *the State insurance regulators described in sub-*  
5           *paragraph (A) declines to serve on the Board, the*  
6           *State insurance regulator with the next greatest*  
7           *total dollar amount of commercial-lines insur-*  
8           *ance in place, as determined by the NAIC as of*  
9           *the end of such period, shall serve as a member*  
10          *of the Board.*

11          (C) *INOPERABILITY.*—*If fewer than 7 State*  
12          *insurance regulators accept appointment to the*  
13          *Board, the Association shall be established with-*  
14          *out NAIC oversight pursuant to section 332.*

15          (d) *TERMS.*—*The term of each director shall, after the*  
16          *initial appointment of the members of the Board, be for 3*  
17          *years, with  $\frac{1}{3}$  of the directors to be appointed each year.*

18          (e) *BOARD VACANCIES.*—*A vacancy on the Board shall*  
19          *be filled in the same manner as the original appointment*  
20          *of the initial Board for the remainder of the term of the*  
21          *vacating member.*

22          (f) *MEETINGS.*—*The Board shall meet at the call of*  
23          *the chairperson, or as otherwise provided by the bylaws of*  
24          *the Association.*

1 **SEC. 327. OFFICERS.**

2 (a) *IN GENERAL.*—

3 (1) *POSITIONS.*—*The officers of the Association*  
4 *shall consist of a chairperson and a vice chairperson*  
5 *of the Board, a president, secretary, and treasurer of*  
6 *the Association, and such other officers and assistant*  
7 *officers as may be deemed necessary.*

8 (2) *MANNER OF SELECTION.*—*Each officer of the*  
9 *Board and the Association shall be elected or ap-*  
10 *pointed at such time and in such manner and for*  
11 *such terms not exceeding 3 years as may be prescribed*  
12 *in the bylaws of the Association.*

13 (b) *CRITERIA FOR CHAIRPERSON.*—*Only individuals*  
14 *who are members of the NAIC shall be eligible to serve as*  
15 *the chairperson of the board of directors.*

16 **SEC. 328. BYLAWS, RULES, AND DISCIPLINARY ACTION.**

17 (a) *ADOPTION AND AMENDMENT OF BYLAWS.*—

18 (1) *COPY REQUIRED TO BE FILED WITH THE*  
19 *NAIC.*—*The board of directors of the Association shall*  
20 *file with the NAIC a copy of the proposed bylaws or*  
21 *any proposed amendment to the bylaws, accompanied*  
22 *by a concise general statement of the basis and pur-*  
23 *pose of such proposal.*

24 (2) *EFFECTIVE DATE.*—*Except as provided in*  
25 *paragraph (3), any proposed bylaw or proposed*  
26 *amendment shall take effect—*

1           (A) 30 days after the date of the filing of  
2 a copy with the NAIC;

3           (B) upon such later date as the Association  
4 may designate; or

5           (C) such earlier date as the NAIC may de-  
6 termine.

7           (3) *DISAPPROVAL BY THE NAIC.*—Notwithstand-  
8 ing paragraph (2), a proposed bylaw or amendment  
9 shall not take effect if, after public notice and oppor-  
10 tunity to participate in a public hearing—

11           (A) the NAIC disapproves such proposal as  
12 being contrary to the public interest or contrary  
13 to the purposes of this subtitle and provides no-  
14 tice to the Association setting forth the reasons  
15 for such disapproval; or

16           (B) the NAIC finds that such proposal in-  
17 volves a matter of such significant public interest  
18 that public comment should be obtained, in  
19 which case it may, after notifying the Associa-  
20 tion in writing of such finding, require that the  
21 procedures set forth in subsection (b) be followed  
22 with respect to such proposal, in the same man-  
23 ner as if such proposed bylaw change were a pro-  
24 posed rule change within the meaning of such  
25 paragraph.

1       **(b) ADOPTION AND AMENDMENT OF RULES.—**

2               **(1) FILING PROPOSED REGULATIONS WITH THE**  
3       **NAIC.—**

4               **(A) IN GENERAL.—***The board of directors of*  
5       *the Association shall file with the NAIC a copy*  
6       *of any proposed rule or any proposed amend-*  
7       *ment to a rule of the Association which shall be*  
8       *accompanied by a concise general statement of*  
9       *the basis and purpose of such proposal.*

10              **(B) OTHER RULES AND AMENDMENTS INEF-**  
11       **ECTIVE.—***No proposed rule or amendment shall*  
12       *take effect unless approved by the NAIC or other-*  
13       *wise permitted in accordance with this para-*  
14       *graph.*

15              **(2) INITIAL CONSIDERATION BY THE NAIC.—***Not*  
16       *later than 35 days after the date of publication of no-*  
17       *tice of filing of a proposal, or before the end of such*  
18       *longer period not to exceed 90 days as the NAIC may*  
19       *designate after such date, if the NAIC finds such*  
20       *longer period to be appropriate and sets forth its rea-*  
21       *sons for so finding, or as to which the Association*  
22       *consents, the NAIC shall—*

23              **(A)** *by order approve such proposed rule or*  
24       *amendment; or*

1           (B) *institute proceedings to determine*  
2 *whether such proposed rule or amendment should*  
3 *be modified or disapproved.*

4           (3) *NAIC PROCEEDINGS.—*

5           (A) *IN GENERAL.—Proceedings instituted*  
6 *by the NAIC with respect to a proposed rule or*  
7 *amendment pursuant to paragraph (2) shall—*

8                   (i) *include notice of the grounds for*  
9 *disapproval under consideration;*

10                   (ii) *provide opportunity for hearing;*

11                   *and*

12                   (iii) *be concluded not later than 180*  
13 *days after the date of the Association’s fil-*  
14 *ing of such proposed rule or amendment.*

15           (B) *DISPOSITION OF PROPOSAL.—At the*  
16 *conclusion of any proceeding under subpara-*  
17 *graph (A), the NAIC shall, by order, approve or*  
18 *disapprove the proposed rule or amendment.*

19           (C) *EXTENSION OF TIME FOR CONSIDER-*  
20 *ATION.—The NAIC may extend the time for con-*  
21 *cluding any proceeding under subparagraph (A)*  
22 *for—*

23                   (i) *not more than 60 days if the NAIC*  
24 *finds good cause for such extension and sets*  
25 *forth its reasons for so finding; or*

1                   (ii) for such longer period as to which  
2                   the Association consents.

3           (4) *STANDARDS FOR REVIEW.*—

4                   (A) *GROUND S FOR APPROVAL.*—The NAIC  
5                   shall approve a proposed rule or amendment if  
6                   the NAIC finds that the rule or amendment is in  
7                   the public interest and is consistent with the  
8                   purposes of this Act.

9                   (B) *APPROVAL BEFORE END OF NOTICE PE-*  
10                   *RIOD.*—The NAIC shall not approve any pro-  
11                   posed rule before the end of the 30-day period be-  
12                   ginning on the date on which the Association  
13                   files proposed rules or amendments in accord-  
14                   ance with paragraph (1), unless the NAIC finds  
15                   good cause for so doing and sets forth the reasons  
16                   for so finding.

17           (5) *ALTERNATE PROCEDURE.*—

18                   (A) *IN GENERAL.*—Notwithstanding any  
19                   provision of this subsection other than subpara-  
20                   graph (B), a proposed rule or amendment relat-  
21                   ing to the administration or organization of the  
22                   Association may take effect—

23                           (i) upon the date of filing with the  
24                           NAIC, if such proposed rule or amendment  
25                           is designated by the Association as relating

1           *solely to matters which the NAIC, consistent*  
2           *with the public interest and the purposes of*  
3           *this subsection, determines by rule do not*  
4           *require the procedures set forth in this*  
5           *paragraph; or*

6                     *(ii) upon such date as the NAIC shall*  
7           *for good cause determine.*

8           *(B) ABROGATION BY THE NAIC.—*

9                     *(i) IN GENERAL.—At any time within*  
10          *60 days after the date of filing of any pro-*  
11          *posed rule or amendment under subpara-*  
12          *graph (A)(i) or clause (ii) of this subpara-*  
13          *graph, the NAIC may repeal such rule or*  
14          *amendment and require that the rule or*  
15          *amendment be refiled and reviewed in ac-*  
16          *cordance with this paragraph, if the NAIC*  
17          *finds that such action is necessary or ap-*  
18          *propriate in the public interest, for the pro-*  
19          *tection of insurance producers or policy-*  
20          *holders, or otherwise in furtherance of the*  
21          *purposes of this subtitle.*

22                     *(ii) EFFECT OF RECONSIDERATION BY*  
23          *THE NAIC.—Any action of the NAIC pursu-*  
24          *ant to clause (i) shall—*

1                   (I) not affect the validity or force  
2                   of a rule change during the period such  
3                   rule or amendment was in effect; and  
4                   (II) not be considered to be a final  
5                   action.

6           (c) *ACTION REQUIRED BY THE NAIC.*—The NAIC  
7   may, in accordance with such rules as the NAIC determines  
8   to be necessary or appropriate to the public interest or to  
9   carry out the purposes of this subtitle, require the Associa-  
10   tion to adopt, amend, or repeal any bylaw, rule or amend-  
11   ment of the Association, whenever adopted.

12           (d) *DISCIPLINARY ACTION BY THE ASSOCIATION.*—

13                   (1) *SPECIFICATION OF CHARGES.*—In any pro-  
14   ceeding to determine whether membership shall be de-  
15   nied, suspended, revoked, and not renewed (hereafter  
16   in this section referred to as a “disciplinary action”),  
17   the Association shall bring specific charges, notify  
18   such member of such charges, give the member an op-  
19   portunity to defend against the charges, and keep a  
20   record.

21                   (2) *SUPPORTING STATEMENT.*—A determination  
22   to take disciplinary action shall be supported by a  
23   statement setting forth—

24                           (A) any act or practice in which such mem-  
25                           ber has been found to have been engaged;

1           (B) *the specific provision of this subtitle,*  
2           *the rules or regulations under this subtitle, or the*  
3           *rules of the Association which any such act or*  
4           *practice is deemed to violate; and*

5           (C) *the sanction imposed and the reason for*  
6           *such sanction.*

7           (e) *NAIC REVIEW OF DISCIPLINARY ACTION.—*

8           (1) *NOTICE TO THE NAIC.—If the Association or-*  
9           *ders any disciplinary action, the Association shall*  
10          *promptly notify the NAIC of such action.*

11          (2) *REVIEW BY THE NAIC.—Any disciplinary ac-*  
12          *tion taken by the Association shall be subject to re-*  
13          *view by the NAIC—*

14                (A) *on the NAIC's own motion; or*

15                (B) *upon application by any person ag-*  
16                *grieved by such action if such application is filed*  
17                *with the NAIC not more than 30 days after the*  
18                *later of—*

19                   (i) *the date the notice was filed with*  
20                   *the NAIC pursuant to paragraph (1); or*

21                   (ii) *the date the notice of the discipli-*  
22                   *nary action was received by such aggrieved*  
23                   *person.*

24           (f) *EFFECT OF REVIEW.—The filing of an application*  
25          *to the NAIC for review of a disciplinary action, or the insti-*

1 *tution of review by the NAIC on the NAIC's own motion,*  
2 *shall not operate as a stay of disciplinary action unless the*  
3 *NAIC otherwise orders.*

4 *(g) SCOPE OF REVIEW.—*

5 *(1) IN GENERAL.—In any proceeding to review*  
6 *such action, after notice and the opportunity for hear-*  
7 *ing, the NAIC shall—*

8 *(A) determine whether the action should be*  
9 *taken;*

10 *(B) affirm, modify, or rescind the discipli-*  
11 *nary sanction; or*

12 *(C) remand to the Association for further*  
13 *proceedings.*

14 *(2) DISMISSAL OF REVIEW.—The NAIC may dis-*  
15 *miss a proceeding to review disciplinary action if the*  
16 *NAIC finds that—*

17 *(A) the specific grounds on which the action*  
18 *is based exist in fact;*

19 *(B) the action is in accordance with appli-*  
20 *cable rules and regulations; and*

21 *(C) such rules and regulations are, and*  
22 *were, applied in a manner consistent with the*  
23 *purposes of this subtitle.*

1 **SEC. 329. ASSESSMENTS.**

2 (a) *INSURANCE PRODUCERS SUBJECT TO ASSESS-*  
3 *MENT.*—*The Association may establish such application*  
4 *and membership fees as the Association finds necessary to*  
5 *cover the costs of its operations, including fees made reim-*  
6 *bursable to the NAIC under subsection (b), except that, in*  
7 *setting such fees, the Association may not discriminate*  
8 *against smaller insurance producers.*

9 (b) *NAIC ASSESSMENTS.*—*The NAIC may assess the*  
10 *Association for any costs that the NAIC incurs under this*  
11 *subtitle.*

12 **SEC. 330. FUNCTIONS OF THE NAIC.**

13 (a) *ADMINISTRATIVE PROCEDURE.*—*Determinations of*  
14 *the NAIC, for purposes of making rules pursuant to section*  
15 *328, shall be made after appropriate notice and oppor-*  
16 *tunity for a hearing and for submission of views of inter-*  
17 *ested persons.*

18 (b) *EXAMINATIONS AND REPORTS.*—

19 (1) *The NAIC may make such examinations and*  
20 *inspections of the Association and require the Associa-*  
21 *tion to furnish to the NAIC such reports and records*  
22 *or copies thereof as the NAIC may consider necessary*  
23 *or appropriate in the public interest or to effectuate*  
24 *the purposes of this subtitle.*

25 (2) *As soon as practicable after the close of each*  
26 *fiscal year, the Association shall submit to the NAIC*

1        *a written report regarding the conduct of its business,*  
2        *and the exercise of the other rights and powers grant-*  
3        *ed by this subtitle, during such fiscal year. Such re-*  
4        *port shall include financial statements setting forth*  
5        *the financial position of the Association at the end of*  
6        *such fiscal year and the results of its operations (in-*  
7        *cluding the source and application of its funds) for*  
8        *such fiscal year. The NAIC shall transmit such report*  
9        *to the President and the Congress with such comment*  
10       *thereon as the NAIC determines to be appropriate.*

11 **SEC. 331. LIABILITY OF THE ASSOCIATION AND THE DIREC-**  
12                    **TORS, OFFICERS, AND EMPLOYEES OF THE**  
13                    **ASSOCIATION.**

14        *(a) IN GENERAL.—The Association shall not be deemed*  
15        *to be an insurer or insurance producer within the meaning*  
16        *of any State law, rule, regulation, or order regulating or*  
17        *taxing insurers, insurance producers, or other entities en-*  
18        *gaged in the business of insurance, including provisions im-*  
19        *posing premium taxes, regulating insurer solvency or fi-*  
20        *nancial condition, establishing guaranty funds and levying*  
21        *assessments, or requiring claims settlement practices.*

22        *(b) LIABILITY OF THE ASSOCIATION, ITS DIRECTORS,*  
23        *OFFICERS, AND EMPLOYEES.—Neither the Association nor*  
24        *any of its directors, officers, or employees shall have any*  
25        *liability to any person for any action taken or omitted in*

1 *good faith under or in connection with any matter subject*  
2 *to this subtitle.*

3 **SEC. 332. ELIMINATION OF NAIC OVERSIGHT.**

4 *(a) IN GENERAL.—The Association shall be established*  
5 *without NAIC oversight and the provisions set forth in sec-*  
6 *tion 324, subsections (a), (b), (c), and (e) of section 328,*  
7 *and sections 329(b) and 330 of this subtitle shall cease to*  
8 *be effective if, at the end of the 2-year period beginning on*  
9 *the date on which the provisions of this subtitle take effect*  
10 *pursuant to section 321—*

11 *(1) at least a majority of the States representing*  
12 *at least 50 percent of the total United States commer-*  
13 *cial-lines insurance premiums have not satisfied the*  
14 *uniformity or reciprocity requirements of subsections*  
15 *(a) and (b) of section 321; and*

16 *(2) the NAIC has not approved the Association’s*  
17 *bylaws as required by section 328 or is unable to op-*  
18 *erate or supervise the Association, or the Association*  
19 *is not conducting its activities as required under this*  
20 *Act.*

21 *(b) BOARD APPOINTMENTS.—If the repeals required by*  
22 *subsection (a) are implemented, the following shall apply:*

23 *(1) GENERAL APPOINTMENT POWER.—The Presi-*  
24 *dent, with the advice and consent of the United States*  
25 *Senate, shall appoint the members of the Association’s*

1 *Board established under section 326 from lists of can-*  
2 *didates recommended to the President by the National*  
3 *Association of Insurance Commissioners.*

4 (2) *PROCEDURES FOR OBTAINING NATIONAL AS-*  
5 *SOCIATION OF INSURANCE COMMISSIONERS APPOINT-*  
6 *MENT RECOMMENDATIONS.—*

7 (A) *INITIAL DETERMINATION AND REC-*  
8 *COMMENDATIONS.—After the date on which the*  
9 *provisions of subsection (a) take effect, the NAIC*  
10 *shall, not later than 60 days thereafter, provide*  
11 *a list of recommended candidates to the Presi-*  
12 *dent. If the NAIC fails to provide a list by that*  
13 *date, or if any list that is provided does not in-*  
14 *clude at least 14 recommended candidates or*  
15 *comply with the requirements of section 326(c),*  
16 *the President shall, with the advice and consent*  
17 *of the United States Senate, make the requisite*  
18 *appointments without considering the views of*  
19 *the NAIC.*

20 (B) *SUBSEQUENT APPOINTMENTS.—After*  
21 *the initial appointments, the NAIC shall provide*  
22 *a list of at least 6 recommended candidates for*  
23 *the Board to the President by January 15 of*  
24 *each subsequent year. If the NAIC fails to pro-*  
25 *vide a list by that date, or if any list that is pro-*

1            *vided does not include at least 6 recommended*  
2            *candidates or comply with the requirements of*  
3            *section 326(c), the President, with the advice and*  
4            *consent of the Senate, shall make the requisite*  
5            *appointments without considering the views of*  
6            *the NAIC.*

7            *(C) PRESIDENTIAL OVERSIGHT.—*

8            *(i) REMOVAL.—If the President deter-*  
9            *mines that the Association is not acting in*  
10           *the interests of the public, the President*  
11           *may remove the entire existing Board for*  
12           *the remainder of the term to which the*  
13           *members of the Board were appointed and*  
14           *appoint, with the advice and consent of the*  
15           *Senate, new members to fill the vacancies*  
16           *on the Board for the remainder of such*  
17           *terms.*

18           *(ii) SUSPENSION OF RULES OR AC-*  
19           *TIONS.—The President, or a person des-*  
20           *ignated by the President for such purpose,*  
21           *may suspend the effectiveness of any rule, or*  
22           *prohibit any action, of the Association*  
23           *which the President or the designee deter-*  
24           *mines is contrary to the public interest.*

1       (c) *ANNUAL REPORT.*—As soon as practicable after the  
2 close of each fiscal year, the Association shall submit to the  
3 President and to the Congress a written report relative to  
4 the conduct of its business, and the exercise of the other  
5 rights and powers granted by this subtitle, during such fis-  
6 cal year. Such report shall include financial statements set-  
7 ting forth the financial position of the Association at the  
8 end of such fiscal year and the results of its operations (in-  
9 cluding the source and application of its funds) for such  
10 fiscal year.

11 **SEC. 333. RELATIONSHIP TO STATE LAW.**

12       (a) *PREEMPTION OF STATE LAWS.*—State laws, regu-  
13 lations, provisions, or other actions purporting to regulate  
14 insurance producers shall be preempted as provided in sub-  
15 section (b).

16       (b) *PROHIBITED ACTIONS.*—No State shall—

17           (1) *impede the activities of, take any action*  
18 *against, or apply any provision of law or regulation*  
19 *to, any insurance producer because that insurance*  
20 *producer or any affiliate plans to become, has applied*  
21 *to become, or is a member of the Association;*

22           (2) *impose any requirement upon a member of*  
23 *the Association that it pay different fees to be licensed*  
24 *or otherwise qualified to do business in that State, in-*  
25 *cluding bonding requirements, based on its residency;*

1           (3) *impose any licensing, appointment, integ-*  
2           *riety, personal or corporate qualifications, education,*  
3           *training, experience, residency, or continuing edu-*  
4           *cation requirement upon a member of the Association*  
5           *that is different from the criteria for membership in*  
6           *the Association or renewal of such membership, except*  
7           *that counter-signature requirements imposed on non-*  
8           *resident producers shall not be deemed to have the ef-*  
9           *fect of limiting or conditioning a producer's activities*  
10          *because of its residence or place of operations under*  
11          *this section; or*

12           (4) *implement the procedures of such State's sys-*  
13          *tem of licensing or renewing the licenses of insurance*  
14          *producers in a manner different from the authority of*  
15          *the Association under section 325.*

16          (c) *SAVINGS PROVISION.—Except as provided in sub-*  
17          *sections (a) and (b), no provision of this section shall be*  
18          *construed as altering or affecting the continuing effective-*  
19          *ness of any law, regulation, provision, or other action of*  
20          *any State which purports to regulate insurance producers,*  
21          *including any such law, regulation, provision, or action*  
22          *which purports to regulate unfair trade practices or estab-*  
23          *lish consumer protections, including countersignature laws.*

1 **SEC. 334. COORDINATION WITH OTHER REGULATORS.**

2 (a) *COORDINATION WITH STATE INSURANCE REGU-*  
3 *LATORS.*—*The Association shall have the authority to—*

4 (1) *issue uniform insurance producer applica-*  
5 *tions and renewal applications that may be used to*  
6 *apply for the issuance or removal of State licenses,*  
7 *while preserving the ability of each State to impose*  
8 *such conditions on the issuance or renewal of a license*  
9 *as are consistent with section 333;*

10 (2) *establish a central clearinghouse through*  
11 *which members of the Association may apply for the*  
12 *issuance or renewal of licenses in multiple States; and*

13 (3) *establish or utilize a national database for*  
14 *the collection of regulatory information concerning*  
15 *the activities of insurance producers.*

16 (b) *COORDINATION WITH THE NATIONAL ASSOCIATION*  
17 *OF SECURITIES DEALERS.*—*The Association shall coordi-*  
18 *nate with the National Association of Securities Dealers in*  
19 *order to ease any administrative burdens that fall on per-*  
20 *sons that are members of both associations, consistent with*  
21 *the purposes of this subtitle and the Federal securities laws.*

22 **SEC. 335. JUDICIAL REVIEW.**

23 (a) *JURISDICTION.*—*The appropriate United States*  
24 *district court shall have exclusive jurisdiction over litiga-*  
25 *tion involving the Association, including disputes between*  
26 *the Association and its members that arise under this sub-*

1 *title. Suits brought in State court involving the Association*  
2 *shall be deemed to have arisen under Federal law and there-*  
3 *fore be subject to jurisdiction in the appropriate United*  
4 *States district court.*

5 (b) *EXHAUSTION OF REMEDIES.—An aggrieved person*  
6 *shall be required to exhaust all available administrative*  
7 *remedies before the Association and the NAIC before it may*  
8 *seek judicial review of an Association decision.*

9 (c) *STANDARDS OF REVIEW.—The standards set forth*  
10 *in section 553 of title 5, United States Code, shall be ap-*  
11 *plied whenever a rule or bylaw of the Association is under*  
12 *judicial review, and the standards set forth in section 554*  
13 *of title 5, United States Code, shall be applied whenever*  
14 *a disciplinary action of the Association is judicially re-*  
15 *viewed.*

16 **SEC. 336. DEFINITIONS.**

17 *For purposes of this subtitle, the following definitions*  
18 *shall apply:*

19 (1) *HOME STATE.—The term “home State”*  
20 *means the State in which the insurance producer*  
21 *maintains its principal place of residence and is li-*  
22 *censed to act as an insurance producer.*

23 (2) *INSURANCE.—The term “insurance” means*  
24 *any product, other than title insurance, defined or*

1       *regulated as insurance by the appropriate State in-*  
2       *surance regulatory authority.*

3           (3) *INSURANCE PRODUCER.*—*The term “insur-*  
4       *ance producer” means any insurance agent or broker,*  
5       *surplus lines broker, insurance consultant, limited in-*  
6       *surance representative, and any other person that so-*  
7       *licits, negotiates, effects, procures, delivers, renews,*  
8       *continues or binds policies of insurance or offers ad-*  
9       *vice, counsel, opinions or services related to insur-*  
10       *ance.*

11           (4) *STATE.*—*The term “State” includes any*  
12       *State, the District of Columbia, American Samoa,*  
13       *Guam, Puerto Rico, and the United States Virgin Is-*  
14       *lands.*

15           (5) *STATE LAW.*—*The term “State law” includes*  
16       *all laws, decisions, rules, regulations, or other State*  
17       *action having the effect of law, of any State. A law*  
18       *of the United States applicable only to the District of*  
19       *Columbia shall be treated as a State law rather than*  
20       *a law of the United States.*

1       **TITLE IV—UNITARY SAVINGS**  
2       **AND LOAN HOLDING COMPANIES**

3       **SEC. 401. PREVENTION OF CREATION OF NEW S&L HOLD-**  
4                       **ING COMPANIES WITH COMMERCIAL AFFILI-**  
5                       **ATES.**

6       *Section 10(c) of the Home Owners' Loan Act (12*  
7       *U.S.C. 1467a(c)) is amended by adding at the end the fol-*  
8       *lowing new paragraph:*

9                       “(9) *PREVENTION OF NEW AFFILIATIONS BE-*  
10                      *TWEEN S&L HOLDING COMPANIES AND COMMERCIAL*  
11                      *FIRMS.—*

12                      “(A) *IN GENERAL.—Notwithstanding para-*  
13                      *graph (3), no company may directly or indi-*  
14                      *rectly, including through any merger, consolida-*  
15                      *tion, or other type of business combination, ac-*  
16                      *quire control of a savings association after Sep-*  
17                      *tember 3, 1998, unless the company is engaged,*  
18                      *directly or indirectly (including through a sub-*  
19                      *subsidiary other than a savings association), only*  
20                      *in activities that are permitted—*

21                      “(i) *under paragraph (1)(C) or (2); or*

22                      “(ii) *for financial holding companies*  
23                      *under section 6(c) of the Bank Holding*  
24                      *Company Act of 1956.*

1           “(B) *PREVENTION OF NEW COMMERCIAL AF-*  
2           *FILIATIONS.—Notwithstanding paragraph (3),*  
3           *no savings and loan holding company may en-*  
4           *gage directly or indirectly (including through a*  
5           *subsidiary other than a savings association) in*  
6           *any activity other than as described in clauses*  
7           *(i) and (ii) of subparagraph (A).*

8           “(C) *PRESERVATION OF AUTHORITY OF EX-*  
9           *ISTING UNITARY S&L HOLDING COMPANIES.—*  
10           *Subparagraphs (A) and (B) do not apply with*  
11           *respect to any company that was a savings and*  
12           *loan holding company on September 3, 1998, or*  
13           *that becomes a savings and loan holding com-*  
14           *pany pursuant to an application pending before*  
15           *the Office of Thrift Supervision on or before that*  
16           *date, and that—*

17                   “(i) *meets and continues to meet the*  
18                   *requirements of paragraph (3); and*

19                   “(ii) *continues to control not fewer*  
20                   *than 1 savings association that it controlled*  
21                   *on September 3, 1998, or that it acquired*  
22                   *pursuant to an application pending before*  
23                   *the Office of Thrift Supervision on or before*  
24                   *that date, or the successor to such savings*  
25                   *association.*

1           “(D) CORPORATE REORGANIZATIONS PER-  
2           MITTED.—This paragraph does not prevent a  
3           transaction that—

4                   “(i) involves solely a company under  
5                   common control with a savings and loan  
6                   holding company from acquiring, directly  
7                   or indirectly, control of the savings and  
8                   loan holding company or any savings asso-  
9                   ciation that is already a subsidiary of the  
10                  savings and loan holding company; or

11                   “(ii) involves solely a merger, consoli-  
12                   dation, or other type of business combina-  
13                   tion as a result of which a company under  
14                   common control with the savings and loan  
15                   holding company acquires, directly or indi-  
16                   rectly, control of the savings and loan hold-  
17                   ing company or any savings association  
18                   that is already a subsidiary of the savings  
19                   and loan holding company.

20           “(E) AUTHORITY TO PREVENT EVASIONS.—  
21           The Director may issue interpretations, regula-  
22           tions, or orders that the Director determines nec-  
23           essary to administer and carry out the purpose  
24           and prevent evasions of this paragraph, includ-  
25           ing a determination that, notwithstanding the

1           *form of a transaction, the transaction would in*  
2           *substance result in a company acquiring control*  
3           *of a savings association.”.*

4 **SEC. 402. OPTIONAL CONVERSION OF FEDERAL SAVINGS**  
5           **ASSOCIATIONS TO NATIONAL BANKS.**

6           *Section 5(i) of the Home Owners’ Loan Act (12 U.S.C.*  
7 *1464(i)) is amended by adding at the end the following new*  
8 *paragraph:*

9           “(5) *CONVERSION TO A NATIONAL BANK.—Not-*  
10 *withstanding any other provision of law, any Federal*  
11 *savings association chartered and in operation before*  
12 *the date of enactment of the Financial Services Act of*  
13 *1998, with branches in 1 or more States, may con-*  
14 *vert, with the approval of the Comptroller of the Cur-*  
15 *rency, into 1 or more national banks, each of which*  
16 *may encompass one or more of the branches of the*  
17 *Federal savings association in 1 or more States, but*  
18 *only if the resulting national bank or banks will meet*  
19 *any and all financial, management, and capital re-*  
20 *quirements applicable to a national bank.”.*

21 **SEC. 403. RETENTION OF “FEDERAL” IN NAME OF CON-**  
22           **VERTED FEDERAL SAVINGS ASSOCIATION.**

23           *Section 2 of the Act entitled “An Act to enable national*  
24 *banking associations to increase their capital stock and to*  
25 *change their names or locations”, approved May 1, 1886*

1 *(12 U.S.C. 30), is amended by adding at the end the follow-*  
 2 *ing new subsection:*

3       “(d) *RETENTION OF ‘FEDERAL’ IN NAME OF CON-*  
 4 *VERTED FEDERAL SAVINGS ASSOCIATION.—*

5               “(1) *IN GENERAL.—Notwithstanding subsection*  
 6 *(a) or any other provision of law, any depository in-*  
 7 *stitution the charter of which is converted from that*  
 8 *of a Federal savings association to a national bank*  
 9 *or a State bank after the date of the enactment of the*  
 10 *Financial Services Act of 1998 may retain the term*  
 11 *‘Federal’ in the name of such institution if such de-*  
 12 *pository institution remains an insured depository*  
 13 *institution.*

14               “(2) *DEFINITIONS.—For purposes of this sub-*  
 15 *section, the terms ‘depository institution’, ‘insured de-*  
 16 *pository institution’, ‘national bank’, and ‘State*  
 17 *bank’ have the same meanings as in section 3 of the*  
 18 *Federal Deposit Insurance Act.”.*

19                       **TITLE V—FINANCIAL**  
 20                       **INFORMATION PRIVACY**

21 **SEC. 501. FINANCIAL INFORMATION PRIVACY.**

22       *The Consumer Credit Protection Act (15 U.S.C. 1601*  
 23 *et seq.) is amended by adding at the end the following:*

1 **“TITLE X—FINANCIAL INFORMA-**  
 2 **TION PRIVACY PROTECTION**

3 **“SEC. 1001. SHORT TITLE; TABLE OF CONTENTS.**

4 “(a) *SHORT TITLE.*—*This title may be cited as the ‘Fi-*  
 5 *nancial Information Privacy Act of 1998’.*

6 “(b) *TABLE OF CONTENTS.*—*The table of contents for*  
 7 *this title is as follows:*

*“TITLE X—FINANCIAL INFORMATION PRIVACY PROTECTION*

*“Sec. 1001. Short title; table of contents.*

*“Sec. 1002. Definitions.*

*“Sec. 1003. Privacy protection for customer information of financial institutions.*

*“Sec. 1004. Administrative enforcement.*

*“Sec. 1005. Civil liability.*

*“Sec. 1006. Criminal penalty.*

*“Sec. 1007. Relation to State laws.*

*“Sec. 1008. Agency guidance.*

8 **“SEC. 1002. DEFINITIONS.**

9 “*For purposes of this title, the following definitions*  
 10 *shall apply:*

11 “(1) *CUSTOMER.*—*The term ‘customer’ means,*  
 12 *with respect to a financial institution, any person (or*  
 13 *authorized representative of a person) to whom the fi-*  
 14 *nancial institution provides a product or service, in-*  
 15 *cluding that of acting as a fiduciary.*

16 “(2) *CUSTOMER INFORMATION OF A FINANCIAL*  
 17 *INSTITUTION.*—*The term ‘customer information of a*  
 18 *financial institution’ means any information main-*  
 19 *tained by a financial institution which is derived*  
 20 *from the relationship between the financial institution*

1        *and a customer of the financial institution and is*  
2        *identified with the customer.*

3            “(3) *DOCUMENT.*—*The term ‘document’ means*  
4        *any information in any form.*

5            “(4) *FINANCIAL INSTITUTION.*—

6            “(A) *IN GENERAL.*—*The term ‘financial in-*  
7        *stitution’ means any institution engaged in the*  
8        *business of providing financial services to cus-*  
9        *tomers who maintain a credit, deposit, trust, or*  
10       *other financial account or relationship with the*  
11       *institution.*

12           “(B) *CERTAIN FINANCIAL INSTITUTIONS*  
13        *SPECIFICALLY INCLUDED.*—*The term ‘financial*  
14        *institution’ includes any depository institution*  
15        *(as defined in section 19(b)(1)(A) of the Federal*  
16        *Reserve Act), any loan or finance company, any*  
17        *credit card issuer or operator of a credit card*  
18        *system, and any consumer reporting agency that*  
19        *compiles and maintains files on consumers on a*  
20        *nationwide basis (as defined in section 603(p)).*

21           “(C) *FURTHER DEFINITION BY REGULA-*  
22        *TION.*—*The Board of Governors of the Federal*  
23        *Reserve System may prescribe regulations fur-*  
24        *ther defining the term ‘financial institution’, in*

1           *accordance with subparagraph (A), for purposes*  
2           *of this title.*

3   **“SEC. 1003. PRIVACY PROTECTION FOR CUSTOMER INFOR-**  
4                           **MATION OF FINANCIAL INSTITUTIONS.**

5           “(a) *PROHIBITION ON OBTAINING CUSTOMER INFOR-*  
6   *MATION BY FALSE PRETENSES.—It shall be a violation of*  
7   *this title for any person to obtain or attempt to obtain, or*  
8   *cause to be disclosed or attempt to cause to be disclosed to*  
9   *any person, customer information of a financial institution*  
10 *relating to another person—*

11           “(1) *by knowingly making a false, fictitious, or*  
12   *fraudulent statement or representation to an officer,*  
13   *employee, or agent of a financial institution with the*  
14   *intent to deceive the officer, employee, or agent into*  
15   *relying on that statement or representation for pur-*  
16   *poses of releasing the customer information;*

17           “(2) *by knowingly making a false, fictitious, or*  
18   *fraudulent statement or representation to a customer*  
19   *of a financial institution with the intent to deceive*  
20   *the customer into relying on that statement or rep-*  
21   *resentation for purposes of releasing the customer in-*  
22   *formation or authorizing the release of such informa-*  
23   *tion; or*

24           “(3) *by knowingly providing any document to*  
25   *an officer, employee, or agent of a financial institu-*

1        *tion, knowing that the document is forged, counterfeit,*  
2        *lost, or stolen, was fraudulently obtained, or contains*  
3        *a false, fictitious, or fraudulent statement or represen-*  
4        *tation, if the document is provided with the intent to*  
5        *deceive the officer, employee, or agent into relying on*  
6        *that document for purposes of releasing the customer*  
7        *information.*

8        *“(b) PROHIBITION ON SOLICITATION OF A PERSON TO*  
9        *OBTAIN CUSTOMER INFORMATION FROM FINANCIAL INSTI-*  
10       *TUTION UNDER FALSE PRETENSES.—It shall be a violation*  
11       *of this title to request a person to obtain customer informa-*  
12       *tion of a financial institution, knowing or consciously*  
13       *avoiding knowing that the person will obtain, or attempt*  
14       *to obtain, the information from the institution in any man-*  
15       *ner described in subsection (a).*

16       *“(c) NONAPPLICABILITY TO LAW ENFORCEMENT*  
17       *AGENCIES.—No provision of this section shall be construed*  
18       *so as to prevent any action by a law enforcement agency,*  
19       *or any officer, employee, or agent of such agency, to obtain*  
20       *customer information of a financial institution in connec-*  
21       *tion with the performance of the official duties of the*  
22       *agency.*

23       *“(d) NONAPPLICABILITY TO FINANCIAL INSTITUTIONS*  
24       *IN CERTAIN CASES.—No provision of this section shall be*  
25       *construed to prevent any financial institution, or any offi-*

1 *cer, employee, or agent of a financial institution, from ob-*  
2 *taining customer information of such financial institution*  
3 *in the course of—*

4           “(1) *testing the security procedures or systems of*  
5 *such institution for maintaining the confidentiality of*  
6 *customer information;*

7           “(2) *investigating allegations of misconduct or*  
8 *negligence on the part of any officer, employee, or*  
9 *agent of the financial institution; or*

10           “(3) *recovering customer information of the fi-*  
11 *nancial institution which was obtained or received by*  
12 *another person in any manner described in subsection*  
13 *(a) or (b).*

14           “(e) *NONAPPLICABILITY TO CERTAIN TYPES OF CUS-*  
15 *TOMER INFORMATION OF FINANCIAL INSTITUTIONS.—No*  
16 *provision of this section shall be construed to prevent any*  
17 *person from obtaining customer information of a financial*  
18 *institution that otherwise is available as a public record*  
19 *filed pursuant to the securities laws (as defined in section*  
20 *3(a)(47) of the Securities Exchange Act of 1934).*

21 **“SEC. 1004. ADMINISTRATIVE ENFORCEMENT.**

22           “(a) *ENFORCEMENT BY FEDERAL TRADE COMMIS-*  
23 *SION.—Except as provided in subsection (b), compliance*  
24 *with this title shall be enforced by the Federal Trade Com-*  
25 *mission in the same manner and with the same power and*

1 *authority as the Commission has under the Fair Debt Col-*  
2 *lection Practices Act to enforce compliance with that title.*

3 “(b) *ENFORCEMENT BY OTHER AGENCIES IN CERTAIN*  
4 *CASES.—*

5 “(1) *IN GENERAL.—Compliance with this title*  
6 *shall be enforced under—*

7 “(A) *section 8 of the Federal Deposit Insur-*  
8 *ance Act, in the case of—*

9 “(i) *national banks, and Federal*  
10 *branches and Federal agencies of foreign*  
11 *banks, by the Office of the Comptroller of*  
12 *the Currency;*

13 “(ii) *member banks of the Federal Re-*  
14 *serve System (other than national banks),*  
15 *branches and agencies of foreign banks*  
16 *(other than Federal branches, Federal agen-*  
17 *cies, and insured State branches of foreign*  
18 *banks), commercial lending companies*  
19 *owned or controlled by foreign banks, and*  
20 *organizations operating under section 25 or*  
21 *25A of the Federal Reserve Act, by the*  
22 *Board;*

23 “(iii) *banks insured by the Federal De-*  
24 *posit Insurance Corporation (other than*  
25 *members of the Federal Reserve System and*

1           *national nonmember banks) and insured*  
2           *State branches of foreign banks, by the*  
3           *Board of Directors of the Federal Deposit*  
4           *Insurance Corporation; and*

5           *“(iv) savings associations the deposits*  
6           *of which are insured by the Federal Deposit*  
7           *Insurance Corporation, by the Director of*  
8           *the Office of Thrift Supervision; and*

9           *“(B) the Federal Credit Union Act, by the*  
10          *Administrator of the National Credit Union Ad-*  
11          *ministration with respect to any Federal credit*  
12          *union.*

13          *“(2) VIOLATIONS OF THIS TITLE TREATED AS*  
14          *VIOLATIONS OF OTHER LAWS.—For the purpose of the*  
15          *exercise by any agency referred to in paragraph (1)*  
16          *of its powers under any Act referred to in that para-*  
17          *graph, a violation of this title shall be deemed to be*  
18          *a violation of a requirement imposed under that Act.*  
19          *In addition to its powers under any provision of law*  
20          *specifically referred to in paragraph (1), each of the*  
21          *agencies referred to in that paragraph may exercise,*  
22          *for the purpose of enforcing compliance with this title,*  
23          *any other authority conferred on such agency by law.*

24          *“(c) STATE ACTION FOR VIOLATIONS.—*

1           “(1) *AUTHORITY OF STATES.*—*In addition to*  
2 *such other remedies as are provided under State law,*  
3 *if the chief law enforcement officer of a State, or an*  
4 *official or agency designated by a State, has reason*  
5 *to believe that any person has violated or is violating*  
6 *this title, the State—*

7           “(A) *may bring an action to enjoin such*  
8 *violation in any appropriate United States dis-*  
9 *trict court or in any other court of competent ju-*  
10 *risdiction;*

11           “(B) *may bring an action on behalf of the*  
12 *residents of the State to recover damages of not*  
13 *more than \$1,000 for each violation; and*

14           “(C) *in the case of any successful action*  
15 *under subparagraph (A) or (B), shall be award-*  
16 *ed the costs of the action and reasonable attorney*  
17 *fees as determined by the court.*

18           “(2) *RIGHTS OF FEDERAL REGULATORS.*—

19           “(A) *PRIOR NOTICE.*—*The State shall serve*  
20 *prior written notice of any action under para-*  
21 *graph (1) upon the Federal Trade Commission*  
22 *and, in the case of an action which involves a*  
23 *financial institution described in section*  
24 *1004(b)(1), the agency referred to in such section*  
25 *with respect to such institution and provide the*

1           *Federal Trade Commission and any such agency*  
2           *with a copy of its complaint, except in any case*  
3           *in which such prior notice is not feasible, in*  
4           *which case the State shall serve such notice im-*  
5           *mediately upon instituting such action.*

6           “(B) *RIGHT TO INTERVENE.*—*The Federal*  
7           *Trade Commission or an agency described in*  
8           *subsection (b) shall have the right—*

9                   “(i) *to intervene in an action under*  
10                   *paragraph (1);*

11                   “(ii) *upon so intervening, to be heard*  
12                   *on all matters arising therein;*

13                   “(iii) *to remove the action to the ap-*  
14                   *propriate United States district court; and*

15                   “(iv) *to file petitions for appeal.*

16           “(3) *INVESTIGATORY POWERS.*—*For purposes of*  
17           *bringing any action under this subsection, no provi-*  
18           *sion of this subsection shall be construed as prevent-*  
19           *ing the chief law enforcement officer, or an official or*  
20           *agency designated by a State, from exercising the*  
21           *powers conferred on the chief law enforcement officer*  
22           *or such official by the laws of such State to conduct*  
23           *investigations or to administer oaths or affirmations*  
24           *or to compel the attendance of witnesses or the pro-*  
25           *duction of documentary and other evidence.*

1           “(4) *LIMITATION ON STATE ACTION WHILE FED-*  
2           *ERAL ACTION PENDING.*—*If the Federal Trade Com-*  
3           *mission or any agency described in subsection (b) has*  
4           *instituted a civil action for a violation of this title,*  
5           *no State may, during the pendency of such action,*  
6           *bring an action under this section against any de-*  
7           *fendant named in the complaint of the Federal Trade*  
8           *Commission or such agency for any violation of this*  
9           *title that is alleged in that complaint.*

10 **“SEC. 1005. CIVIL LIABILITY.**

11           “*Any person, other than a financial institution, who*  
12           *fails to comply with any provision of this title with respect*  
13           *to any financial institution or any customer information*  
14           *of a financial institution shall be liable to such financial*  
15           *institution or the customer to whom such information re-*  
16           *lates in an amount equal to the sum of the amounts deter-*  
17           *mined under each of the following paragraphs:*

18           “(1) *ACTUAL DAMAGES.*—*The greater of—*

19                   “(A) *the amount of any actual damage sus-*  
20                   *tained by the financial institution or customer*  
21                   *as a result of such failure; or*

22                   “(B) *any amount received by the person*  
23                   *who failed to comply with this title, including*  
24                   *an amount equal to the value of any nonmone-*

1            *tary consideration, as a result of the action*  
2            *which constitutes such failure.*

3            “(2) *ADDITIONAL DAMAGES.*—*Such additional*  
4            *amount as the court may allow.*

5            “(3) *ATTORNEYS’ FEES.*—*In the case of any suc-*  
6            *cessful action to enforce any liability under para-*  
7            *graph (1) or (2), the costs of the action, together with*  
8            *reasonable attorneys’ fees.*

9            **“SEC. 1006. CRIMINAL PENALTY.**

10            “(a) *IN GENERAL.*—*Whoever violates, or attempts to*  
11            *violate, section 1003 shall be fined in accordance with title*  
12            *18, United States Code, or imprisoned for not more than*  
13            *5 years, or both.*

14            “(b) *ENHANCED PENALTY FOR AGGRAVATED CASES.*—  
15            *Whoever violates, or attempts to violate, section 1003 while*  
16            *violating another law of the United States or as part of*  
17            *a pattern of any illegal activity involving more than*  
18            *\$100,000 in a 12-month period shall be fined twice the*  
19            *amount provided in subsection (b)(3) or (c)(3) (as the case*  
20            *may be) of section 3571 of title 18, United States Code,*  
21            *imprisoned for not more than 10 years, or both.*

22            **“SEC. 1007. RELATION TO STATE LAWS.**

23            “(a) *IN GENERAL.*—*This title shall not be construed*  
24            *as superseding, altering, or affecting the statutes, regula-*  
25            *tions, orders, or interpretations in effect in any State, ex-*

1 *cept to the extent that such statutes, regulations, orders, or*  
2 *interpretations are inconsistent with the provisions of this*  
3 *title, and then only to the extent of the inconsistency.*

4       “(b) *GREATER PROTECTION UNDER STATE LAW.—For*  
5 *purposes of this section, a State statute, regulation, order,*  
6 *or interpretation is not inconsistent with the provisions of*  
7 *this title if the protection such statute, regulation, order,*  
8 *or interpretation affords any person is greater than the pro-*  
9 *tection provided under this title.*

10 **“SEC. 1008. AGENCY GUIDANCE.**

11       *“In furtherance of the objectives of this title, each Fed-*  
12 *eral banking agency (as defined in section 3(z) of the Fed-*  
13 *eral Deposit Insurance Act) shall issue advisories to deposi-*  
14 *tory institutions under the jurisdiction of the agency, in*  
15 *order to assist such depository institutions in deterring and*  
16 *detecting activities proscribed under section 1003.”.*

17 **SEC. 502. REPORT TO CONGRESS ON FINANCIAL PRIVACY.**

18       *Not later than 18 months after the date of enactment*  
19 *of this Act, the Comptroller General of the United States,*  
20 *in consultation with the Federal Trade Commission, the*  
21 *Federal banking agencies, and other appropriate Federal*  
22 *law enforcement agencies, shall submit to the Congress a*  
23 *report on—*

24               (1) *the efficacy and adequacy of the remedies*  
25               *provided in the amendments made by section 501 in*

1 *addressing attempts to obtain financial information*  
 2 *by fraudulent means or by false pretenses; and*

3 *(2) any recommendations for additional legisla-*  
 4 *tive or regulatory action to address threats to the pri-*  
 5 *vacancy of financial information created by attempts to*  
 6 *obtain information by fraudulent means or false pre-*  
 7 *tenses.*

## 8 **TITLE VI—MISCELLANEOUS**

### 9 **SEC. 601. GRAND JURY PROCEEDINGS.**

10 *Section 3322(b) of title 18, United States Code, is*  
 11 *amended—*

12 *(1) in paragraph (1), by inserting “Federal or*  
 13 *State” before “financial institution”; and*

14 *(2) in paragraph (2), by inserting “at any time*  
 15 *during or after the completion of the investigation of*  
 16 *the grand jury,” before “upon”.*

### 17 **SEC. 602. SENSE OF THE COMMITTEE ON BANKING, HOUS-** 18 **ING, AND URBAN AFFAIRS OF THE SENATE.**

19 *(a) FINDINGS.—The Committee on Banking, Housing,*  
 20 *and Urban Affairs of the Senate finds that—*

21 *(1) financial modernization legislation should*  
 22 *benefit small institutions as well as large institutions;*

23 *(2) the Congress made the subchapter S election*  
 24 *of the Internal Revenue Code of 1986, available to*

1        *banks in 1996, reflecting a desire by the Congress to*  
2        *reduce the tax burden on community banks;*

3            *(3) large numbers of community banks have*  
4        *elected or expressed interest in the subchapter S elec-*  
5        *tion; and*

6            *(4) the Committee on Banking, Housing, and*  
7        *Urban Affairs of the Senate recognizes that some ob-*  
8        *stacles remain for community banks wishing to make*  
9        *the subchapter S election.*

10        *(b) SENSE OF THE COMMITTEE.—It is the sense of the*  
11        *Committee on Banking, Housing, and Urban Affairs of the*  
12        *Senate that—*

13            *(1) the small business tax provisions of the Inter-*  
14        *nal Revenue Code of 1986, should be more widely*  
15        *available to community banks;*

16            *(2) legislation should be passed to amend the In-*  
17        *ternal Revenue Code of 1986, to—*

18            *(A) increase the allowed number of S cor-*  
19        *poration shareholders;*

20            *(B) permit S corporation stock to be held in*  
21        *individual retirement accounts;*

22            *(C) clarify that interest on investments held*  
23        *for safety, soundness, and liquidity purposes*  
24        *should not be considered to be passive income;*

1           (D) provide that bank director stock is not  
2           treated as a disqualifying second class of stock  
3           for S corporations; and

4           (E) improve the tax treatment of bad debt  
5           and interest deductions; and

6           (3) the legislation described in paragraph (2)  
7           should be adopted by the Congress in conjunction with  
8           any financial modernization legislation.

9   **SEC. 603. INVESTMENTS IN GOVERNMENT SPONSORED EN-**  
10                                   **TERPRISES.**

11           Section 18(s) of the Federal Deposit Insurance Act (12  
12   U.S.C. 1828(s)) is amended—

13           (1) by redesignating paragraph (4) as para-  
14           graph (6); and

15           (2) by inserting after paragraph (3) the follow-  
16           ing:

17           “(4) CERTAIN INVESTMENTS.—Paragraph (1)  
18           shall not apply with respect to investments lawfully  
19           made before April 11, 1996, by a depository institu-  
20           tion in any Government sponsored enterprise.

21           “(5) STUDENT LOANS.—

22           “(A) IN GENERAL.—This subsection does  
23           not apply to any arrangement between a Hold-  
24           ing Company (or any subsidiary of the Holding  
25           Company other than the Student Loan Market-

1            *ing Association) and a depository institution, if*  
2            *the Secretary approves the affiliation and deter-*  
3            *mines that—*

4                    *“(i) the wind-down of the Association*  
5                    *in accordance with the requirements of sec-*  
6                    *tion 440 of the Higher Education Act of*  
7                    *1965, will not be adversely affected by the*  
8                    *arrangement;*

9                    *“(ii) the Association will not extend*  
10                   *credit to, or guarantee or provide credit en-*  
11                   *hancement to any obligation of, the deposi-*  
12                   *tory institution; and*

13                   *“(iii) the operations of the Association*  
14                   *will be separate from the operations of the*  
15                   *depository institution.*

16                   *“(B) TERMS AND CONDITIONS.—In approv-*  
17                   *ing an affiliation referred to in subparagraph*  
18                   *(A), the Secretary may impose any terms and*  
19                   *conditions on such affiliation that the Secretary*  
20                   *considers appropriate, including—*

21                   *“(i) requiring the Association to pro-*  
22                   *vide a binding plan to dissolve before Sep-*  
23                   *tember 30, 2008;*

1           “(ii) imposing additional restrictions  
2           on the issuance of debt obligations by the  
3           Association; or

4           “(iii) restricting the use of proceeds  
5           from the issuance of such debt.

6           “(C) ENFORCEMENT.—Terms and condi-  
7           tions imposed under subparagraph (B) may be  
8           enforced by the Secretary in accordance with sec-  
9           tion 440 of the Higher Education Act of 1965.

10          “(D) DEFINITIONS.—In this paragraph—

11           “(i) the terms ‘Association’ and ‘Hold-  
12           ing Company’ have the same meanings as  
13           in section 440(i) of the Higher Education  
14           Act of 1965; and

15           “(ii) the term ‘Secretary’ means the  
16           Secretary of the Treasury.”.

17   **SEC. 604. REPEAL OF SAVINGS BANK PROVISIONS IN THE**  
18           **BANK HOLDING COMPANY ACT OF 1956.**

19           Section 3(f) of the Bank Holding Company Act of 1956  
20   (12 U.S.C. 1842(f)) is amended to read as follows:

21           “(f) [Reserved].”.