Frank (MA)	Luther	Sandlin
Gephardt	Maloney (CT)	Sawyer
Goode	Martinez	Schumer
Gutierrez	Matsui	Scott
Hastings (FL)	McCarthy (MO)	Serrano
Hefley	McCollum	Sherman
Hilleary	McDermott	Skelton
Hinchey	McHale	Slaughter
Hoyer	McIntyre	Smith, Adam
Istook	Meehan	Stokes
Jackson (IL)	Meek (FL)	Taylor (MS)
Johnson (WI)	Menendez	Thompson
Jones	Millender-McDonald	Thune
Kanjorski	Miller (CA)	Tiahrt
Kennedy (MA)	Obey	Tierney
Kucinich	Olver	Torres
LaFalce	Owens	Turner
LaHood	Payne	Vento
Lampson	Pelosi	Wamp
Lantos	Poshard	Waters
Lee	Price (NC)	Watt (NC)
Lewis (GA)	Riley	Waxman
Lewis (KY)	Rothman	Yates
Lipinski	Roybal-Allard	
Lowey		

NOT VOTING—16

Bateman	Gonzalez	Mink
Christensen	Hall (OH)	Radanovich
Clay	Harman	Riggs
Ewing	Hefner	Skaggs
Gekas	Hilliard	
Gilchrest	Kilpatrick	

□ 1254

Messrs. WAMP, LEWIS of Kentucky, EVERETT, HASTINGS of Florida, DICKEY, DELAHUNT, WAXMAN, STOKES, and CRAMER changed their vote from ''yea'' to ''nay.''

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore (Mr. HANSEN). Pursuant to House Resolution 428 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 10.

□ 1255

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 10) 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, with Mrs. Emerson in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Iowa (Mr. LEACH), the gentleman from New York (Mr. LAFALCE), the gentleman from Virginia (Mr. BLILEY), and the gentleman from Michigan (Mr. DINGELL) each will control 15 minutes.

The Chair recognizes the gentleman from Iowa (Mr. LEACH).

Mr. LEACH. Madam chairman, I yield myself such time as I may consume.

(Mr. LEACH asked and was given permission to revise and extend his remarks.)

Mr. LEACH. Madam Chairman, we come to the Congress today to deal with truly historic legislation. Everybody knows there are massive changes underway in the financial landscape. Not all of us like all of these changes. In fact, I would suspect the majority of the country and the majority of this body have serious doubts. But the bill we are bringing before the Congress is about the question of whether we want to have a government of laws or of men, whether we want to have laws shaped and constrained to defend the financial system for the benefit of the public.

What we really have before us as we deal with issues of this nature are differences between and within industrial groupings, differences between and within regulatory bodies, and questions of the public interest.

In my view, the principal issue is the latter, what is in the public interest. What we have in the bill that is being brought before us is a bill designed to be pro-competitive. In its broadest outlines, there is enormous support in the administration, both sides of Congress, both committees for the principle that we ought to have more competition within financial services; banks being allowed to offer more securities and insurance services, insurance companies more banking and securities products, securities firms more insurance and banking products. That is a pro-competitive circumstance.

Now, there are many differences of judgment on the subtleties: who regulates, who gets what powers relative to what other institutions. My view is very simple. We ought to put a great emphasis on antitrust, we ought to put a great emphasis and decide as many issues as possible on what is the most pro-competitive option, and we ought to be, most of all, concerned for small individuals and small institutions.

□ 1300

Here let me just stress from the perspective of a Midwesterner, for the first time we have historic new powers granted to community banks to allow them to offer lower-cost services for small business and for agriculture based on access to capital from a government-sponsored enterprise, the Federal Home Loan Bank system. We also have the capacity of the consumers to get services from more sources in a single moment, what is called one-stop shopping. That is the framework of the bill. I think it makes sense.

There are different subtleties that we will get into and certainly an amendment that I will be offering that I feel is of enormous consequence. Having said that, let me turn for a moment to the regulatory situation.

What this bill does is establish functional regulation with a bit of a tilt to the Federal Reserve Board. The Department of the Treasury has some objection to this tilt.

I would only say for Members of this body that the Federal Reserve Board is the only institution of the United States Government that has significant experience in the holding company regulatory area, which is what we are really getting into with this legislation.

It is also the only institution that has resources available in a time of emergency, absolutely extraordinary and stunning resources that can be brought to bear in an instantaneous time period. It also has the greatest reputation for being a nonpoliticized institution of the government.

These are reasons that this Congress has historically tilted, not just this legislative body, but historically tilted to the Fed. My own view is, the Department of the Treasury has some reasonable positions that this Congress is going to have to take into consideration. The gentleman from New York (Mr. LAFALCE) will offer an amendment tilting in that direction, I think, fractionally too far, but in any regard, tilting in that direction.

Certainly, whatever happens on this floor, if this bill passes, if we go to conference, I would expect the Treasury to have a seat at the table, and we will certainly take into consideration their views. But I would simply say to my friends and colleagues that have listened to the Department of the Treasury about certain concerns, I would hope that the Department of the Treasury would recognize that the major issue is what is in the public interest, not what is in the parochial interests of any particular institution of government.

We have to be enormously cautious as we proceed that, as new powers are undertaken, as new changes occur in the marketplace, that we have a credible regulatory framework set in place. That is what I believe this bill in its final measure accomplishes. Certainly, there are nuanced changes that can occur without great damage to that structure, but I would hope very much that the administration and the other side would recognize that these are honest differences of opinion that this body will have to deal with over time.

Madam Chairman, In this context, H.R. 10, the Financial Services Act, references a historic effort to modernize the basic laws governing the financial services sector of the economy so that our banks, securities and insurance firms can better serve customers in the United States and remain world leaders as financial services providers.

The Glass-Steagall Act, which has separated commercial banking from investment banking, turns 65 years old this year. During these past six decades, financial services has proved to be one of the fastest evolving sectors of the economy, yet it continues to be governed by legislation that is antiquated.

H.R. 10 has been several years in the making, and has involved negotiations and compromises: between different congressional committees, different political parties, different industrial groupings and different regulators. No single individual or group got all—or even most—of what it wanted.

But it should be remembered that while the work of Congress inevitably involves adjudicating regulatory turf battles and refereeing industrial groups fighting for their piece of the pie, the principal work of Congress in the work of the people. To ensure that citizens have access to the widest range of products at the lowest possible price; that taxpayers are not threatened by institutions that take unacceptable risks; that institutions are able to compete against their international rivals, which far outweigh even our largest financial services groups.

The trick in crafting financial services legislation that works to the public interest is to enhance competitiveness abroad, while advancing competition here at home. In this contest, H.R. 10 strengthens the competitive position of America's financial services sector internationally and at some time empowers community banks and small financial institutions to ensure competition and consumer choice.

We address this legislation, of course, in the shadow of large mergers that have been announced in the financial services sector. Many of us have concerns about certain trends in finances. The key, whether one likes or dislikes what is happening in the market place, is to ensure that appropriate regulation is in place—anti-trust, consumer, and perhaps, most critically regulation related to derivatives always and other complex financial products. In this regard, this bill opts for functional regulations and for the primary of non-politicized Federal Reverse supervision.

Here it deserves stressing that amid all the publicity about large financial institutions, the true beneficiaries of this legislation are small community banks and the ordinary citizens and small businesses they serve. This bill is opposed by many of the largest banks in the country, because they can already take part in most of the activities the bill permits.

Americans have long held concerns about bigness in the economy. As we have seen in other countries, concentration of economic power does not lead to increased competition, innovation or customer service.

But the solution to the problem of concentration of economic power is not to deny small banks the new powers included in H.R. 10. It is to empower them to compete against large institutions, combining the new powers granted in this legislation with their personal service and local knowledge in order to maintain and increase their market share.

In order to compete against large regional institutions or new technologies like Internet banking, community based institutions need new powers like the ones granted in H.R. 10. Banks which stick with offering the same old accounts and services in the same old ways will find their viability threatened.

For many communities, retaining their local, independent bank depends upon granting that bank the power to compete against mega-giants which are being formed under the current regulatory and legal framework. In a David versus Goliath circumstance, H.R. 10 is the small banks' slingshot.

H.R. 10 provides community banks with the tools to compete, not only against large mega-banks but also against new technologies such as Internet banking.

First, H.R. 10 gives community banks the ability to offer ''one stop shopping,'' so that they can attract new individual and business customers and retain customers who might otherwise feel they have outgrown a community institution. Large financial institutions can already offer a variety of services. But community banks are usually not large enough to utilize legal loopholes like Section 20 affiliates or creation of the unitary thrift holding company which large institutions—commercial as well as financial—have turned to.

Second, H.R. 10 gives community banks access to low cost federal funds through the Home Loan Bank System, letting small banks compete against the Farm Credit System in providing credit for agricultural and rural development projects. Not only will community banks benefit from this provision, but increased competition in rural lending will lower costs to farmers.

Third, H.R. 10 prohibits what are called ''deposit production offices''—that is, offices which are designed to gather up deposits in communities without lending out money to people in these communities. This provision helps ensure that deposits made by members of a community stay in the community, thereby creating economic growth and opportunity.

By bolstering the viability of community-based institutions and providing greater flexibility to them, H.R. 10 increases the percentage of dollars retained in local communities.

It should be our goal to approve a bill that first of all gives greater choice and lowers prices to the consumers of financial services; second, protects the taxpayer; and third, is balanced between the various industrial and commercial interests.

As we all know, there are complex issues involved in this legislation, and there will be differing judgments on major issues by members. One thing we all may agree upon, however, is that Congress needs to reassert its Constitutional role in determining what should be the laws governing financial services, instead of allowing the regulators and courts to usurp this responsibility.

If Congress turns its back on financial services modernization, we should not fool ourselves that rapid evolution in the fields of banking, securities and insurance will cease. It will not. Financial services modernization will take place with or without Congressional approval. Without this legislation, however, changes in financial services will continue unabated, but they will take place in an ad hoc manner through the courts and through regulatory fiat, and will not be subject to the safeguards and prudential parameters established in this legislation.

Now is the time for Congress, not the regulators and the courts, to step up to the challenge of modernizing our nation's financial services sector for the 21st century, to ensure that it remains competitive internationally, that it is stable and poses no threat to the taxpayer, and that it provides quality service to all our citizens and communities.

Madam Chairman, I reserve the balance of my time.

Mr. LAFALCE. Madam Chairman, I yield myself such time as I may consume.

First of all, I want to acknowledge the fact that it has been a pleasure to work with the chairman of the Committee on Banking and Financial Services, the gentleman from Iowa (Mr. LEACH), and the chairman of the Committee on Commerce and the ranking Democrat, the gentleman from Virginia (Mr. BLILEY) and the gentleman from Michigan (Mr. DINGELL).

We have some differences of opinion. There are some very good provisions within the most recent iteration of H.R. 10, but in my judgment there are some very, very bad provisions that take significant steps backward. The issue is, how do we best advance the cause of the American consumer? How do we best protect the cause of the American consumer?

Every consumer group in America that I am aware of opposes H.R. 10, even with the manager's amendment. The administration opposes it, even with the manager's amendment, to such an extent that the Secretary of the Treasury had a press conference yesterday, appeared before Congress today, and indicated that he would strongly recommend a veto of it because it is not in the public interest.

I side with all of these consumer organizations. I side with the administration. I also side on these issues with the State banking regulators and the chairman of the FDIC, the insurance fund.

Now, in its current form, unfortunately, this bill reduces competition; it does not enhance competition. It fuels concentration. I think that is why most of the bigger banks and bigger insurance companies and bigger securities firms are for it, but the smaller banks of America, for example, and the consumers are opposed to it. It leaves smaller and medium-size banks at a serious competitive disadvantage, and it flatly discriminates against national banks as providers of new financial services.

Perhaps most importantly, the bill requires national banks to move assets out of institutions covered by the Community Reinvestment Act in order to offer new products and services.

We Democrats have worked hard for years to ensure that banks actively invest in the communities from which they draw their funds. No such requirements apply to the new conglomerates that will be created as the result of this bill. Only banks are covered by the CRA, and traditional banking institutions are put at a competitive disadvantage under this bill.

The strength of CRA is substantially dependent on the strength of the national bank system. This bill undermines both. For this and a number of other reasons, consumer and community groups generally oppose this legislation.

The creation of large, diversified financial institutions that can compete in global markets must be a part of financial modernization, but there must be room in this country and in this bill for the community-based institutions that we so heavily rely on to provide credit to consumers and local businesses and to fuel community development.

Many Members have also asked me whether this bill is good for consumers and good for their communities. Consumers benefit from innovation and

competition. Communities benefit from investment in their citizens and businesses that can spur economic development. This bill, unfortunately, would impede innovation by preventing national banks from offering new products and services within their existing structure. It would reduce competition by eliminating the historical tension between different bank charters and different bank regulators, forcing all institutions into one mold governed by one regulator. For those who fear the power of the Federal Reserve Board, this is not a slight tilt in the Federal Reserve Board's direction; this is a massive shift.

It virtually compels smaller banks to become part of a larger-scale conglomerate in order to compete. It forces assets out of banks and, therefore, out of the reach of the CRA. I cannot honestly say that any one of these things is good for either consumers or communities.

The gentleman from Minnesota (Mr. VENTO) and I will be offering an amendment to cure many of these defects. I would urge Members' strong support of our amendment to cure so many of these defects.

If our amendment should not pass, I would be constrained to oppose the bill as the consumer groups of America do, as this administration does.

Madam Chairman, I reserve the balance of my time.

Mr. BLILEY. Madam Chairman, I yield myself such time as I may consume.

I would like to begin by thanking my good friend and ranking Democratic member on the Committee on Commerce, the gentleman from Michigan (Mr. DINGELL), as well as the gentleman from Ohio (Mr. OXLEY), the gentleman from New York (Mr. MANTON), the gentleman from Ohio (Mr. BOEHNER), and the gentleman from Iowa (Mr. LEACH), who have spent hundreds of hours in meetings and negotiations working on a bipartisan basis to create our best opportunity in 65 years to modernize our financial system.

Every step of the way we were opposed by lobbyists and special interest groups who said it could not be done. But we heard the concerns of the American people about all of these megamergers. We heard the concerns of the local businessmen who want to better compete but have one hand tied behind their backs by the archaic Glass-Steagall restrictions that current law imposes. And we heard from the Federal and State financial regulators who expressed concern about the safety and soundness of the financial system and their consumer protections as we enter into the 21st century if we do not enact reform.

It is a testament to the will of the American people that we have heard your concerns and are here today to pass legislation to protect your future and that of your children.

I have a grandson who is almost 2 years old, Thomas J. Bliley, the 4th. When our committee heard from the OCC bank regulator that they considered critical securities and insurance consumer protection regulations to be only guidelines that banks may or may not have to comply with, I worried about his future. This bill protects us.

Last year, the citizens of Illinois encouraged their legislature to sign a comprehensive law governing bank insurance sales. It was a bipartisan consensus, worked out with the support of all the affected industries. We have taken this great compromise from Illinois and made it one of the central keys to this legislation. We have protected or safe-harbored any State consumer protection law which is no more restrictive than the Illinois consensus.

This means that if my grandson, TJ, goes into a bank in New York, the New York law guaranteeing consumers information that their choice of insurance providers will not affect the loan application will be a requirement, not a guideline. It means if he goes into a financial institution in Florida, that that State's laws providing disclosures will be requirements, not guidelines. And if he goes to Louisiana, which has a law protecting the confidentiality of a consumer's insurance history, something very important to all of us, that such privacy protections will be a requirement that banks have to follow, not just a guideline. But even if those State laws are protected, how much competition will be left by the time he grows up?

Our committee has been inundated with letters and calls by consumers worried about the ongoing megamergers, such as First Union bank's purchase of CoreStates Bank in Pennsylvania, which included plans to cut 4,400 jobs, close 172 bank branches and turn Philadelphia into the top 10 market most dominated by a single bank at an amazing 53 percent of the market. If we do not remove the government restrictions preventing new competition in the banking industry, consumers will continue to face higher fees and increased charges into the future.

This bill immediately triples the number of providers that can potentially offer competing products and will ensure new competition to reduce prices and surcharges.

And banks are not the only ones abusing the protectionist loopholes in the current system. Our committee has investigated extensive fraud by insurance agents who have swindled consumers out of huge premiums for little to no extra policy benefits. H.R. 10 would not only let insurance companies bring competition into the banking industry, but it also allows banks the ability to offer competing insurance products in every branch and location and at a huge potential savings for customers.

I happen to be a friend of both my local bank and my insurance agent. Both are honest and hard-working individuals. But would I like to see them compete to see who can offer me the lowest price for my business? Absolutely. Do I want American consumers to have the same savings? Yes, absolutely yes.

Last month we all heard about the Travelers-Citibank merger which created the biggest corporation in the Nation. I am told that they cannot do this under current law, that we have restrictions in place against this sort of thing, but they did it and more companies will do it, and we do not have the framework in place to regulate it. This bill creates that framework.

With H.R. 10 we create a standard for protecting consumer laws and the safety of our country's finances. Without H.R. 10, we are diving into a river of uncertainty at night hoping what somehow we will make it to the opposite shore in one piece.

I have heard from the administration and the Treasury Department that they oppose this bill because it hurts the national bank charter. Do not be fooled. They are simply losing a turf battle between two agencies, the OCC and the Federal Reserve, over who gets control over these megamergers.

If I have to choose between a Federal Reserve Board that has kept inflation at a long-term low, made the American dollar the envy of the world and strengthened our financial payment system into the best shape it has ever been in versus the OCC bureaucrats that go around threatening to preempt State consumer protection laws and then join political fund-raisers to solicit campaign money from the affected institutions, then I choose the Federal Reserve.

□ 1315

If we do not care more about protecting the American people than protecting a bank charter, then we should turn in our election certificates and find someone who can better represent our country.

Vote ''yes'' on H.R. 10 to ensure that my grandson TJ and millions of other Americans do not lose the protection of our securities and insurance laws. Vote ''yes'' on H.R. 10 because it opens up competition and protects consumers from these mega-mergers. Vote ''yes'' because, after all, there are millions of industry lobbying dollars spent to defeat this bill every year. Our country needs reform, and they are depending on us to do the right thing.

Madam Chairman, I reserve the balance of my time.

The CHAIRMAN. Without objection, the gentleman from New York (Mr. MANTON) will control the time.

There was no objection.

Mr. MANTON. Madam Chairman, I yield myself 2 minutes.

Today we have before us legislation involving the reform of our financial services marketplace. As the ranking member of the Subcomittee on Finance and Hazardous Materials of the Committee on Commerce, and having seen this particular financial services bill

die and resurrect itself several times over the last year, I fully appreciate that simply getting this far is quite a feat.

This legislation is very complex and will dramatically affect both financial and nonfinancial companies in the way they do business in the future. There is little disagreement as to the need for reform, the problem is just how to go about it. I believe the package we have before us today, while not perfect, is an excellent step in the right direction and will significantly move this process forward.

This legislation repeals the anti-affiliation provisions of the Glass-Steagall Act that have kept various financial industries from affiliating with one another for the last 65 years. While this restriction may have been a good idea in the 1930's, the landscape has so significantly changed since that time that maintaining such a limitation no longer makes sense.

With an increasingly global marketplace, and consolidation within the industry, the need for this regulation legislation is abundantly clear. Within the last year alone we have witnessed the merging of large financial institutions at an unprecedented rate, especially banks buying up securities firms, while the same securities firms are unable to acquire banks. Rapdily evolving banking laws have allowed for such combinations, while potential competitors are still stuck under the restrictions of Glass-Steagall.

I believe this legislation will create competitive parity and thereby level the playing field between banks and other financial providers. The ultimate beneficiaries of this increased competition will be consumers; who will have a greater number of products and services to choose from, in a more convenient forum, and at lower prices.

I would like to to take a moment to thank the chairman of the Committee on Commerce, the gentleman from Virginia (Mr. BLILEY), and the full committee ranking member, the gentleman from Michigan (Mr. DINGELL) for all of their hard work and diligence in ensuring that adequate consumer and investor protection provisions be built into the manager's amendment which we will consider later today.

The manager's amendment ensures that consumers will be true beneficiaries of the increased competition this legislation seeks to promote. I believe this overall package is a good one, and I urge my colleagues to support it.

Madam Chairman, I reserve the balance of my time.

Mr. LEACH. Madam Chairman, I yield 2 minutes to the gentleman from New York (Mr. LAZIO), our distinguished colleague and close friend.

Mr. LAZIO of New York. Madam Chairman, I thank the gentleman for yielding me this time, and I want to begin by complimenting the chairman, the gentleman from Iowa (Mr. LEACH), the chairman, the gentleman from Virginia (Mr. BLILEY), the chairman, the gentleman from Ohio (Mr. OXLEY), and the chairman, the gentleman from New York (Mr. MANTON) for their extraordinary work in moving this forward. This was never inevitable. Only because of the hard work and the consensus building that they were able to achieve are we here today.

Let us go back to the early 1930's, Madam Chairman, and the movie the ''Wizard of Oz''. The stock market collapsed. The Securities and Exchange Commission did not exist and few securities laws were enacted. Between 1930 and 1933, 8,000 banks with $5 billion of deposits, an enormous sum at the time, went bankrupt. American families suffered. Their life's savings, money for food and shelter was lost.

To restore American confidence in our banks, Glass-Steagall erected a wall between commercial banks and investment banks. Deposit insurance was created so American families knew their financial nest egg was safe. In the fragile days of the Great Depression, Glass-Steagall made sense.

Years ago, families kept the bulk of their savings in banks, earning low rates of interest. Today, families invest in the stock market. In the last 7 years stock ownership has doubled. Now, 43 percent of adults' own them. Americans are seeking higher returns.

Consumer behavior changed because stocks and mutual funds achieved superior long-term results. People began managing their own retirement funds. In short, Americans are no longer hiding their savings in their mattresses.

Today, we stand at the center of an electronic revolution; computer banking, cash management accounts, online mutual fund investing, moving money to Tokyo and back again in an instant. We can pay our bills through TV, and a customer can see and speak to a teller via the Internet. We simply no longer live in the depression era that gave birth to Glass-Steagall.

Madam Chairman, this bill rids us of the inefficiencies of the financial services system. American families and small businesses should have the same investment and borrowing choices that have been enjoyed for years by large businesses, foreigners and millionaires.

Each year we spend $300 billion for brokerage, insurance and banking services. Some of that money belongs in the pockets of folks living in places like Bayshore, Long Island.

Families go to one place to open a checking account, to another to invest in a mutual fund, then to a third to get an annuity for their retirement. At each of these stops a transaction fee, or a cost, is charged.

Mr. BLILEY. Madam Chairman, I yield 2 minutes to the gentleman from New York (Mr. LAZIO).

Mr. LAZIO of New York. Madam Chairman, I thank the distinguished gentleman for yielding me this time.

While millionaires have been getting the best service at the best price, one-stop shopping is still not available to working families. Financial modernization will give families greater choices where and how to invest their hard-earned savings. Make no mistake, the positive impact of this bill will stretch from Wall Street to Main Street to M Street, from the cradle to the wedding to retirement.

This bill breaks the chains of Glass-Steagall that no longer serve the interests of American families without sweeping us away in the tide of economic euphoria. This bill sustains us as the caretakers of senior citizens' nest eggs and ensures that the life savings of working families are not lost in economic downturns.

We, as legislators, do not know what financial products and services will be demanded by the public in the future, but we should break down barriers and encourage competition creating environments for more innovative products and better prices. A vibrant financial base is at the core of a healthy economy.

Without this bill, ominous news is in store for some American financial institutions and thousands of their workers. We risk trapping some of them by barring them from competition. The United States should make its destiny. We should not stand on the sidelines while foreign banks take over America's oldest securities firms.

Madam Chairman, the Congress has tried time and time again to modernize our financial services laws. I am not certain that we will get another chance, and we certainly cannot afford to standstill. I urge my colleagues, Republican and Democrat, to let American finance step into the future. Support this fine bill, because it will be a positive, constructive part of America's financial services history.

Mr. LAFALCE. Madam Chairman, I yield 4 minutes to the gentleman from Minnesota (Mr. VENTO), the distinguished ranking Democrat on the Subcommittee on Financial Institutions and Consumer Credit of the Committee on Banking and Financial Services.

(Mr. VENTO asked and was given permission to revise and extend his remarks.)

Mr. VENTO. Madam Chairman, I rise in opposition to H.R. 10. This rule that has structured our consideration of this bill will, hopefully, make improvements to the bill, but for now I am opposed to the substance of this so-called modernization bill.

As I stated earlier, I do not believe it is worthy of its name. This is sort of a one-size-fits-all bill, forcing, or trying to superimpose upon the dynamic U.S. marketplace in our economy, probably the most advanced economy that the world has ever seen, this sort of convoluted regulatory structure. As I said in the consideration of the rule, our banks provide the foundation of this dynamic economy.

A bill worthy of the name modernization ought to, in fact, eliminate some of the barriers. The fact is these barriers have never been black and white

with regard to the Glass-Steagall laws. There have been many gray areas. Banks have been involved in insurance, banks have been involved in the sale of insurance, they have been involved in the sale of securities.

We have seen the regulators move banking financial institutions forward to try and address the reality of the marketplace. And rather than try and get out in front of that and rationalize that process in this bill, as my colleague from Texas (Mr. BENTSEN) pointed out, this bill moves to balkanize those issues and to limit financial institutions, especially the national banks, in terms of the exercise of those responsibilities and such powers.

The bill in its current form is a step backwards. It denies the benefits of financial modernization not just to the medium and small banks that we are talking about but also to the communities that, after all, are the true beneficiaries, and stacks the deck against these financial institutions by forcing them to give up profitable, existing, valid and workable lines of business for no compelling public policy reasons.

Our national banks have been and remain a source of economic strength and a solid foundation on which to construct an economic framework for growth. This bill changes the balance between national and State bank charters. It will likely result in some charters flipping. If it is all right for a State bank to conduct an activity in an operating subsidiary, and it is appropriate for an international U.S. bank to function in an operating subsidiary, why do we then limit national banks in that very function and corporate structure, within the national U.S. economy.

This so-called modernization bill should, in fact, restore competitive balance, but this bill, at every turn in the policy decision, fences in activities and tries to protect and insulate and balkanize what is becoming apparent to all of us, and that is that the lines of business of insurance, the line of business of securitization of banking loans is something that has, in fact, greatly changed. These financial instruments have become a distinction but they really look and perform no different.

These new limits and proposed law comes with few, if any, competitive gain for a small or medium sized bank. I hope we can correct that with the LaFalce-Vento amendment and help consumers and help institutions.

Furthermore, Madam Chairman, the commercial basket in this bill which again discriminates against banks. I think that a reasonable, a level playing field with regards to commercial basket should be included. And I am pleased to have joined in sponsorship of an amendment with the gentlewoman from New Jersey (Mrs. ROUKEMA), the chairwoman of the subcommittee, in sponsoring such amendments to this measure.

The bill has any number of flaws that need to be corrected. Clearly, I think reading the litany of groups against this bill, I think, would astound the Members, looking at the banking institutions, the consumer groups, Acorn, many of the other groups that are against the bill. The fact is, who is for it also tells us or suggests what this bill does. Obviously, those that need to be for this measure are the Citibanks and Travelers that have basically entered into agreements which are not permitted under current law. Therefore, the bill is a must pass measure for such institutions.

As we see the bill grow, we should also put in place the safeguards that are absolutely necessary so that the consumer and so that the economy and the government and the deposit insurance programs are protected.

Madam Chairman, I rise in opposition to H.R. 10. The rule that structured our consideration of this bill will hopefully help make improvements to the bill, but for now I am opposed to the substance of this so-called ''modernization'' bill.

I would like to be making a statement in strong support of financial services modernization legislation this afternoon. Our laws need to catch up with reality by mapping a path of true modernization for financial institutions in the financial services marketplace for today and tomorrow. We need to enhance the competitiveness of our financial services sector and to move forward with predictable, certain, logical, and uniform regulation.

As written today, H.R. 10 would force banks to move financial innovation out of the bank, a loss of diversity that is disadvantageous for many reasons. Structurally, banks would fundamentally be forced to choose a holding company structure in order to participate in a meaningful way in the 21st Century financial services landscape. This is essentially a business decision that should be made on a business basis, not because options have been closed down by this ''modernization'' bill.

The bill in its current form is a step backwards because it denies the benefits of financial modernization to communities and consumers, and stacks the deck against many financial institutions by forcing them to give up profitable existing, valid and workable lines of business for no compelling public policy reasons.

Our national banks have been and should remain a source of economic strength and a solid foundation to construct an economic framework of growth. This bill changes the balance between the national bank and state bank charters and may push banks to charter flip to state banks where flexibility will remain.

True financial reform need not play off one segment of the financial services industry against another. Rather it should provide competitive balance. H.R. 10 plainly discriminates against national banks by taking away existing powers and creating uncertainty in the conduct of their business. These limits come with few, if any, competitive gains for small- or medium-sized national banks which today ironically have more options and exercise more powers than they would under this H.R. 10.

The commercial basket in this bill is not level between banks and other financial services companies as the bill envisions a limited 5% basket for financial service holding companies affiliated with banks and a 15% basket for securities and insurance firms that become financial holding companies. There is no reason for the competitive inequity for banks other than it fits with the entire bill in its antagonism towards banks and their future options.

Furthermore, H.R. 10 would undermine the Community Reinvestment Act (CRA) by requiring that new financial products and services be offered outside of banks and their subsidiaries and only in holding company affiliates. Of course, these concerns could be remedied by adopting the LaFalce-Vento operating subsidiary amendment and the Roukema-Vento-Baker-McCollum-LaFalce basket amendment. At this point, however, their success is not preordained.

This bill has a number of other flaws. It will undermine our federal banking regulator in the courts by altering the deference standard. If H.R. 10 were to pass as written now, the precedent could be detrimental to other areas of law as well. The complex provisions regarding the interface of state and federal law on insurance have become confusing at best. I would prefer that the bill return to the Banking Committee's balanced provision in Section 104 that would have clarified that no state, by statute, regulation, or order, could prevent or restrict affiliations between financial companies, nor prevent or restrict activities authorized under this Act. H.R. 10 now only serves to confuse the issue and could no doubt send everyone back to the courts for decades to come.

Financial services modernization must do far more than just pave the road with a Congressional stamp of approval on the acquisition and merger phenomena. As I said in the Banking Committee hearing on bank mergers a couple of weeks ago, we need to be vigilant and the regulators need to be vigorous in applying the laws we have today. I do not find heartening, for example, the Federal Reserve Board's current laissez faire attitude with regard to the Citicorp/Travelers merger. In fact, I find it less than comforting that the Fed is coming out so strong in support of the holding company model (as opposed to an op sub option) when they seem sanguine about this premodernization merger.

Nonetheless, these are not mere matters of turf. They are not just matters of committee jurisdiction. Our nation and economy demands a strong national bank charter today and tomorrow. Without changes in this bill to ensure strong national banks, this ''modernization'' initiative will atrophy bank powers that are being employed today. It will not be worthy of its name or the positive support of Congress.

Madam Chairman, while some of the laws governing the financial services sector are overdue for reform, we should not be replacing old law with bad law. Moving the process forward is not enough for this Member because I cannot logically defend this bill as it is not written. There must be some reason, some fair rationale.

Financial services modernization for the future should be balanced; should enhance competition, and should not foster industry concentration and corporate restructuring at the expense of consumers and communities. Mr. Chairman, the Administration has made their concerns known throughout this process. Unfortunately, their input has been largely ignored and this has resulted in a veto threat for

this bill. I urge Members to keep these fundamentals in mind as we move to the amendments on H.R. 10 and to oppose this bill without passage of LaFalce-Vento and other parity amendments.

Mr. BLILEY. Madam Chairman, I yield 3 minutes to the gentleman from Ohio (Mr. OXLEY), the very able chairman of the subcommittee.

(Mr. OXLEY asked and was given permission to revise and extend his remarks.)

Mr. OXLEY. Madam Chairman, first I would like to thank the chairman of the full committee, the gentleman from Virginia (Mr. BLILEY), as well as the ranking member, the gentleman from Michigan (Mr. DINGELL), and my good friend the gentleman from New York (Mr. MANTON), the ranking member of our subcommittee, for their good work in bringing this bill to the floor today.

We have reached a critical watershed in the evolution of the financial services industry. Congress has been trying for 63 years to modernize our financial markets; trying for 63 years to allow banks to diversify their portfolios, to protect the solvency of the banking industry, to provide our American companies with some abilities that their foreign competitors already have, and to provide a fair and comprehensive system of functional regulation to protect consumers and the American taxpayer.

When my subcommittee began work on H.R. 10, we focused on three fundamental goals: Protect consumers, increase competition and maintain the safety and soundness of our Nation's financial system. This legislation, H.R. 10, achieves those goals.

H.R. 10 establishes full functional regulation of financial activities, balancing Federal and State regulations to ensure maximum protection to consumers. It repeals the depression era 1930's restrictions on competition so that banks will no longer be forced to make riskier and riskier investments to hang on to a dwindling share of consumer savings. And it brings our American financial industry into the 21st century on an even footing with our foreign competitors with full competition and consumer choice.

When H.R. 10 came to our committee, it was opposed by almost every regulator and industry group. Now, after months of hard work by Republican and Democrat bipartisan committee staff, we have a bill that has the support of the Federal Reserve and Chairman Greenspan, Securities and Exchange Commission, Chairman Arthur Levitt, Consumers First, the National Association of Home Builders, insurance agents, insurance underwriters, securities firms, mutual funds and banks representing a quarter of their market.

Most importantly, this bill helps advance the interests of consumers. Consumers want to be able to go to a financial planner or investment adviser and take care of all their financial needs. They want to be able to have the opportunity to choose from a variety of hybrid products without artificial limits placed on their choices. And they want to take advantage of the $15 billion per year in consumer savings that would result from repealing the inefficient and archaic Glass-Steagall bill.

□ 1330

The Washington lobbyists and the media have panned this bill from day one. They said it could not be done. They said the Congress will not have the will to buck the tide and pass a bill that does not have the unanimous support of all segments of the financial industry. Each step of the way we have proved them wrong. We are going to prove them wrong again today.

Congress will not be paralyzed by lobbyists who get paid to stop good legislation. At the beginning of this year, the gentleman from Ohio (Mr. BOEHNER) and I decided to go around the lobbyists and convened a meeting with top CEOs of the financial industry for their commitment to getting financial reform.

Some lawyers are continuing to try to pick apart our efforts. Some companies do not want to face increased competition and are afraid of H.R. 10's brave new financial world that forces them to be more responsive to their consumers. But the leaders of American business know this bill is good for their shareholders and good for their country. Eventually they came to us and said, we will support your efforts.

Let us support H.R. 10. It is a well-balanced and well-crafted piece of legislation.

Mr. MANTON. Madam Chairman, I yield 2 minutes to the gentlewoman from Colorado (Ms. DeGette).

Ms. DEGETTE. Madam Chairman, I thank the gentleman for yielding.

I rise in support of H.R. 10, the Financial Services Competitiveness Act. We have an opportunity today to modernize financial laws that have not changed since the 1930s. This legislation takes some important steps to modernize Depression-era banking laws that no longer reflect the reality of today's marketplace.

I know there are fears about the complexity of this legislation. I know that those changes make everybody nervous. But this is a complex issue and it demands a complex solution. The good news is the bill has the potential to foster free-market competition and protect the interests of the public with the consumer protections included in the managers' amendment.

Supporters of this bill have heralded how much it will benefit consumers. And it will if we pass the managers' amendment, which includes the very important Bliley-Dingell consumer protection language.

There is an additional consumer protection that is included in the underlying bill and deserves recognition. Buried in H.R. 10 is the first-ever Federal protection aimed at preventing property, casualty and life insurers from discriminating against survivors of domestic violence.

I first raised this issue last October during the Committee on Commerce consideration of H.R. 10. Many of my colleagues on both sides of the aisle were stunned to learn that insurers routinely use domestic violence as an underwriting criterion. Many insurers treat a person's history of abuse as if it were a life-style choice like skydiving or car racing. Domestic violence is indeed dangerous, but it is in no way a life-style choice.

During the intense and often acrimonious negotiations over this legislation, the chairman and ranking member of the Committee on Commerce did not lose sight of the importance of this issue. I am grateful to the gentleman from Virginia (Mr. BLILEY), the gentleman from Ohio (Mr. OXLEY), the gentleman from Michigan (Mr. DINGELL), and the gentleman from New York (Mr. MANTON) for their steadfast commitment to including these important protections in the underlying bill.

I would also like to thank the gentlewoman from Maryland (Mrs. MORELLA) and the gentleman from Vermont (Mr. SANDERS), who are the original sponsors of the legislation upon which the amendment was built and whose leadership has been instrumental in pushing this issue to the forefront of debate.

While 23 States have passed this protection, H.R. 10 will help all victims of domestic abuse. It will also help consumers. I urge support of the managers' amendment. I urge support of the legislation.

Mr. LEACH. Madam Chairman, I yield 3 minutes to the gentlewoman from New Jersey (Mrs. ROUKEMA), distinguished chairman of the Subcommittee on Financial Institutions and Consumer Credit.

(Mrs. ROUKEMA asked and was given permission to revise and extend her remarks.)

Mrs. ROUKEMA. Madam Chairman, I rise in strong support of this legislation.

I base my support for this bill on some very fundamental principles. One, it must preserve the safety and soundness of our Federal deposit system and the rest of the Federal safety net and protect the taxpayers. This bill does that. It must protect against concentration of economic power. And I believe that H.R. 10 maintains both these fundamental principles.

The bill permits banks, security firms, and insurance companies to affiliate under one holding company, and the bill grants bank holding companies the authority to engage in virtually any activity financial in nature. It grants holding companies the authority it make modest amounts of investment in commercial activities. And the bill grants authority to banks to deal in insurance activities while assuring, and I stress that, assuring that the consumers will be protected.

But the bill does not permit underwriting of insurance and real estate investments in the holding company. The bill sets up a nuclear regulatory structure. And, my colleagues, this is fundamental to understanding why I support this bill. We are adopting functional regulation here. While banks, security firms, and insurance companies will be permitted to affiliate, the banking securities and insurance regulators will continue to regulate and supervise these entities. This will provide the so-called level playing field, and it will be level for all participants in a particular area of financial services regardless of what that corporate structure may be.

But here I want to get to the safety and soundness question and I want to stress that the affiliation will not undermine safety and soundness. The bill protects the Federal deposit system so that it will not be used to bail out securities or insurance affiliates of the banks. The transaction with affiliates' ''restrictions'' found in sections 23(a) and 23(b) will continue to apply to insurance and securities affiliates in this holding company structure. I stress, these types of fire walls are absolutely essential to protect the consumers and the taxpayers.

I would like to tangentially make the point that I oppose the operating subsidiary amendments which will be offered later, but we will debate that at the appropriate time.

This legislation is also necessary, absolutely necessary, to keep us competitive with our foreign competition. Outdated laws need to be updated, and this bill does that; but as well as protecting us in world markets, it also protects us here at home.

I want, in conclusion, to say that we need this legislation to set a statutory framework to direct the regulators who have, I am afraid, in the absence of congressional action, taken arbitrary and ad hoc actions and have rewritten the rules. But they are not directly accountable to the voters, my colleagues. I want to repeat that. The regulators are not accountable to the voters and the taxpayers. We are.

Today we must take action, act now, and take this away from those regulators who have been acting in the absence of our action.

Mr. LAFALCE. Madam Chairman, I yield 1 minute to the gentleman from Florida (Mr. MCCOLLUM).

(Mr. MCCOLLUM asked and was given permission to revise and extend his remarks.)

Mr. MCCOLLUM. Madam Chairman, today I very reluctantly rise in opposition to the bill in its present form. Like every other member, I think, of the Committee on Banking and Financial Services, on both sides of the aisle, I want very badly to see modernization. But I do not believe that this bill fulfills the flexibility test that I wish that it did. And unless we amend it in significant ways that I do not expect today, I am going to have to vote against it.

I am afraid that it will destroy flexibility in the banking system and will not allow the innovation that we need to have going into the 21st century. I am worried that it increases the amount of regulation, rather than decreasing it, on our financial services system. I am concerned that the bill does not provide, as the committee bills did out of both Banking and Commerce, for the merger of the bank and thrift insurance funds, which very much needs to be done for safety and soundness; and frankly, it is very disappointing we are not doing that here today. And I am fearful that we will invite more litigation because of the vague standards that are in this bill. For those reasons, I am opposed to the bill.

I am not speaking to it for any other reason than to lay out the predicate for it today. It is a sad moment for me to be here opposing my chairman on this issue. I respect him a great deal. I respect all of the people who worked hard on this bill. And I truly hope that we get to a flexible, innovative financial services modernization piece of legislation.

Mr. BLILEY. Madam Chairman, I reserve the balance of my time.

Mr. MANTON. Madam Chairman, I yield 4 minutes to the gentleman from Massachusetts (Mr. MARKEY).

Mr. MARKEY. Madam Chairman, I thank the gentleman from New York for yielding me the time, and I want to congratulate him and the gentleman from Ohio (Mr. OXLEY) along with the chairman of the full committee, the gentleman from Virginia (Mr. BLILEY) and the ranking Democrat for the full committee, the gentleman from Michigan (Mr. DINGELL) for their excellent work on this bill; and all the other members, the gentleman from New York (Mr. LAFALCE) and the gentleman from Iowa (Mr. LEACH) and everyone else who has worked on this bill.

Banking, insurance, securities. Now, to the ordinary person listening to this debate, it sounds like a struggle between the very rich and the extremely wealthy. ''What is my stake in this debate?'' the ordinary person says. Well, it is really a debate about investors and depositors and businesses and consumers. And, in fact, it is a debate about a fundamental change being proposed in the capital formation system in the United States that is the very engine which drives capitalism in the United States.

Now, back in 1933, when Glass-Steagall was put on the books, it was in the aftermath of a great economic collapse in the United States, and there was great concern about the mixture of investment banking with ordinary banking.

Now many people argue times have changed. And they have. But something has not changed. That is human nature. It is still the same. And the very same forces of greed and fear which existed in 1929, 1930, 1931, and 1932, throughout the 1930s, still exists today.

Now, tearing down Glass-Steagall is a good idea if we build in the proper safeguards, fire walls to protect investors and depositors and taxpayers. If we do not, it is a disaster for this country and it would be a great mistake for us to pass legislation here today.

We have tried to pass legislation for the last 15 years or so in this area. But like the character created by Albert Camus in his famous novel, ''The Myth of Sisyphus,'' in 1942, Congress has pretty much engaged in an exercise where we gain great satisfaction from just trying to get the boulder up to the top of the mountain but never successfully making it. And in fact, that is how this whole exercise may actually end. But it is worth the effort.

Over the years, however, it has foundered because, while banks have wanted the extra powers that would come with repealing Glass-Steagall, they have always wanted to do so without the requisite safeguards being put into place so that we do not repeat the past.

The bill before us now has good and bad and ugly, like that old Clint Eastwood spaghetti western. The good is that we keep out Op-subs. We will keep hearing that. It will be defined to us as an operating subsidiary. What Op-sub really stands for is ''ordinary people subsidizing'' banks. That is what Op-sub means, spreading the Federal protection for banking activities over into securities, over into insurance areas. Ordinary people subsidizing risky business, that is bad. It is not in the bill.

However there are some things in the bill which are bad and ugly. The Leach amendment seeks to deal with the mixture of commerce and banking. I support that amendment. It is a good amendment. The Bliley-Dingell amendment seeks to deal with the deficiencies which exist in the protections for depositors and investors, and I support that amendment. They should both be adopted if our goal is to form a more perfect version of what this legislation should be so that we can move to a future without Glass-Steagall, but at the same time give the protections to investors, to depositors, to taxpayers which they deserve.

□ 1345

Mr. LEACH. Madam Chairman, I yield 2 minutes to the gentleman from Delaware (Mr. CASTLE), my distinguished friend and colleague, the subcommittee chairman.

Mr. CASTLE. Madam Chairman, I thank the gentleman for yielding.

Madam Chairman, I, too, like most of the other speakers here, rise in support of the repeal of Glass-Steagall and the modernization of financial institutions across the United States of America. I think this is very, very important to do.

I will submit a fuller statement for the RECORD, but I would just like to take the little bit of time I have, to first of all, thank all those who put

this together, there is too many to mention in 2 minutes, and to state that the most important reason for supporting this legislation that I can find and I hope others can find is that it will benefit every American seeking to improve their family's financial security by saving and investing more.

This legislation will help them achieve that goal by making more savings and investment products available in one-stop shopping at competitive prices. In addition, the bill contains important disclosure and sales standards that protect consumers as they shop for these products.

The legislation will help consumers, but it will also benefit the businesses seeking to provide these financial products. It will enable banks, insurance companies, and securities firms to affiliate and operate more competitively, which is good for all of us on a level playing field.

It will expand the products that these financial services can offer to their customers while maintaining adequate regulation to preserve the safety and soundness of the system. That is what it is all about.

We needed to find a piece of legislation after 60 years, and Glass-Steagall was questioned almost on the day it passed, I might add, but we needed to find something which we had proper regulation, good capital requirements, the fire walls that we are concerned about in order to move it forward.

In my judgment, this piece of legislation does that. H.R. 10 meets those standards. I am supportive of a number of the amendments which are going to come up, because I feel it should be tilted a little bit one way or the other, as others may feel, too. But in the long run, I intend to support this legislation regardless of how these amendments may come out.

I must say I have a sense of deja vu about all this. My State went through this in the 1980s. We liberalized our banking laws a great deal. Our banks were among the first in the country which were allowed to do a number of things that are being talked about in this legislation when the States were allowed to regulate it.

I cannot tell my colleagues how well it has worked. We have regulated well. We have been careful about what they could do. We have made sure the capital requirements were high. Delaware has prospered mightily as a part of all of this.

I would also say that there are many banks who are opposed to this legislation, and I think we will find in the long run, when we are through in the House and the Senate, that they will be pleased. So support the legislation.

Madam Chairman, I rise in support of H.R. 10, the Financial Services Competition Act. This legislation is long-overdue to modernize our Nation's banking, securities and insurance laws. While the bill before us is not perfect, it does represent a fair compromise on important issues. As is the case with any compromise, not every group is happy. Banking is very important to my State of Delaware and our banks are split over the bill. I will support several of the key amendments to the bill, in an effort to improve some provisions, but regardless of what happens on those amendments, I believe this legislation is a step forward and should be passed today.

As a member of the House Banking Committee, I have been directly involved in the work to modernize our financial services laws since I came to Congress in 1993. It has been a difficult struggle to update our laws to keep pace with and manage what is happening in the market place, while seeking to balance the competing interests of the banking, securities and insurance industries.

Now is the time to act. We must do this to benefit consumers who need a variety of financial products to help them plan for their economic futures. In addition, we must update these laws to allow our financial services providers to compete effectively in the next century.

The most important reason for supporting this legislation is that it will benefit every American seeking to improve their family's financial security by saving and investing more. This legislation will help them achieve that goal by making more savings and investment products available in one-stop shopping at competitive prices. In addition, the bill contains important disclosure and sales standards to protect consumers as they shop for these products.

This legislation will help consumers, but it will also benefit the businesses seeking to provide these financial products. It will enable banks, insurance companies and securities firms to affiliate and operate more competitively on a level playing field. It will expand the products that these financial services firms can offer to their customers, while maintaining adequate regulation to preserve the safety and soundness of the system.

Madam Chairman, as part of the long deliberations seeking to treat all financial services providers fairly, I have been particularly interested in assuring that national banks are permitted to compete fairly in selling and underwriting insurance products. Bank sales and underwriting of insurance will be good for competition and good for American consumers.

To be candid, in my view the provisions in this legislation regarding banking and insurance are not perfect. I believe the language that was contained in the Banking Committee's version of H.R. 10 is superior. The improved compromise language is adequate in protecting the right of national banks to participate in the insurance business, but it has been asserted that section 104 could leave some chance that a State could attempt to treat banks less fairly than other providers of insurance. We should continue to work to further clarify this provision in a potential conference on the bill before it becomes law. I am committed to working toward that goal.

Finally, Madam Chairman, I say to my colleagues that this is historic legislation that has been a long-time in coming and it has been an extremely difficult effort to balance all the competing interests affected by H.R. 10. As I noted, I am not entirely happy with every provision in this bill, and I will work to improve those provisions before it becomes law. But overall, H.R. 10 is a well-crafted effort to make our financial services system ready for the 21st century and to meet the needs of American consumers and business. I urge my colleagues to keep this effort alive and pass H.R. 10 today.

Mr. LAFALCE. Madam Chairman, I yield 2 minutes to the gentlewoman from California (Ms. WATERS).

(Ms. WATERS asked and was given permission to revise and extend her remarks.)

Ms. WATERS. Madam Chairman, I rise in opposition to the Financial Services Act of 1998. I am not opposed to the reform of our banking laws. However, I oppose this bill because it sacrifices the needs of the American consumer and underserved communities in order to benefit our Nation's huge banking securities and insurance industries.

H.R. 10 undermines the Community Reinvestment Act. Many of us inside and outside of Congress have struggled to make financial institutions more accountable to the communities they serve. This bill weakens the CRA by allowing banks to shift assets to affiliates with no CRA obligation.

H.R. 10 does not adequately protect consumers. The bill permits the unprecedented preemption of stronger State consumer protection laws. State banking laws that prohibit ATM surcharges or require the provision of low-cost bank accounts would be subject to Federal preemption.

H.R. 10 allows the dangerous mixing of banking and commerce. H.R. 10 permits banks to merge with retail and manufacturing companies. This would undermine the critical role of banks as the impartial providers of credit and concentrate economic power in the hands of just a few institutions.

None of the national consumer organizations support this bill, and neither do I. I urge my colleagues to vote against H.R. 10.

Mr. BLILEY. Madam Chairman, I yield 2 minutes to the gentleman from Ohio (Mr. BOEHNER), the chairman of the Republican Conference.

Mr. BOEHNER. Madam Chairman, let me first begin by congratulating the Members from both the Committee on Banking and Financial Services and the Committee on Commerce from the Democrat and Republican side of the aisles for their outstanding work in bringing this piece of legislation to this floor today.

Once again, I think that Congress is about to make history. Despite countless changes in our economy, there has been no significant reform of America's financial service laws since the Great Depression, but we have never been closer to making these changes than we are now. There is today a broad bipartisan consensus that the time to move forward has finally come.

We have worked hard for a consensus bill that ensures that every American is a winner: consumers, bankers, insurers, brokers. American consumers deserve the freedom of one-stop shopping for inspection services which we believe will mean about $15 billion savings directly passed to themselves and to their families. But we should not forget that the financial sector of our economy is also the foundation of our country and the foundation of our economy today.

Madam Chairman, America cannot meet the challenges of the 21st Century with financial service laws that are designed for the 1930s. Financial services reform is not about politics. It is about what is good for America. We are hopeful that the White House would join Chairman Greenspan, Republicans, Democrats together in this bipartisan reform of these financial service laws.

Mr. MANTON. Madam Chairman, we have only one speaker left on our side, and we would inquire of the Chair who has the right to close.

The CHAIRMAN. The gentleman from Iowa (Mr. LEACH) has the right to close. The gentleman from New York (Mr. MANTON) has 7 minutes remaining.

Mr. MANTON. Madam Chairman, I reserve the balance of my time.

Mr. LEACH. Madam Chairman, I yield 1 minute to the distinguished gentlewoman from New York (Mrs. KELLY).

(Mrs. KELLY asked and was given permission to revise and extend her remarks.)

Mrs. KELLY. Madam Chairman, one of the most important aspects of H.R. 10 is that it is designed to enhance functional regulation of holding companies. As such, it is my understanding that insurance companies within the holding company structure will be regulated by the State insurance regulators, and securities firms will be regulated by the SCC and the State securities regulators.

While the Federal Reserve Board will remain the umbrella supervisor, H.R. 10 will assure that firms within the holding company such as insurance companies will be able to continue to operate in the manner in which they operate today.

Madam Chairman, I simply want to confirm with the gentleman from Iowa (Mr. LEACH) that this is his understanding of the bill as well.

Mr. LEACH. Madam Chairman, will the gentlewoman yield?

Mrs. KELLY. I yield to the gentleman from Iowa.

Mr. LEACH. Madam Chairman, the gentlewoman has precisely and correctly laid out the circumstances of the bill. This bill is designed to enhance functional regulation as she has described.

Mrs. KELLY. Madam Chairman, I ask unanimous consent to incorporate a further explanation of this aspect of the bill after consultation with Chairman LEACH.

The CHAIRMAN. A colloquy may not be inserted into the official RECORD.

Mr. LAFALCE. Madam Chairman, I yield 1 minute to the gentleman from Minnesota (Mr. VENTO).

Mr. VENTO. Madam Chairman, I thank the gentleman for yielding, and, again, I would reiterate my opposition. I think this bill, frankly, for many of us simply reregulates rather than unregulates what is portrayed as being a modernization bill.

It is grudging in a sense to the point of fencing in many activities and not being responsive to the market. It tries to superimpose on the market something that will not work that will continue to frustrate the efforts of financial institutions to respond to the market.

The opposition from the Clinton administration is very strong. It is not about turf. It is not about committee jurisdiction. It is about trying to write laws that make common sense that respond to today's marketplace and let these capital flows move forward, which, in the end, serve all the vital purposes of our economy.

National banks functioning under the 1862 bank law which created the national bank charter, have been a great success and has led to and provided the economic foundation for today's economy. This bill, frankly, reneges on that. Again, I would reiterate the importance of acting on the LaFalce-Vento amendment in the amendment process to safeguard and preserve the national bank charter.

Mr. BLILEY. Madam Chairman, how much time do I have remaining?

The CHAIRMAN. The gentleman from Virginia (Mr. BLILEY) has 2¼ minutes remaining.

Mr. BLILEY. Madam Chairman, I yield myself the balance of the time.

Madam Chairman, I rise in strong support of this bill. The gentleman from Ohio (Mr. BOEHNER) who previously spoke in the well met with the banking industry this week and said, what is your bottom line? What do you want? The bottom line is they want no bill. Why do they want no bill? Because the OCC is giving them everything they want. Guess what. The OCC is leaving. Guess where the OCC is going. It is going to work for Banker's Trust in New York. Isn't that a surprise. And we will get a new one.

If we defeat this bill, this issue will be dead in the House and in the Congress this year. When the Congress goes out this fall for the elections, and the new Congress between that time and the time the new Congress comes in, it is this gentleman's prediction that more authority will be given to the banks. Perhaps they will be allowed into real estate sales, and then try to move the legislation.

My friends, there is never a perfect time. There is never such a thing as a perfect piece of legislation as complex as this issue. But the time is now. For 10 separate Congresses, we have wrestled with this issue to no avail. Today, we are further along then we have ever been.

We hear that the other body will not take it up. We hear that the White House might veto it. We will never know until we send it to them. So let us do our duty. Let us send it to them.

I say to those interested who feel that everything in this bill is not to their liking, go next-door. Make your case. Perhaps you will be successful. When we get to the conference, which I hope we will, as the gentleman from Iowa has so ably pointed out, the administration will have a seat at the table, and we will attempt to address their concerns. But the most important thing today is to pass this bill and send it to the other body.

Mr. MANTON. Madam Chairman, we continue our reservation of time.

Mr. LEACH. Madam Chairman, I would be happy to close, but were there other speakers that wish to speak to the subject?

Mr. LAFALCE. Madam Chairman, I respect the gentleman's right to close, and I believe I have a right to speak immediately preceding him. Therefore, if there are going to be any other speakers from either the side of the gentleman from Virginia (Mr. BLILEY) or the gentleman from New York (Mr. MANTON), they should precede me.

The CHAIRMAN. The gentleman from Virginia (Mr. BLILEY) has no more time remaining. The gentleman from New York (Mr. MANTON) has 7 minutes remaining.

Mr. MANTON. Madam Chairman, does the gentleman from New York have any speakers besides himself?

Mr. LAFALCE. Madam Chairman, how much time do I have remaining?

The CHAIRMAN. The gentleman from New York (Mr. LAFALCE) has 2 minutes remaining.

Mr. LAFALCE. Madam Chairman, I will be using that 2 minutes.

Mr. MANTON. Madam Chairman, I yield as much time as he may consume to the gentleman from Michigan (Mr. DINGELL), the ranking member of the Committee on Commerce.

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

Mr. DINGELL. Madam Chairman, this is a remarkable day. I never thought I would live long enough to see us discuss this issue with such harmony on the House floor. We have a bipartisan bill. We have a bipartisan managers' amendment, and we have a result which is going to be in the public interest.

I urge my colleagues to support the managers' amendment. I urge them to support the bill. This will resolve an issue which has cursed this Congress for better than 20 years, and it will do it on terms which meet the public interest.

H.R. 10 provides a safe and sound framework for the financial services industries of this country. It does so in a way which protects consumers, which protects investors, and which protects the economy of this Nation.

It also sees to it that the new global economy of the world is going to have

active, vigorous, capable American participants in it. The legislation will not spur megamergers. Passing it will mean that we will assure that, if such occurs, there will be reasonable protection for investors and for consumers.

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H.R. 10 draws a clear line between bank activities, those which are going to be insured and subsidized by the taxpayers, and far riskier exercises, such as the sale of securities and other activities of that sort.

H.R. 10, along with the managers' amendment, protects the consumer. Just last week NationsBank paid a large fine because their employees sold risky uninsured derivative securities to elderly holders of securities of deposit, telling them that their money was as safe as the Capitol of the United States.

H.R. 10, along with the managers' amendment, protects the investor. It says you are not going to sell stocks or bonds or other instruments under conditions which are going to hurt the consumers, and you are going to have to make, if you do so, the same disclosures and satisfy the same regulatory requirements as everyone else in the business.

It also says some other things which are important. With the managers' amendment, it will protect the taxpayer. It prevents FDIC insurance, which is paid for by the taxpayer, from being extended to cover the losses that might come from risky, speculative activities.

I would remind my colleagues that not long back we passed legislation which unleashed the savings & loan industry, and that led to the problem which was called the savings & loan debacle, which cost the taxpayers of this country better than $500 billion. This will protect against that kind of exercise by bank management.

It promotes fair competition. Banks have lower costs of capital. Why? Because they are taxpayer insured. That is an effective taxpayer subsidy. In fact, it might even be called corporate welfare. But, if it is, and if banks are going to function, they should see to it that that kind of exercise is kept separate from their other activities, so that they cannot use taxpayer subsidies to compete with others in the financial services industry, and also to see to it, as the Congress acted back in the thirties, to assure that banks do not put at risk Federal taxpayer financed insurance of their activities.

H.R. 10, with the managers' amendment, will prevent an Asian banking crisis from spreading like Asian flu to the United States, by putting intelligent limits on the mixing of banking and commerce.

Finally, H.R. 10, with the managers' amendment, does nothing to hurt the banks. It expands the range of allowable bank activities. Any bank can engage in any financial activity, so long as it sets up a separate affiliate. It creates, insofar as humanly possible, a fair, two-way street for all players. And it does something else: It sees to it that when bankers are engaged in these kinds of activities, they play by the same rules that everybody else does.

It does not undermine the Community Reinvestment Act. That is left as it is. I would urge my colleagues to recognize that that is a good thing.

The choice is clear. I intend to vote for the managers' amendment; I intend to vote against other amendments. I intend to try and see to it that we do not expand high risk activities of banks. I intend to try to see that we do not include operating subsidies inside the banks which can pervert the purposes of the managers' amendment or indeed to put at risk taxpayers' guarantees of bank deposits.

I urge my colleagues to support the managers' amendment and to oppose other amendments.

Madam Chairman, this is good legislation. With the managers' amendment, it is an excellent piece of legislation. It resolves the problems which banks complain about. To the degree that it is proper to do so, it protects competition inside the financial services industry. It protects investors, it protects consumers.

I would point out that the bankers have said they are going to oppose this legislation, regardless of how amended, whether the amendment offered by my dear friend the gentleman from New York (Mr. LAFALCE) is included or not. I would point out that the consumers of this country, through the Consumers Union, have said that they support the managers' amendment.

I would urge my colleagues to vote for the bipartisan legislation and the bipartisan amendment. It is an opportunity to resolve a long-standing problem in honorable, effective, decent, public serving, and public interest ways.

Mr. LAFALCE. Madam Chairman, I yield myself such time as I may consume.

Madam Chairman, the gentleman from Michigan (Mr. DINGELL) said that today is a remarkable day, and I concur with him. The gentleman comes before us today and he advocates repeal of Glass-Stegall and significant changes in the Bank Holding Company Act. You think that is remarkable, and I concur with him.

This is something I have fought for for 20 years. But, unfortunately, the bill makes not only those changes; the bill makes significant other changes. It is those other changes that I am concerned about.

Now, the managers' amendment will add consumer protections that the gentleman from Michigan (Mr. DINGELL) and I were fighting for a month or so ago as part of the Dingell-LaFalce amendment, but there are significant other provisions that I wanted addressed that are not addressed, and that is the way in which the bill undermines the national bank charter.

National banks have existed within the United States for over 100 years. They have always been controversial. But, thankfully, we have always been able to preserve their vitality and their viability, and I think it has been the vitality of our national bank system that has contributed to the economic growth of the United States of America.

Every administration has wanted to preserve that economic viability of our national bank system. In our most recent tenure, whether it is the Carter administration, or the Reagan administration, or the Bush administration, or now the Clinton administration, they have said do not undermine the national bank charter; do not undermine the regulator of the national banks.

This bill does that. It undermines the national bank regulator, it undermines the national bank charter. That is the principal reason that the administration says they would veto the bill in its present form, unless the LaFalce-Vento amendment passes.

The by-product of that, the fact that so many assets would potentially be removed from the jurisdiction of the Community Reinvestment Act, is why every consumer group that I am aware of, in any event, opposes the bill also, or at least the principal reason.

I will offer an amendment to cure these defects. If it goes down, I will also offer a motion to recommit that would continue the essence of the bill, the repeal of Glass-Stegall and the changes in the Bank Holding Company Act and the consumer protections that we all want, but would not deal with this undermining of the national bank charter.

Mr. LEACH. Madam Chairman, I yield myself such time as I may consume.

Madam Chairman, first I would like to thank my good friend the gentleman from Virginia (Mr. BLILEY) for his leadership, and also the gentleman from Michigan (Mr. DINGELL), the gentleman from New York (Mr. MANTON), and my distinguished friend in dissent, the gentleman from New York (Mr. LAFALCE).

To my colleagues who oppose the bill because they are concerned about consumers, I ask you, what happens if the bill does not pass? This bill contains new Federal consumer and CRA protections that are not now the law of the land. Inaction is anti-consumer.

To my colleagues who object to megamerger trends, I ask, what happens if the bill does not pass? The mergers will continue, but under a regulatory regime with undefined cracks and competitive bureaucratic instincts to regulate weakly. Inaction is simply imprudent.

To my colleagues who, like myself, worry about rural community banks, I ask what happens if the bill does not pass? Small banks will be saddled with competition from mega-businesses likely to sweep money from small communities, unless small institutions are given new powers, such as access to the

Federal Home Loan Bank for small business and agricultural lending, and new restraints on the so-called unitary thrifts that merge so ignobly commerce and banking.

Simply put, inaction is the friend of the big, not the small. Inaction puts the taxpayer at grave risk. That is why we need this bill at this time, and I would urge sympathetic consideration by my colleagues.

Mr. HASTINGS of Washington. Madam Chairman, I appreciate the opportunity to share my views on this legislation.

As my colleagues know, this legislation has supporters and detractors. Several hundred of my own constituents have contacted me on this issue over the past several months. And while many support our efforts here today, others, particularly small banks in my district, are concerned that the legislation does not do enough to assist their industry.

In particular, I strongly share their concerns about the lack of relief from the burdensome Community Reinvestment Act. Let me share a few statistics.

The CRA, first passed in 1977, took only two pages of bill language when first authored by former Senator William Proxmire. Yet our federal regulators have now promulgated more than 275 pages of regulations—in microscopic government type, mind you—governing this provision. As a result, what was meant to be a community based, largely voluntary program to infuse private capital into struggling areas has now become a massive, burdensome, and counterproductive federal mandate.

According to one study, our financial community spends more than $1 billion each year, and 15 million man hours, complying with the CRA. The impact is particularly hard on smaller banks, which incur three times the compliance costs of larger institutions.

Some had suggested that CRA requirements be reformed to bring them back in line with the original intent of the 1977 law. One proposal would have provided relief for all banks smaller than $100 million in assets, and for rural banks with assets of under $250 million. This would have gone a long way towards relieving this tremendous financial and paperwork burden on the small community banks in my district. Unfortunately, the bill does not include this common sense reform.

While I am very disappointed with this result, I nonetheless believe that we must take action to reform our depression era banking statutes. In addition, many of my constituents have contacted me to urge their support of this legislation. As a result, I will support this bill today in an effort to keep the reform effort alive. But I will work during the next few months to ensure that critical reforms, like CRA reform, are included in any final package approved by both the House and the Senate and sent to the President.

Mr. STENHOLM. Madam Chairman, the legislation pending before the House, H.R. 10, the Financial Services Competition Act, contains numerous provisions that cause concern. Specifically, I'd like to bring to the attention of the Members of this body the section of the bill that proposes to broadly expand the mission of the Federal Home Loan Bank (FHLB) System. The authorities of the FHLB System would be expanded to provide advances to commercial banks for a variety of purposes, including agricultural lending.

I am concerned that this proposal could actually limit credit availability by adversely affecting the two government sponsored enterprises chartered to serve rural markets: the Farm Credit System (FCS) and the Federal Agricultural Mortgage Corporation (FarmerMac). Expanding the Federal Home Loan Bank mission will convert every commercial bank with assets of less than $500 million into a retail GSE.

As the ranking Democrat on the Agriculture Committee, I have had a keen interest in rural credit availability for many years. Credit is quite literally the lifeblood of our nation's agricultural producers. As a result, I am very interested in new ways to provide additional credit to farmers and rural communities. However, I am concerned that we have not had ample time to fully consider the serious policy implications of expanding the FHLB System's mission.

While I support an appropriate expansion of credit for rural Americans, doing so through the FHLB System, without making important changes in the lending charter of the Farm Credit System, could potentially disrupt the competitive balance that exists in rural markets today. Currently, commercial banks, the Farm Credit System and FarmerMac work to provide competitively priced credit to those who live and work in rural America. We all have an interest in seeing that that competitive balance continues.

The Agriculture Committee is aware of efforts by all participants in the rural credit markets to expand their lending authority. I am convinced that if we proceed down the path of expanding authorities, then we must consider all players that provide rural credit.

Mr. DAVIS of Illinois. Madam Chairman, I rise today in strong opposition to H.R. 10, the ''Financial Services Competition Act.''

I rise in opposition not because the laws governing our financial system are immune to change * * * just the opposite, in our rapidly changing world our financial system is undergoing a veritable transformation and our legal framework must change to correspond to the new realities. However, let us remember that many of our financial laws and regulations grew out of our great failures of the past in protecting the interests of the great masses of Americans. In addressing the need for change we must also learn from our history.

H.R. 10 weakens the Community Reinvestment Act, a critical tool for low-income communities to develop housing, small business and financial services. CRA should be extended to all bank affiliates: insurance companies, securities firms and mortgage companies. Instead, H.R. 10 encourages the movement of bank assets beyond the reach of the CRA and, indeed, beyond the bank charter.

H.R. 10 does not address insurance redlining, still a major problem in many communities and one which I recently called upon the Attorney General to investigate in my district as regards to auto insurance.

H.R. 10 should prohibit insurance companies from merging with banks until the company is in full compliance with the Fair Housing Act and other relevant legislation.

H.R. 10 breaks down the final protective barriers between banks and commercial firms and adds a new level of risk to our financial stability, one we have not seen in our country in generations, but which we can all see in Southeast Asia today.

H.R. 10 sharply reduces community input, giving automatic approvals FHCs whose banks have Satisfactory or Outstanding CRA ratings. This means that 98% of financial institutions will be beyond community input. It continues a trend brought into sharp national focus with the publication of William Greider's book Secrets of the Temple in 1987.

Secrets brought to the attention of the nation how the Federal Reserve had been given greater command over many issues over the years and how many of the decisions entrusted to them, regardless of how wrong they might be, were made without public input or control.

H.R. 10 ignores history, ignores the lessons of other nations, ignores the interests of poor and working Americans, ignores consumer interests, ignores community reinvestment protections and ignores increased risk to our financial infrastructure.

Madam Chairman, I urge a vote against this legislation.

Mr. HYDE. Madam Chairman, I rise in support of H.R. 10, the ''Financial Services Competition Act of 1998.'' For many years, we have been trying to repeal the outdated restrictions that keep banks, securities firms, and insurance companies from getting into one another's businesses. After all the debate, I think we have finally come up with something in this bill that will open up a whole new world of competition.

Now I know that some of the players in this debate have problems with this bill. That is always the case with major deregulation bills. But we cannot ignore the future. Financial services are becoming increasingly globalized, increasingly computerized, and increasingly seamless. Banking laws passed during the Depression simply will not do in the 21st century.

Do I wish that we could maintain a world where everyone knew their banker on a first name basis and loans were made on a handshake? Sure, and I think in the new world some banks will provide that kind of service to those who demand it. But we need not have laws that limit us to that kind of service, as desirable as it may seem. Everyone is better off if the market decides what kinds of services all financial firms will offer.

Just think about the progress we have made in the past 10 years. When I was a child, only the wealthy owned stocks. Now, with the growth of the mutual fund industry and self-directed retirement funds, millions and millions of average Americans not only own stocks, but make their own investment decisions. These developments create wealth, increase people's incentive to produce, and relieve some of the entitlement burden of government. I believe that this bill will bring more such positive developments.

I want to say a word about my friends JIM LEACH, chairman of the Banking Committee, and TOM BLILEY, chairman of the Commerce Committee. They have done an excellent job of putting this package together. I commend them for their work in bringing about this bill in a very difficult and contentious environment.

I especially want to commend them for working with me on the bank merger provisions of the bill. Under current law, bank mergers are reviewed under special bank merger statutes, and they do not go through the Hart-Scott-Rodino merger review process that covers most other mergers. Now banks

will be able to get into other businesses which they have not been able to do before.

The principle that we have tried to follow is that when mergers occur, the bank part of that merger will be judged under the current bank merger statutes, and we do not intend any change in that process or in any of the agencies' respective jurisdictions. The nonbank part of that merger, which will fall under the new section 6 of the Bank Holding Company Act, will be subject to the normal Hart-Scott-Rodino merger review by either the Justice Department or the Federal Trade Commission. The managers' amendment has language that embodies that principle. In short, no bank is treated differently than it otherwise would be because it has some other business within its corporate family. Likewise, no other business is treated differently than it otherwise would be because it has a bank within its corporate family.

We have embodied that same principle with respect to the Federal Trade Commission's authority to enforce the Federal Trade Commission Act and other laws. Section 5 of the Federal Trade Commission Act specifically prohibits the FTC from enforcing the Act against banks because they are heavily regulated. The language in the managers' amendment does not change that, but it does clarify that the bank prohibition does not extend to any other nonbank parts of a bank's corporate family. I would also note that similar language was not necessary for the Justice Department because there are no specific statutory prohibitions on its ability to enforce laws against banks, other than the Hart-Scott-Rodino exemption that I have already discussed.

I think that we all agree on this principle both with respect to the mergers and the other laws, but the specific language may require some further refinement in conference. For that reason, I will be requesting Judiciary Committee conferees on this narrow part of the bill, and I look forward to continuing to work with my Banking Committee and Commerce Committee colleagues in this area.

I also want to announce that the Judiciary Committee will hold a hearing on bank mergers on June 3, and I am hopeful that this hearing will help us determine whether we need to make any further revisions to this language

Let me again commend my friends JIM LEACH and TOM BLILEY and everyone else who has worked on this legislation, and I ask my colleagues to support it.

Mr. STRICKLAND. Madam Chairman, today's financial services marketplace is an increasingly complex web of interconnecting products and service providers. In the 1990's, consumers are going to their bank not just to deposit money in a traditional passbook savings account, but also, increasingly, to purchase insurance products. They visit their insurance broker not only for simple, term life insurance, but also for insurance products that include a long-term investment component. Consumers are no longer content with the choices of the past, but are demanding more advanced financial products and often want the convenience of ''one stop shopping.'' At the same time, financial institutions are consolidating at an increasing rate—banks are merging with other banks and insurance and securities dealers are combining forces—leading to new types of financial entities.

These changes are enhancing the success of U.S. financial markets. They stimulate the economy and provide consumers with more savings and investment options. Unfortunately, the Depression era laws that regulate our financial markets have not kept pace with these market forces, leaving American consumers faced with a ''catch 22''. Consumers have access to more advanced, enhanced financial products, but are not adequately protected from fraud and abuse by the laws that currently regulate their financial investments and savings. As a result, the regulatory agencies responsible for enforcing those laws are forced to deal with new entities using old formulas that fail to fully appreciate the complexities of the evolving marketplace.

The world recently witnessed in Asia that unregulated financial markets can lead to corruption and weakened economic conditions. With America's financial markets slowly evolving in the same direction as those in Asia, it is crucial that our country learns from Asia's misfortune and take the initiative to develop appropriate measures that will deter similar negative repercussions in our own financial markets.

In the House of Representatives, the House Committees on Commerce and Banking have worked to develop a legislative response to these changes for the past year and a half. We recently reached a critical juncture in the legislative process—the Committees have devised a plan that lays the groundwork for carrying our financial markets safely and soundly into the 21st century. As a member of the House Commerce Committee, I support initiatives that address our antiquated laws and am committed to ensuring that the legislative process continues unhindered by powerful special interest groups.

H.R. 10, the Financial Services Act, permits financial entities, such as banks, insurance and securities groups, to merge, affiliate and associate activities. One of the most pivotal components of H.R. 10 is the concept of functional regulation. Functional regulation would certify that all financial providers would be regulated according to the services which they provide. For example, a financial holding company that has an insurance entity as an operating subsidiary would be regulated by both the state insurance commission (insurance activities) and the Office of the Comptroller of the Currency and the Federal Reserve (banking activities). As a result, financial activities would be regulated by experts in that respective financial field.

The House leadership has reached an agreement on a financial package that I believe is fair to all industries and best serves the public interest. The compromise on H.R. 10 will create a modernized financial system that will allow our country to be financially competitive into the next century. However, H.R. 10 can still be improved with the adoption of a package of consumer protection amendments which will be offered by commerce Committee Chairman TOM BLILEY (R–VA) and Ranking Member JOHN DINGELL (D–MI). This amendment will provide the necessary safeguards for consumers while providing enough freedoms to financial providers to compete globally on a level playing field.

Congress has waited long enough to enact legislation to guarantee the solvency of American financial markets. Congress must move the process forward and provide the necessary consumer protections and regulations to guarantee that all players, big and small, private and public, benefit from the financial prosperity of a developing and growing financial market in the U.S.

Mr. FAZIO of California. Mr. Speaker, the Financial Services Act of 1998 revolutionizes American financial institutions and it ensures the United States continued cutting edge success in the world market.

The rules and regulations of the Great Depression aren't enough to maintain a healthy and increasingly globalized interdependent U.S. economy.

The rules have changed and H.R. 10 recognizes these changes.

In the old days, banking, insurance and security institutions each provided a distinct, clear financial service. But in the modern financial marketplace, financial innovations and globalization have increasingly blurred these institution's activities.

H.R. 10 reflects the dynamic changes occurring in the marketplace.

Republicans and Democrats have crafted a balanced bill that fosters open, fair competition, protects consumers and promotes U.S. financial services' competitiveness in the world economy.

Our financial sector contributes over 18 percent to our GNP—this is an economic force that can't be ignored any longer.

Today, my colleagues from both sides of the aisle have the opportunity to enhance competition in the financial services and maintain U.S. prominence in the international economic arena.

I strongly encourage both Republicans and Democrats to vote ''yes'' for fair competition and ''yes'' for a prosperous, strong American economy that will take us safely into the 21st Century.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the amendment in the nature of a substitute printed in part 1 of House Report 105–531 is considered as an original bill for the purpose of amendment under the 5 minute rule and is considered read.

The text of the amendment in the nature of a substitute is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; PURPOSES; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Financial Services Act of 1998''.

(b) PURPOSES.—The purposes of this Act are as follows:

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

(2) To ensure the continued safety and soundness of depository institutions.

(3) To provide necessary and appropriate protections for investors and ensure fair and honest markets in the delivery of financial services.

(4) To provide for appropriate functional regulation of insurance activities.

(5) To reduce and, to the maximum extent practicable, to eliminate the legal barriers preventing affiliation among depository institutions, securities firms, insurance companies, and other financial service providers and to provide a prudential framework for achieving that result.

(6) To enhance the availability of financial services to citizens of all economic circumstances and in all geographic areas.

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

(8) To ensure compliance by depository institutions with the provisions of the Community Reinvestment Act of 1977 and enhance the ability of depository institutions to meet the capital and credit needs of all citizens and communities, including underserved communities and populations.

(c) TABLE OF CONTENTS.—The table of contents for 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.

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.

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—Streamlining Antitrust Review of Bank Acquisitions and Mergers

Sec. 141. Amendments to the Bank Holding Company Act of 1956.
Sec. 142. Amendments to the Federal Deposit Insurance Act to vest in the Attorney General sole responsibility for antitrust review of depository institution mergers.
Sec. 143. Information filed by depository institutions; interagency data sharing.
Sec. 144. Applicability of antitrust laws.
Sec. 145. Clarification of status of subsidiaries and affiliates.
Sec. 146. Effective date.

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—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.

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.

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. 45. 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.

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

Subtitle A—Affiliations

SEC. 101. GLASS-STEAGALL ACT REFORMED.

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

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

SEC. 102. ACTIVITY RESTRICTIONS APPLICABLE TO BANK HOLDING COMPANIES WHICH ARE NOT FINANCIAL HOLDING COMPANIES.

(a) IN GENERAL.—Section 4(c)(8) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(8)) is amended to read as follows:

''(8) shares of any company the activities of which had been determined by the Board by regulation under this paragraph as of the day before the date of the enactment of the Financial Services Act of 1998, to be so closely related to banking as to be a proper incident thereto (subject to such terms and conditions contained in such regulation, unless modified by the Board);''.

(b) CONFORMING CHANGES TO OTHER STATUTES.—

(1) AMENDMENT TO THE BANK HOLDING COMPANY ACT AMENDMENTS OF 1970.—Section 105 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1850) is amended by striking '', to engage directly or indirectly in a nonbanking activity pursuant to section 4 of such Act,''.

(2) AMENDMENT TO THE BANK SERVICE COMPANY ACT.—Section 4(f) of the Bank Service Company Act (12 U.S.C. 1864(f)) is amended by striking the period and adding at the end the following: ''as of the day before the date of enactment of the Financial Services Act of 1998.''.

SEC. 103. FINANCIAL HOLDING COMPANIES.

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

''SEC. 6. FINANCIAL HOLDING COMPANIES.

''(a) FINANCIAL HOLDING COMPANY DEFINED.—For purposes of this section, the term 'financial holding company' means a bank holding company which meets the requirements of subsection (b).

''(b) ELIGIBILITY REQUIREMENTS FOR FINANCIAL HOLDING COMPANIES.—

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

''(A) All of the subsidiary depository institutions of the bank holding company are well capitalized.

''(B) All of the subsidiary depository institutions of the bank holding company are well managed.

''(C) All of the subsidiary depository institutions of the bank holding company have achieved a rating of 'satisfactory record of meeting community credit needs', or better, at the most recent examination of each such institution under the Community Reinvestment Act of 1977.

''(D) All of the subsidiary insured depository institutions of the bank holding company (other than any such depository institution which does not, in the ordinary course of the business of the depository institution, offer consumer transaction accounts to the general public) offer and maintain low-cost basic banking accounts.

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

''(2) FOREIGN BANKS AND COMPANIES.—For purposes of paragraph (1), the Board shall establish and apply comparable capital standards to a foreign bank that operates a branch or agency or owns or controls a bank or commercial lending company in the United States, and any company that owns or controls such foreign bank, giving due regard to the principle of national treatment and equality of competitive opportunity.

''(3) LIMITED EXCLUSIONS FROM COMMUNITY NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DEPOSITORY INSTITUTIONS.—

''(A) IN GENERAL.—If the requirements of subparagraph (B) are met, any depository institution acquired by a bank holding company during the 24-month period preceding the submission of a declaration under paragraph (1)(E) and any depository institution acquired after the submission of such declaration may be excluded for purposes of paragraph (1)(C) until the later of—

''(i) the end of the 24-month period beginning on the date the acquisition of the depository institution by such company is consummated; or

''(ii) the date of completion of the 1st examination of such depository institution under the Community Reinvestment Act of 1977 which is conducted after the date of the acquisition of the depository institution.

''(B) REQUIREMENTS.—The requirements of this subparagraph are met with respect to any bank holding company referred to in subparagraph (A) if—

''(i) the bank holding company has submitted an affirmative plan to the appropriate Federal banking agency to take such action as may be necessary in order for such institution to achieve a rating of 'satisfactory record of meeting community credit needs', or better, at the next examination of the institution under the Community Reinvestment Act of 1977; and

''(ii) the plan has been approved by such agency.

''(c) ENGAGING IN ACTIVITIES FINANCIAL IN NATURE.—

''(1) IN GENERAL.—Notwithstanding section 4(a), a financial holding company and a wholesale financial holding company may engage in any activity, and acquire and retain the shares of any company engaged in any activity, which the Board has determined (by regulation or order) to be financial in nature or incidental to such financial activities.

''(2) FACTORS TO BE CONSIDERED.—In determining whether an activity is financial in nature or incidental to financial activities, the Board shall take into account—

''(A) the purposes of this Act and the Financial Services Act of 1998;

''(B) changes or reasonably expected changes in the marketplace in which bank holding companies compete;

''(C) changes or reasonably expected changes in the technology for delivering financial services; and

''(D) whether such activity is necessary or appropriate to allow a bank holding company and the affiliates of a bank holding company to—

''(i) compete effectively with any company seeking to provide financial services in the United States;

''(ii) use any available or emerging technological means, including any application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions, in providing financial services; and

''(iii) offer customers any available or emerging technological means for using financial services.

''(3) ACTIVITIES THAT ARE FINANCIAL IN NATURE.—The following activities shall be considered to be financial in nature:

''(A) Lending, exchanging, transferring, investing for others, or safeguarding money or securities.

''(B) Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or broker for purposes of the foregoing.

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

''(D) Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly.

''(E) Underwriting, dealing in, or making a market in securities.

''(F) Engaging in any activity that the Board has determined, by order or regulation that is in effect on the date of enactment of the Financial Services Act of 1998, to be so closely related to banking or managing or controlling banks as to be a proper incident thereto (subject to the same terms and conditions contained in such order or regulation, unless modified by the Board).

''(G) Engaging, in the United States, in any activity that—

''(i) a bank holding company may engage in outside the United States; and

''(ii) the Board has determined, under regulations issued pursuant to section 4(c)(13) of this Act (as in effect on the day before the date of enactment of the Financial Services Act of 1998) to be usual in connection with the transaction of banking or other financial operations abroad.

''(H) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution or subsidiary of a depository institution, that the bank holding company controls) or otherwise, shares, assets, or ownership interests (including without limitation debt or equity securities, partnership interests, trust certificates or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if—

''(i) the shares, assets, or ownership interests are not acquired or held by a depository institution or subsidiary of a depository institution;

''(ii) such shares, assets, or ownership interests are acquired and held by a securities affiliate or an affiliate thereof as part of a bona fide underwriting or merchant banking activity, including investment activities engaged in for the purpose of appreciation and ultimate resale or disposition of the investment;

''(iii) such shares, assets, or ownership interests, are held only for such a period of time as will permit the sale or disposition thereof on a reasonable basis consistent with the nature of the activities described in clause (ii); and

''(iv) during the period such shares, assets, or ownership interests are held, the bank holding company does not actively participate in the day to day management or operation of such company or entity, except insofar as necessary to achieve the objectives of clause (ii).

''(I) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution or subsidiary of a depository institution, that the bank holding company controls) or otherwise, shares, assets, or ownership interests (including without limitation debt or equity securities, partnership interests, trust certificates or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if—

''(i) the shares, assets, or ownership interests are not acquired or held by a depository institution or a subsidiary of a depository institution;

''(ii) such shares, assets, or ownership interests are acquired and held by an insurance company that is predominantly engaged in

underwriting life, accident and health, or property and casualty insurance (other than credit-related insurance);

''(iii) such shares, assets, or ownership interests represent an investment made in the ordinary course of business of such insurance company in accordance with relevant State law governing such investments; and

''(iv) during the period such shares, assets, or ownership interests are held, the bank holding company does not directly or indirectly participate in the day-to-day management or operation of the company or entity except insofar as necessary to achieve the objectives of clauses (ii) and (iii).

''(4) ACTIONS REQUIRED.—The Board shall, by regulation or order, define, consistent with the purposes of this Act, the following activities as, and the extent to which such activities are, financial in nature or incidental to activities which are financial in nature:

''(A) Lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities.

''(B) Providing any device or other instrumentality for transferring money or other financial assets;

''(C) Arranging, effecting, or facilitating financial transactions for the account of third parties.

''(5) POST CONSUMMATION NOTIFICATION.—

''(A) IN GENERAL.—A financial holding company and a wholesale financial holding company that acquires any company, or commences any activity, pursuant to this subsection shall provide written notice to the Board describing the activity commenced or conducted by the company acquired no later than 30 calendar days after commencing the activity or consummating the acquisition.

''(B) APPROVAL NOT REQUIRED FOR CERTAIN FINANCIAL ACTIVITIES.—Except as provided in section 4(j) with regard to the acquisition of a savings association, a financial holding company and a wholesale financial holding company may commence any activity, or acquire any company, pursuant to paragraph (3) or any regulation prescribed or order issued under paragraph (4), without prior approval of the Board.

''(d) PROVISIONS APPLICABLE TO FINANCIAL HOLDING COMPANIES THAT FAIL TO MEET REQUIREMENTS.—

''(1) IN GENERAL.—If the Board finds that a financial holding company is not in compliance with the requirements of subparagraph (A), (B), or (C) of subsection (b)(1), the Board shall give notice of such finding to the company.

''(2) AGREEMENT TO CORRECT CONDITIONS REQUIRED.—Within 45 days of receipt by a financial holding company of a notice given under paragraph (1) (or such additional period as the Board may permit), the company shall execute an agreement acceptable to the Board to comply with the requirements applicable to a financial holding company.

''(3) BOARD MAY IMPOSE LIMITATIONS.—Until the conditions described in a notice to a financial holding company under paragraph (1) are corrected, the Board may impose such limitations on the conduct or activities of the company or any affiliate of the company as the Board determines to be appropriate under the circumstances.

''(4) FAILURE TO CORRECT.—If, after receiving a notice under paragraph (1), a financial holding company does not—

''(A) execute and implement an agreement in accordance with paragraph (2);

''(B) comply with any limitations imposed under paragraph (3);

''(C) in the case of a notice of failure to comply with subsection (b)(1)(A), restore each depository institution subsidiary to well capitalized status before the end of the 180-day period beginning on the date such notice is received by the company (or such other period permitted by the Board); or

''(D) in the case of a notice of failure to comply with subparagraph (B) or (C) of subsection (b)(1), restore compliance with any such subparagraph by the date the next examination of the depository institution subsidiary is completed or by the end of such other period as the Board determines to be appropriate,

the Board may require such company, under such terms and conditions as may be imposed by the Board and subject to such extension of time as may be granted in the Board's discretion, to divest control of any depository institution subsidiary or, at the election of the financial holding company, instead to cease to engage in any activity conducted by such company or its subsidiaries pursuant to this section.

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

''(e) SAFEGUARDS FOR BANK SUBSIDIARIES.—A financial holding company shall assure that—

''(1) the procedures of the holding company for identifying and managing financial and operational risks within the company, and the subsidiaries of such company, adequately protect the subsidiaries of such company which are insured depository institutions from such risks;

''(2) the holding company has reasonable policies and procedures to preserve the separate corporate identity and limited liability of such company and the subsidiaries of such company, for the protection of the company's subsidiary insured depository institutions; and

''(3) the holding company complies with this section.

''(f) NONFINANCIAL ACTIVITIES.—

''(1) IN GENERAL.—Notwithstanding section 4(a), a financial holding company may engage in activities which are not (or have not been determined to be) financial in nature or incidental to activities which are financial in nature, or acquire and retain ownership and control of the shares of a company engaged in such activities, if—

''(A) the aggregate annual gross revenues derived from all such activities and all such companies does not exceed the lesser of—

''(i) 5 percent of the consolidated annual gross revenues of the financial holding company; or

''(ii) $500,000,000;

''(B) the consolidated total assets of any company the shares of which are acquired by the financial holding company pursuant to this paragraph are less than $750,000,000 at the time the shares are acquired by the holding company; and

''(C) the holding company provides notice to the Board within 30 days of commencing the activity or acquiring the ownership or control.

''(2) INCLUSION OF GRANDFATHERED ACTIVITIES.—For purposes of determining the limits contained in paragraph (1)(A), the gross revenues derived from all activities conducted, and companies the shares of which are held, under subsection (g) shall be considered to be derived or held under this subsection.

''(3) FOREIGN BANKS.—In lieu of the limitation contained in paragraph (1)(A) in the case of a foreign bank or a company that owns or controls a foreign bank which engages in any activity or acquires or retains ownership or control of shares of any company pursuant to paragraph (1), the aggregate annual gross revenues derived from all such activities and all such companies in the United States shall not exceed the lesser of—

''(A) 5 percent of the consolidated annual gross revenues of the foreign bank or company in the United States derived from any branch, agency, commercial lending company, or depository institution controlled by the foreign bank or company and any subsidiary engaged in the United States in activities permissible under section 4 or 6; or

''(B) $500,000,000.

''(4) INDEXING REVENUE TEST.—After December 31, 1998, the Board shall annually adjust the dollar amount contained in paragraphs (1)(A) and (3) by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

''(5) NONAPPLICABILITY OF OTHER EXEMPTION.—Any foreign bank or company that owns or controls a foreign bank which engages in any activity or acquires or retains ownership or control of shares of any company pursuant to this subsection shall not be eligible for any exception described in section 2(h).

''(g) AUTHORITY TO RETAIN LIMITED NONFINANCIAL ACTIVITIES AND AFFILIATIONS.—

''(1) IN GENERAL.—Notwithstanding subsection (f)(1) and section 4(a), a company that is not a bank holding company or a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978) and becomes a financial holding company after the date of the enactment of the Financial Services Act of 1998 may continue to engage in any activity and retain direct or indirect ownership or control of shares of a company engaged in any activity if—

''(A) the holding company lawfully was engaged in the activity or held the shares of such company on September 30, 1997;

''(B) the holding company is predominantly engaged in financial activities as defined in paragraph (2); and

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

''(2) PREDOMINANTLY FINANCIAL.—For purposes of this subsection, a company is predominantly engaged in financial activities if, as of the day before the company becomes a financial holding company, the annual gross revenues derived by the holding company and all subsidiaries of the holding company, on a consolidated basis, from engaging in activities that are financial in nature or are incidental to activities that are financial in nature under subsection (c) represent at least 85 percent of the consolidated annual gross revenues of the company.

''(3) NO EXPANSION OF GRANDFATHERED COMMERCIAL ACTIVITIES THROUGH MERGER OR CONSOLIDATION.—A financial holding company that engages in activities or holds shares pursuant to this subsection, or a subsidiary of such financial holding company, may not acquire, in any merger, consolidation, or other type of business combination, assets of any other company which is engaged in any activity which the Board has not determined to be financial in nature or incidental to activities that are financial in nature under subsection (c).

''(4) CONTINUING REVENUE LIMITATION ON GRANDFATHERED COMMERCIAL ACTIVITIES.—Notwithstanding any other provision of this subsection, a financial holding company may continue to engage in activities or hold shares in companies pursuant to this subsection only to the extent that the aggregate annual gross revenues derived from all such activities and all such companies does not exceed 15 percent of the consolidated annual gross revenues of the financial holding company.

''(5) CROSS MARKETING RESTRICTIONS APPLICABLE TO COMMERCIAL ACTIVITIES.—A depository institution controlled by a financial holding company shall not—

''(A) offer or market, directly or through any arrangement, any product or service of a company whose activities are conducted or whose shares are owned or controlled by the financial holding company pursuant to this subsection, subsection (f), or subparagraph (H) or (I) of subsection (c)(3); or

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

''(6) TRANSACTIONS WITH NONFINANCIAL AFFILIATES.—An insured depository institution controlled by a financial holding company may not engage in a covered transaction (as defined by section 23A(b)(7) of the Federal Reserve Act) with any affiliate controlled by the company pursuant to this subsection, subsection (f), or subparagraph (H) or (I) of subsection (c)(3).

''(h) DEVELOPING ACTIVITIES.—A financial holding company and a wholesale financial holding company may engage directly or indirectly, or acquire shares of any company engaged, in any activity that the Board has not determined to be financial in nature or incidental to financial activities under subsection (c) if—

''(1) the holding company reasonably concludes that the activity is financial in nature or incidental to financial activities;

''(2) the gross revenues from all activities conducted under this subsection represent less than 5 percent of the consolidated gross revenues of the holding company;

''(3) the aggregate total assets of all companies the shares of which are held under this subsection do not exceed 5 percent of the holding company's consolidated total assets;

''(4) the total capital invested in activities conducted under this subsection represents less than 5 percent of the consolidated total capital of the holding company;

''(5) the Board has not determined that the activity is not financial in nature or incidental to financial activities under subsection (c); and

''(6) the holding company provides written notification to the Board describing the activity commenced or conducted by the company acquired no later than 10 business days after commencing the activity or consummating the acquisition.''.

SEC. 104. CERTAIN STATE LAWS PREEMPTED.

(a) AFFILIATIONS.—No State may by statute, regulation, order, interpretation, or otherwise, prevent or restrict an insured depository institution or a wholesale financial institution from being affiliated with an entity (including an entity engaged in insurance activities) as authorized by this Act or any other provision of Federal law.

(b) ACTIVITIES—.

(1) Except as provided in paragraphs (2) and (3) and subject to section 18(c) of the Securities Act of 1933, no State may by statute, regulation, order, interpretation, or otherwise, prevent or restrict an insured depository institution or a wholesale financial institution from engaging, directly or indirectly or in conjunction with an affiliate, in any activity authorized under this Act or any other provision of Federal law.÷

(2) As stated by the United States Supreme Court in *Barnett Bank of Marion County, N.A.* v. *Nelson*, 116 S.Ct. 1103 (1996), no State may, by statute, regulation, order, interpretation, or otherwise, prevent or significantly interfere with the ability of an insured depository institution or wholesale financial institution to engage, directly or indirectly, or in conjunction with an affiliate, in any insurance sales or solicitation activity, except that—

(A) State statutes and regulations governing insurance sales and solicitations which are no more restrictive than provisions in the Illinois ''Act Authorizing and Regulating the Sale of Insurance by Financial Institutions, Public Act 90–41'' (215 ILCS 5/1400–1416), as in effect on October 1, 1997, shall not be deemed to prevent or significantly interfere with the ability of an insured depository institution or wholesale financial institution to engage, directly or indirectly, or in conjunction with an affiliate, in any insurance sales or solicitation activity; and

(B) subparagraph (A) shall not create any inference regarding State statutes, and regulations governing insurance sales and solicitations which are more restrictive than any provision in the Illinois ''Act Authorizing and Regulating the Sale of Insurance by Financial Institutions'', (Public Act 90–41; 215 ILCS 5/1400–1416), as in effect on October 1, 1997.

(3) State statutes, regulations, orders, and interpretations which are applicable to and are applied in the same manner with respect to insurance underwriting activities of an affiliate of an insured depository institution or a wholesale financial institution as they are applicable to and are applied to an insurance underwriter which is not affiliated with an insured depository institution or a wholesale financial institution shall not be preempted under paragraph (1).

SEC. 105. MUTUAL BANK HOLDING COMPANIES AUTHORIZED.

(a) IN GENERAL.—Section 3(g)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(g)(2)) is amended to read as follows:

''(2) REGULATIONS.—A bank holding company organized as a mutual holding company shall be regulated on terms, and shall be subject to limitations, comparable to those applicable to any other bank holding company.''.

SEC. 106. PROHIBITION ON DEPOSIT PRODUCTION OFFICES.

(a) IN GENERAL.—Section 109(d) of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (12 U.S.C. 1835a(d)) is amended—

(1) by inserting '', the Financial Services Act of 1998,'' after ''pursuant to this title''; and

(2) by inserting ''or such Act'' after ''made by this title''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 109(e)(4) of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (12 U.S.C. 1835a(e)(4)) is amended by inserting ''and any branch of a bank controlled by an out-of-State bank holding company (as defined in section 2(o)(7) of the Bank Holding Company Act of 1956)'' before the period.

SEC. 107. CLARIFICATION OF BRANCH CLOSURE REQUIREMENTS.

Section 42(d)(4)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1831r–1(d)(4)(A)) is amended by inserting ''and any bank controlled by an out-of-State bank holding company (as defined in section 2(o)(7) of the Bank Holding Company Act of 1956)'' before the period.

SEC. 108. AMENDMENTS RELATING TO LIMITED PURPOSE BANKS.

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

(1) in paragraph (2)(A)(ii)—

(A) by striking ''and'' at the end of subclause (IX);

(B) by inserting ''and'' after the semicolon at the end of subclause (X); and

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

''(XI) assets that are derived from, or are incidental to, activities in which institutions described in section 2(c)(2)(F) are permitted to engage,'';

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

''(B) any bank subsidiary of such company engages in any activity in which the bank was not lawfully engaged as of March 5, 1987, unless the bank is well managed and well capitalized;

''(C) any bank subsidiary of such company both—

''(i) accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties; and

''(ii) engages in the business of making commercial loans (and, for purposes of this clause, loans made in the ordinary course of a credit card operation shall not be treated as commercial loans); or

''(D) after the date of the enactment of the Competitive Equality Amendments of 1987, any bank subsidiary of such company permits any overdraft (including any intraday overdraft), or incurs any such overdraft in such bank's account at a Federal reserve bank, on behalf of an affiliate, other than an overdraft described in paragraph (3).''; and

(3) by striking paragraphs (3) and (4) and inserting the following new paragraphs:

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

''(A) such overdraft results from an inadvertent computer or accounting error that is beyond the control of both the bank and the affiliate; or

''(B) such overdraft—

''(i) is permitted or incurred on behalf of an affiliate which is monitored by, reports to, and is recognized as a primary dealer by the Federal Reserve Bank of New York; and

''(ii) is fully secured, as required by the Board, by bonds, notes, or other obligations which are direct obligations of the United States or on which the principal and interest are fully guaranteed by the United States or by securities and obligations eligible for settlement on the Federal Reserve book entry system.

''(4) DIVESTITURE IN CASE OF LOSS OF EXEMPTION.—If any company described in paragraph (1) fails to qualify for the exemption provided under such paragraph by operation of paragraph (2), such exemption shall cease to apply to such company and such company shall divest control of each bank it controls before the end of the 180-day period beginning on the date that the company receives notice from the Board that the company has failed to continue to qualify for such exemption, unless before the end of such 180-day period, the company has—

''(A) corrected the condition or ceased the activity that caused the company to fail to continue to qualify for the exemption; and

''(B) implemented procedures that are reasonably adapted to avoid the reoccurrence of such condition or activity.''.

Subtitle B—Streamlining Supervision of Financial Holding Companies

SEC. 111. STREAMLINING FINANCIAL HOLDING COMPANY SUPERVISION.

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

''(c) REPORTS AND EXAMINATIONS.—

''(1) REPORTS.—

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

''(i) its financial condition, systems for monitoring and controlling financial and operating risks, and transactions with depository institution subsidiaries of the holding company; and

''(ii) compliance by the company or subsidiary with applicable provisions of this Act.

''(B) USE OF EXISTING REPORTS.—

''(i) IN GENERAL.—The Board shall, to the fullest extent possible, accept reports in fulfillment of the Board's reporting requirements under this paragraph that a bank holding company or any subsidiary of such company has provided or been required to provide to other Federal and State supervisors or to appropriate self-regulatory organizations.

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

''(iii) REQUIRED USE OF PUBLICLY REPORTED INFORMATION.—The Board shall, to the fullest extent possible, accept in fulfillment of any reporting or recordkeeping requirements under this Act information that is otherwise required to be reported publicly and externally audited financial statements.

''(iv) REPORTS FILED WITH OTHER AGENCIES.—In the event the Board requires a report from a functionally regulated nondepository institution subsidiary of a bank holding company of a kind that is not required by another Federal or State regulator or appropriate self-regulatory organization, the Board shall request that the appropriate regulator or self-regulatory organization obtain such report. If the report is not made available to the Board, and the report is necessary to assess a material risk to the bank holding company or its subsidiary depository institution or compliance with this Act, the Board may require such subsidiary to provide such a report to the Board.

''(C) DEFINITION.—For purposes of this subsection, the term 'functionally regulated nondepository institution' means—

''(i) a broker or dealer registered under the Securities Exchange Act of 1934;

''(ii) an investment adviser registered under the Investment Advisers Act of 1940, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities;

''(iii) an insurance company subject to supervision by a State insurance commission, agency, or similar authority; and

''(iv) an entity subject to regulation by the Commodity Futures Trading Commission, with respect to the commodities activities of such entity and activities incidental to such commodities activities.

''(2) EXAMINATIONS.—

''(A) EXAMINATION AUTHORITY.—

''(i) IN GENERAL.—The Board may make examinations of each bank holding company and each subsidiary of a bank holding company.

''(ii) FUNCTIONALLY REGULATED NONDEPOSITORY INSTITUTION SUBSIDIARIES.—Notwithstanding clause (i), the Board may make examinations of a functionally regulated nondepository institution subsidiary of a bank holding company only if—

''(I) the Board has reasonable cause to believe that such subsidiary is engaged in activities that pose a material risk to an affiliated depository institution, or

''(II) based on reports and other available information, the Board has reasonable cause to believe that a subsidiary is not in compliance with this Act or with provisions relating to transactions with an affiliated depository institution and the Board cannot make such determination through examination of the affiliated depository institution or bank holding company.

''(B) LIMITATIONS ON EXAMINATION AUTHORITY FOR BANK HOLDING COMPANIES AND SUBSIDIARIES.—Subject to subparagraph (A)(ii), the Board may make examinations under subparagraph (A)(i) of each bank holding company and each subsidiary of such holding company in order to—

''(i) inform the Board of the nature of the operations and financial condition of the holding company and such subsidiaries;

''(ii) inform the Board of—

''(I) the financial and operational risks within the holding company system that may pose a threat to the safety and soundness of any subsidiary depository institution of such holding company; and

''(II) the systems for monitoring and controlling such risks; and

''(iii) monitor compliance with the provisions of this Act and those governing transactions and relationships between any subsidiary depository institution and its affiliates.

''(C) RESTRICTED FOCUS OF EXAMINATIONS.—The Board shall, to the fullest extent possible, limit the focus and scope of any examination of a bank holding company to—

''(i) the bank holding company; and

''(ii) any subsidiary of the holding company that, because of—

''(I) the size, condition, or activities of the subsidiary;

''(II) the nature or size of transactions between such subsidiary and any depository institution which is also a subsidiary of such holding company; or

''(III) the centralization of functions within the holding company system,

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

''(D) DEFERENCE TO BANK EXAMINATIONS.—The Board shall, to the fullest extent possible, use, for the purposes of this paragraph, the reports of examinations of depository institutions made by the appropriate Federal and State depository institution supervisory authority.

''(E) DEFERENCE TO OTHER EXAMINATIONS.—The Board shall, to the fullest extent possible, address the circumstances which might otherwise permit or require an examination by the Board by forgoing an examination and instead reviewing the reports of examination made of—

''(i) any registered broker or dealer or registered investment adviser by or on behalf of the Securities and Exchange Commission;

''(ii) any licensed insurance company by or on behalf of any state regulatory authority responsible for the supervision of insurance companies; and

''(iii) any other subsidiary that the Board finds to be comprehensively supervised by a Federal or State authority.

''(3) CAPITAL.—

''(A) IN GENERAL.—The Board shall not, by regulation, guideline, order or otherwise, prescribe or impose any capital or capital adequacy rules, guidelines, standards, or requirements on any subsidiary of a financial holding company that is not a depository institution and—

''(i) is in compliance with applicable capital requirements of another Federal regulatory authority (including the Securities and Exchange Commission) or State insurance authority; or

''(ii) is registered as an investment adviser under the Investment Advisers Act of 1940.

''(B) RULE OF CONSTRUCTION.—Subparagraph (A) shall not be construed as preventing the Board from imposing capital or capital adequacy rules, guidelines, standards, or requirements with respect to activities of a registered investment adviser other than investment advisory activities or activities incidental to investment advisory activities.

''(4) TRANSFER OF BOARD AUTHORITY TO APPROPRIATE FEDERAL BANKING AGENCY.—

''(A) IN GENERAL.—In the case of any bank holding company which is not significantly engaged in nonbanking activities, the Board, in consultation with the appropriate Federal banking agency, may designate the appropriate Federal banking agency of the lead insured depository institution subsidiary of such holding company as the appropriate Federal banking agency for the bank holding company.

''(B) AUTHORITY TRANSFERRED.—An agency designated by the Board under subparagraph (A) shall have the same authority as the Board under this Act to—

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

''(ii) approve or disapprove applications or transactions under section 3;

''(iii) take actions and impose penalties under subsections (e) and (f) of section 5 and section 8; and

''(iv) take actions regarding the holding company, any affiliate of the holding company (other than a depository institution), or any institution-affiliated party of such company or affiliate under the Federal Deposit Insurance Act and any other statute which the Board may designate.

''(C) AGENCY ORDERS.—Section 9 (of this Act) and section 105 of the Bank Holding Company Act Amendments of 1970 shall apply to orders issued by an agency designated under subparagraph (A) in the same manner such sections apply to orders issued by the Board.

''(5) FUNCTIONAL REGULATION OF SECURITIES AND INSURANCE ACTIVITIES.—The Board shall defer to—

''(A) the Securities and Exchange Commission with regard to all interpretations of, and the enforcement of, applicable Federal securities laws relating to the activities, conduct, and operations of registered brokers, dealers, investment advisers, and investment companies; and

''(B) the relevant State insurance authorities with regard to all interpretations of, and the enforcement of, applicable State insurance laws relating to the activities, conduct, and operations of insurance companies and insurance agents.''.

SEC. 112. ELIMINATION OF APPLICATION REQUIREMENT FOR FINANCIAL HOLDING COMPANIES.

(a) PREVENTION OF DUPLICATIVE FILINGS.—Section 5(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(a)) is amended by adding the following new sentence at the end: ''A declaration filed in accordance with section 6(b)(1)(E) shall satisfy the requirements of this subsection with regard to the registration of a bank holding company but not any requirement to file an application to acquire a bank pursuant to section 3.''.

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

(1) by striking ''Financial Institutions Supervisory Act of 1966, order'' and inserting ''Financial Institutions Supervisory Act of 1966, at the election of the bank holding company—

''(A) order''; and

(2) by striking ''shareholders of the bank holding company. Such distribution'' and inserting ''shareholders of the bank holding company; or

''(B) order the bank holding company, after due notice and opportunity for hearing, and after consultation with the bank's primary supervisor, which shall be the Comptroller of the Currency in the case of a national bank, and the Federal Deposit Insurance Corporation and the appropriate State supervisor in the case of an insured nonmember bank, to terminate (within 120 days or such longer period as the Board may direct) the ownership

or control of any such bank by such company.

''The distribution referred to in subparagraph (A)''.

SEC. 113. AUTHORITY OF STATE INSURANCE REGULATOR AND SECURITIES AND EXCHANGE COMMISSION.

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

''(g) AUTHORITY OF STATE INSURANCE REGULATOR AND THE SECURITIES AND EXCHANGE COMMISSION.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, any regulation, order, or other action of the Board which requires a bank holding company to provide funds or other assets to a subsidiary insured depository institution shall not be effective nor enforceable if—

''(A) such funds or assets are to be provided by—

''(i) a bank holding company that is an insurance company or is a broker or dealer registered under the Securities Exchange Act of 1934; or

''(ii) an affiliate of the depository institution which is an insurance company or a broker or dealer registered under such Act; and

''(B) the State insurance authority for the insurance company or the Securities and Exchange Commission for the registered broker or dealer, as the case may be, determines in writing sent to the holding company and the Board that the holding company shall not provide such funds or assets because such action would have a material adverse effect on the financial condition of the insurance company or the broker or dealer, as the case may be.

''(2) NOTICE TO STATE INSURANCE AUTHORITY OR SEC REQUIRED.—If the Board requires a bank holding company, or an affiliate of a bank holding company, which is an insurance company or a broker or dealer described in paragraph (1)(A) to provide funds or assets to an insured depository institution subsidiary of the holding company pursuant to any regulation, order, or other action of the Board referred to in paragraph (1), the Board shall promptly notify the State insurance authority for the insurance company or the Securities and Exchange Commission, as the case may be, of such requirement.

''(3) DIVESTITURE IN LIEU OF OTHER ACTION.—If the Board receives a notice described in paragraph (1)(B) from a State insurance authority or the Securities and Exchange Commission with regard to a bank holding company or affiliate referred to in such paragraph, the Board may order the bank holding company to divest the insured depository institution within 180 days of receiving notice or such longer period as the Board determines consistent with the safe and sound operation of the insured depository institution.

''(4) CONDITIONS BEFORE DIVESTITURE.—During the period beginning on the date an order to divest is issued by the Board under paragraph (3) to a bank holding company and ending on the date the divestiture is completed, the Board may impose any conditions or restrictions on the holding company's ownership or operation of the insured depository institution, including restricting or prohibiting transactions between the insured depository institution and any affiliate of the institution, as are appropriate under the circumstances.''.

SEC. 114. PRUDENTIAL SAFEGUARDS.

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

''(h) PRUDENTIAL SAFEGUARDS.—

''(1) IN GENERAL.—The Board may, by regulation or order, impose restrictions or requirements on relationships or transactions between a depository institution subsidiary of a bank holding company and any affiliate of such depository institution (other than a subsidiary of such institution) which the Board finds is consistent with the public interest, the purposes of this Act, the Financial Services Act of 1998, the Federal Reserve Act, and other Federal law applicable to depository institution subsidiaries of bank holding companies and the standards in paragraph (2).

''(2) STANDARDS.—The Board may exercise authority under paragraph (1) if the Board finds that such action will have any of the following effects:

''(A) Avoid any significant risk to the safety and soundness of depository institutions or any Federal deposit insurance fund.

''(B) Enhance the financial stability of bank holding companies.

''(C) Avoid conflicts of interest or other abuses.

''(D) Enhance the privacy of customers of depository institutions.

''(E) Promote the application of national treatment and equality of competitive opportunity between nonbank affiliates owned or controlled by domestic bank holding companies and nonbank affiliates owned or controlled by foreign banks operating in the United States.

''(3) REVIEW.—The Board shall regularly—

''(A) review all restrictions or requirements established pursuant to paragraph (1) to determine whether there is a continuing need for any such restriction or requirement to carry out the purposes of the Act, including any purpose described in paragraph (2); and

''(B) modify or eliminate any restriction or requirement the Board finds is no longer required for such purposes.''.

SEC. 115. EXAMINATION OF INVESTMENT COMPANIES.

(a) EXCLUSIVE COMMISSION AUTHORITY.—

(1) IN GENERAL.—The Commission shall be the sole Federal agency with authority to inspect and examine any registered investment company that is not a bank holding company.

(2) PROHIBITION ON BANKING AGENCIES.—A Federal banking agency may not inspect or examine any registered investment company that is not a bank holding company.

(b) EXAMINATION RESULTS AND OTHER INFORMATION.—The Commission shall provide to any Federal banking agency, upon request, the results of any examination, reports, records, or other information with respect to any registered investment company to the extent necessary for the agency to carry out its statutory responsibilities.

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

(1) BANK HOLDING COMPANY.—The term ''bank holding company'' has the meaning given to such term in section 2 of the Bank Holding Company Act of 1956.

(2) COMMISSION.—The term ''Commission'' means the Securities and Exchange Commission.

(3) FEDERAL BANKING AGENCY.—The term ''Federal banking agency'' has the meaning given to such term in section 3(z) of the Federal Deposit Insurance Act.

(4) REGISTERED INVESTMENT COMPANY.—The term ''registered investment company'' means an investment company which is registered with the Commission under the Investment Company Act of 1940.

SEC. 116. LIMITATION ON RULEMAKING, PRUDENTIAL, SUPERVISORY, AND ENFORCEMENT AUTHORITY OF THE BOARD.

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

''SEC. 10A. LIMITATION ON RULEMAKING, PRUDENTIAL, SUPERVISORY, AND ENFORCEMENT AUTHORITY OF THE BOARD.

''(a) LIMITATION ON DIRECT ACTION.—

''(1) IN GENERAL.—The Board may not prescribe regulations, issue or seek entry of orders, impose restraints, restrictions, guidelines, requirements, safeguards, or standards, or otherwise take any action under or pursuant to any provision of this Act or section 8 of the Federal Deposit Insurance Act against or with respect to a regulated subsidiary of a bank holding company unless the action is necessary to prevent or redress an unsafe or unsound practice or breach of fiduciary duty by such subsidiary that poses a material risk to—

''(A) the financial safety, soundness, or stability of an affiliated depository institution; or

''(B) the domestic or international payment system.

''(2) CRITERIA FOR BOARD ACTION.—The Board shall not take action otherwise permitted under paragraph (1) unless the Board finds that it is not reasonably possible to effectively protect against the material risk at issue through action directed at or against the affiliated depository institution or against depository institutions generally.

''(b) LIMITATION ON INDIRECT ACTION.—The Board may not prescribe regulations, issue or seek entry of orders, impose restraints, restrictions, guidelines, requirements, safeguards, or standards, or otherwise take any action under or pursuant to any provision of this Act or section 8 of the Federal Deposit Insurance Act against or with respect to a financial holding company or a wholesale financial holding company where the purpose or effect of doing so would be to take action indirectly against or with respect to a regulated subsidiary that may not be taken directly against or with respect to such subsidiary in accordance with subsection (a).

''(c) ACTIONS SPECIFICALLY AUTHORIZED.—Notwithstanding subsection (a), the Board may take action under this Act or section 8 of the Federal Deposit Insurance Act to enforce compliance by a regulated subsidiary with Federal law that the Board has specific jurisdiction to enforce against such subsidiary.

''(d) REGULATED SUBSIDIARY DEFINED.—For purposes of this section, the term 'regulated subsidiary' means any company that is not a bank holding company and is—

''(1) a broker or dealer registered under the Securities Exchange Act of 1934;

''(2) an investment adviser registered under the Investment Advisers Act of 1940, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities;

''(3) an investment company registered under the Investment Company Act of 1940;

''(4) an insurance company or an insurance agency subject to supervision by a State insurance commission, agency, or similar authority; or

''(5) an entity subject to regulation by the Commodity Futures Trading Commission, with respect to the commodities activities of such entity and activities incidental to such commodities activities.''.

Subtitle C—Subsidiaries of National Banks

SEC. 121. PERMISSIBLE ACTIVITIES FOR SUBSIDIARIES OF NATIONAL BANKS.

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

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

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

"SEC. 5136A. SUBSIDIARIES OF NATIONAL BANKS.

''(a) SUBSIDIARIES OF NATIONAL BANKS AUTHORIZED TO ENGAGE IN FINANCIAL ACTIVITIES.—

''(1) EXCLUSIVE AUTHORITY.—No provision of section 5136 or any other provision of this title LXII of the Revised Statutes shall be construed as authorizing a subsidiary of a national bank to engage in, or own any share of or any other interest in any company engaged in, any activity that—

''(A) is not permissible for a national bank to engage in directly; or

''(B) is conducted under terms or conditions other than those that would govern the conduct of such activity by a national bank, unless a national bank is specifically authorized by the express terms of a Federal statute and not by implication or interpretation to acquire shares of or an interest in, or to control, such subsidiary, such as by paragraph (2) of this subsection and section 25A of the Federal Reserve Act.

''(2) SPECIFIC AUTHORIZATION TO CONDUCT AGENCY ACTIVITIES WHICH ARE FINANCIAL IN NATURE.—A national bank may control a company that engages in agency activities that have been determined to be financial in nature or incidental to such financial activities pursuant to and in accordance with section 6(c) of the Bank Holding Company Act of 1956 if—

''(A) the company engages in such activities solely as agent and not directly or indirectly as principal,

''(B) the national bank is well capitalized and well managed, and has achieved a rating of satisfactory or better at the most recent examination of the bank under the Community Reinvestment Act of 1977;

''(C) all depository institution affiliates of the national bank are well capitalized and well managed, and have achieved a rating of satisfactory or better at the most recent examination of each such depository institution under the Community Reinvestment Act of 1977; and

''(D) the bank has received the approval of the Comptroller of the Currency.

''(3) DEFINITIONS.—

''(A) COMPANY; CONTROL; SUBSIDIARY.—The terms 'company', 'control', and 'subsidiary' have the meanings given to such terms in section 2 of the Bank Holding Company Act of 1956.

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

''(C) WELL MANAGED.—The term 'well managed' means—

''(i) in the case of a bank that has been examined, unless otherwise determined in writing by the Comptroller—

''(I) the achievement of a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under an equivalent rating system) in connection with the most recent examination or subsequent review of the bank; and

''(II) at least a rating of 2 for management, if that rating is given; or

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

''(b) LIMITED EXCLUSIONS FROM COMMUNITY NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DEPOSITORY INSTITUTIONS.—Any depository institution which becomes affiliated with a national bank during the 24-month period preceding the submission of an application to acquire a subsidiary under subsection (a)(2), and any depository institution which becomes so affiliated after the approval of such application, may be excluded for purposes of subsection (a)(2)(B) during the 24-month period beginning on the date of such acquisition if—

''(1) the depository institution has submitted an affirmative plan to the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) to take such action as may be necessary in order for such institution to achieve a 'satisfactory record of meeting community credit needs', or better, at the next examination of the institution under the Community Reinvestment Act of 1977; and

''(2) the plan has been approved by the appropriate Federal banking agency.''.

(b) LIMITATION ON CERTAIN ACTIVITIES IN SUBSIDIARIES.—Section 21(a)(1) of the Banking Act of 1933 (12 U.S.C. 378(a)(1)) is amended—

(1) by inserting '', or to be a subsidiary of any person, firm, corporation, association, business trust, or similar organization engaged (unless such subsidiary (A) was engaged in such securities activities as of September 15, 1997, or (B) is a nondepository subsidiary of a foreign bank and is not also a subsidiary of a domestic depository institution),'' after ''to engage at the same time''; and

(2) by inserting ''or any subsidiary of such bank, company, or institution'' after ''or private bankers''.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) ANTITYING.—Section 106(a) of the Bank Holding Company Act Amendments of 1970 is amended by adding at the end the following new sentence: ''For purposes of this section, a subsidiary of a national bank which engages in activities as an agent pursuant to section 5136A(a)(2) shall be deemed to be a subsidiary of a bank holding company, and not a subsidiary of a bank.''.

(2) SECTION 23B.—Section 23B(a) of the Federal Reserve Act (12 U.S.C. 371c–1(a)) is amended by adding at the end the following new paragraph:

''(4) SUBSIDIARY OF NATIONAL BANK.—For purposes of this section, a subsidiary of a national bank which engages in activities as an agent pursuant to section 5136A(a)(2) shall be deemed to be an affiliate of the national bank and not a subsidiary of the bank.''

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

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

(2) by inserting after the item relating to section 5136 the following new item:

''5136A. Financial subsidiaries of national banks.''.

SEC. 122. MISREPRESENTATIONS REGARDING DEPOSITORY INSTITUTION LIABILITY FOR OBLIGATIONS OF AFFILIATES.

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

"§ 1008. Misrepresentations regarding financial institution liability for obligations of affiliates

''(a) IN GENERAL.—No institution-affiliated party of an insured depository institution or institution-affiliated party of a subsidiary or affiliate of an insured depository institution shall fraudulently represent that the institution is or will be liable for any obligation of a subsidiary or other affiliate of the institution.

''(b) CRIMINAL PENALTY.—Whoever violates subsection (a) shall be fined under this title, imprisoned for not more than 1 year, or both.

''(c) INSTITUTION-AFFILIATED PARTY DEFINED.—For purposes of this section, the term 'institution-affiliated party' with respect to a subsidiary or affiliate has the same meaning as in section 3 except references to an insured depository institution shall be deemed to be references to a subsidiary or affiliate of an insured depository institution.

''(d) OTHER DEFINITIONS.—For purposes of this section, the terms 'affiliate', 'insured depository institution', 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) WHOLESALE FINANCIAL HOLDING COMPANY DEFINED.—The term 'wholesale financial holding company' means any company that—

''(A) is registered as a bank holding company;

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

''(C) controls 1 or more wholesale financial institutions;

''(D) does not control—

''(i) a bank other than a wholesale financial institution;

''(ii) an insured bank other than an institution permitted under subparagraph (D), (F), or (G) of section 2(c)(2); or

''(iii) a savings association; and

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

''(2) SAVINGS ASSOCIATION TRANSITION PERIOD.—Notwithstanding paragraph (1)(C)(iii), the Board may permit a company that controls a savings association and that otherwise meets the requirements of paragraph (1) to become supervised under paragraph (1), if the company divests control of any such savings association within such period not to exceed 5 years after becoming supervised under paragraph (1) as permitted by the Board.

''(b) SUPERVISION BY THE BOARD.—

''(1) IN GENERAL.—The provisions of this section shall govern the reporting, examination, and capital requirements of wholesale financial holding companies.

''(2) REPORTS.—

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

''(i) the company's or subsidiary's activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and transactions with depository institution subsidiaries of the holding company; and

''(ii) the extent to which the company or subsidiary has complied with the provisions of this Act and regulations prescribed and orders issued under this Act.

''(B) USE OF EXISTING REPORTS.—

''(i) IN GENERAL.—The Board shall, to the fullest extent possible, accept reports in fulfillment of the Board's reporting requirements under this paragraph that the wholesale financial holding company or any subsidiary of such company has provided or been required to provide to other Federal and State supervisors or to appropriate self-regulatory organizations.

''(ii) AVAILABILITY.—A wholesale financial holding company or a subsidiary of such company shall provide to the Board, at the request of the Board, a report referred to in clause (i).

''(C) EXEMPTIONS FROM REPORTING REQUIREMENTS.—

''(i) IN GENERAL.—The Board may, by regulation or order, exempt any company or class of companies, under such terms and conditions and for such periods as the Board shall provide in such regulation or order, from the provisions of this paragraph and any regulation prescribed under this paragraph.

''(ii) CRITERIA FOR CONSIDERATION.—In making any determination under clause (i) with regard to any exemption under such clause, the Board shall consider, among such other factors as the Board may determine to be appropriate, the following factors:

''(I) Whether information of the type required under this paragraph is available from a supervisory agency (as defined in section 1101(7) of the Right to Financial Privacy Act of 1978) or a foreign regulatory authority of a similar type.

''(II) The primary business of the company.

''(III) The nature and extent of the domestic and foreign regulation of the activities of the company.

''(3) EXAMINATIONS.—

''(A) LIMITED USE OF EXAMINATION AUTHORITY.—The Board may make examinations of each wholesale financial holding company and each subsidiary of such company in order to—

''(i) inform the Board regarding the nature of the operations and financial condition of the wholesale financial holding company and its subsidiaries;

''(ii) inform the Board regarding—

''(I) the financial and operational risks within the wholesale financial holding company system that may affect any depository institution owned by such holding company; and

''(II) the systems of the holding company and its subsidiaries for monitoring and controlling those risks; and

''(iii) monitor compliance with the provisions of this Act and those governing transactions and relationships between any depository institution controlled by the wholesale financial holding company and any of the company's other subsidiaries.

''(B) RESTRICTED FOCUS OF EXAMINATIONS.—The Board shall, to the fullest extent possible, limit the focus and scope of any examination of a wholesale financial holding company under this paragraph to—

''(i) the holding company; and

''(ii) any subsidiary (other than an insured depository institution subsidiary) of the holding company that, because of the size, condition, or activities of the subsidiary, the nature or size of transactions between such subsidiary and any affiliated depository institution, or the centralization of functions within the holding company system, could have a materially adverse effect on the safety and soundness of any depository institution affiliate of the holding company.

''(C) DEFERENCE TO BANK EXAMINATIONS.—The Board shall, to the fullest extent possible, use the reports of examination of depository institutions made by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision or the appropriate State depository institution supervisory authority for the purposes of this section.

''(D) DEFERENCE TO OTHER EXAMINATIONS.—The Board shall, to the fullest extent possible, address the circumstances which might otherwise permit or require an examination by the Board by forgoing an examination and by instead reviewing the reports of examination made of—

''(i) any registered broker or dealer or any registered investment adviser by or on behalf of the Commission; and

''(ii) any licensed insurance company by or on behalf of any State government insurance agency responsible for the supervision of the insurance company.

''(E) CONFIDENTIALITY OF REPORTED INFORMATION.—

''(i) IN GENERAL.—Notwithstanding any other provision of law, the Board shall not be compelled to disclose any nonpublic information required to be reported under this paragraph, or any information supplied to the Board by any domestic or foreign regulatory agency, that relates to the financial or operational condition of any wholesale financial holding company or any subsidiary of such company.

''(ii) COMPLIANCE WITH REQUESTS FOR INFORMATION.—No provision of this subparagraph shall be construed as authorizing the Board to withhold information from the Congress, or preventing the Board from complying with a request for information from any other Federal department or agency for purposes within the scope of such department's or agency's jurisdiction, or from complying with any order of a court of competent jurisdiction in an action brought by the United States or the Board.

''(iii) COORDINATION WITH OTHER LAW.—For purposes of section 552 of title 5, United States Code, this subparagraph shall be considered to be a statute described in subsection (b)(3)(B) of such section.

''(iv) DESIGNATION OF CONFIDENTIAL INFORMATION.—In prescribing regulations to carry out the requirements of this subsection, the Board shall designate information described in or obtained pursuant to this paragraph as confidential information.

''(F) COSTS.—The cost of any examination conducted by the Board under this section may be assessed against, and made payable by, the wholesale financial holding company.

''(4) CAPITAL ADEQUACY GUIDELINES.—

''(A) CAPITAL ADEQUACY PROVISIONS.—Subject to the requirements of, and solely in accordance with, the terms of this paragraph, the Board may adopt capital adequacy rules or guidelines for wholesale financial holding companies.

''(B) METHOD OF CALCULATION.—In developing rules or guidelines under this paragraph, the following provisions shall apply:

''(i) FOCUS ON DOUBLE LEVERAGE.—The Board shall focus on the use by wholesale financial holding companies of debt and other liabilities to fund capital investments in subsidiaries.

''(ii) NO UNWEIGHTED CAPITAL RATIO.—The Board shall not, by regulation, guideline, order, or otherwise, impose under this section a capital ratio that is not based on appropriate risk-weighting considerations.

''(iii) NO CAPITAL REQUIREMENT ON REGULATED ENTITIES.—The Board shall not, by regulation, guideline, order or otherwise, prescribe or impose any capital or capital adequacy rules, standards, guidelines, or requirements upon any subsidiary that—

''(I) is not a depository institution; and

''(II) is in compliance with applicable capital requirements of another Federal regulatory authority (including the Securities and Exchange Commission) or State insurance authority.

''(iv) LIMITATION.—The Board shall not, by regulation, guideline, order or otherwise, prescribe or impose any capital or capital adequacy rules, standards, guidelines, or requirements upon any subsidiary that is not a depository institution and that is registered as an investment adviser under the Investment Advisers Act of 1940, except that this clause shall not be construed as preventing the Board from imposing capital or capital adequacy rules, guidelines, standards, or requirements with respect to activities of a registered investment adviser other than investment advisory activities or activities incidental to investment advisory activities.

''(v) APPROPRIATE EXCLUSIONS.—The Board shall take full account of—

''(I) the capital requirements made applicable to any subsidiary that is not a depository institution by another Federal regulatory authority or State insurance authority; and

''(II) industry norms for capitalization of a company's unregulated subsidiaries and activities.

''(vi) INTERNAL RISK MANAGEMENT MODELS.—The Board may incorporate internal risk management models of wholesale financial holding companies into its capital adequacy guidelines or rules and may take account of the extent to which resources of a subsidiary depository institution may be used to service the debt or other liabilities of the wholesale financial holding company.

''(c) NONFINANCIAL ACTIVITIES AND INVESTMENTS.—

''(1) AUTHORITY FOR LIMITED AMOUNTS OF NEW ACTIVITIES AND INVESTMENTS.—

''(A) IN GENERAL.—Notwithstanding section 4(a), a wholesale financial holding company may engage in activities which are not (or have not been determined to be) financial in nature or incidental to activities which are financial in nature, or acquire and retain ownership and control of the shares of a company engaged in such activities if—

''(i) the aggregate annual gross revenues derived from all such activities and of all such companies does not exceed 5 percent of the consolidated annual gross revenues of the wholesale financial holding company or, in the case of a foreign bank or any company that owns or controls a foreign bank, the aggregate annual gross revenues derived from any such activities in the United States does not exceed 5 percent of the consolidated annual gross revenues of the foreign bank or company in the United States derived from any branch, agency, commercial lending company, or depository institution controlled by the foreign bank or company and any subsidiary engaged in the United States in activities permissible under section 4 or 6 or this subsection;

''(ii) the consolidated total assets of any company the shares of which are acquired pursuant to this subsection are less than $750,000,000 at the time the shares are acquired by the wholesale financial holding company; and

''(iii) such company provides notice to the Board within 30 days of commencing the activity or acquiring the ownership or control.

''(B) INCLUSION OF GRANDFATHERED ACTIVITIES.—For purposes of determining compliance with the limits contained in subparagraph (A), the gross revenues derived from all activities conducted and companies the shares of which are held under paragraph (2) shall be considered to be derived or held under this paragraph.

''(C) REPORT.—No later than 5 years after the date of enactment of the Financial Services Act of 1998, the Board shall submit to the Congress a report regarding the activities conducted and companies held pursuant to this paragraph and the effect, if any, that affiliations permitted under this paragraph have had on affiliated depository institutions. The report shall include recommendations regarding the appropriateness of retaining, increasing, or decreasing the limits contained in those provisions.

''(2) GRANDFATHERED ACTIVITIES.—

''(A) IN GENERAL.—Notwithstanding paragraph (1)(A) and section 4(a), a company that becomes a wholesale financial holding company may continue to engage, directly or indirectly, in any activity and may retain ownership and control of shares of a company engaged in any activity if—

''(i) on the date of the enactment of the Financial Services Act of 1998, such wholesale financial holding company was lawfully engaged in that nonfinancial activity, held the shares of such company, or had entered into a contract to acquire shares of any company engaged in such activity; and

''(ii) the company engaged in such activity continues to engage only in the same activities that such company conducted on the date of the enactment of the Financial Services Act of 1998, and other activities permissible under this Act.

''(B) NO EXPANSION OF GRANDFATHERED COMMERCIAL ACTIVITIES THROUGH MERGER OR CONSOLIDATION.—A wholesale financial holding company that engages in activities or holds shares pursuant to this paragraph, or a subsidiary of such wholesale financial holding company, may not acquire, in any merger, consolidation, or other type of business combination, assets of any other company which is engaged in any activity which the Board has not determined to be financial in nature or incidental to activities that are financial in nature under section 6(c).

''(C) LIMITATION TO SINGLE EXEMPTION.—No company that engages in any activity or controls any shares under subsection (f) or (g) of section 6 may engage in any activity or own any shares pursuant to this paragraph or paragraph (1).

''(3) COMMODITIES.—

''(A) IN GENERAL.—Notwithstanding section 4(a), a wholesale financial holding company which was predominately engaged as of January 1, 1997, in financial activities in the United States (or any successor to any such company) may engage in, or directly or indirectly own or control shares of a company engaged in, activities related to the trading, sale, or investment in commodities and underlying physical properties that were not permissible for bank holding companies to conduct in the United States as of January 1, 1997, if such wholesale financial holding company, or any subsidiary of such holding company, was engaged directly, indirectly, or through any such company in any of such activities as of January 1, 1997, in the United States.

''(B) LIMITATION.—Notwithstanding paragraph (1)(A)(i), the attributed aggregate consolidated assets of a wholesale financial holding company held under the authority granted under this paragraph and not otherwise permitted to be held by all wholesale financial holding companies under this section may not exceed 5 percent of the total consolidated assets of the wholesale financial holding company, except that the Board may increase such percentage of total consolidated assets by such amounts and under such circumstances as the Board considers appropriate, consistent with the purposes of this Act.

''(4) CROSS MARKETING RESTRICTIONS.—A wholesale financial holding company shall not permit—

''(A) any company whose shares it owns or controls pursuant to paragraph (1), (2), or (3) to offer or market any product or service of an affiliated wholesale financial institution; or

''(B) any affiliated wholesale financial institution to offer or market any product or service of any company whose shares are owned or controlled by such wholesale financial holding company pursuant to such paragraphs.

''(d) QUALIFICATION OF FOREIGN BANK AS WHOLESALE FINANCIAL HOLDING COMPANY.—

''(1) IN GENERAL.—Any foreign bank, or any company that owns or controls a foreign bank, that—

''(A) operates a branch, agency, or commercial lending company in the United States, including a foreign bank or company that owns or controls a wholesale financial institution; and

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

may request a determination from the Board that such bank or company be treated as a wholesale financial holding company for purposes of subsection (c).

''(2) CONDITIONS FOR TREATMENT AS A WHOLESALE FINANCIAL HOLDING COMPANY.—A foreign bank and a company that owns or controls a foreign bank may not be treated as a wholesale financial holding company unless the bank and company meet and continue to meet the following criteria:

''(A) NO INSURED DEPOSITS.—No deposits held directly by a foreign bank or through an affiliate (other than an institution described in subparagraph (D) or (F) of section 2(c)(2)) are insured under the Federal Deposit Insurance Act.

''(B) CAPITAL STANDARDS.—The foreign bank meets risk-based capital standards comparable to the capital standards required for a wholesale financial institution, giving due regard to the principle of national treatment and equality of competitive opportunity.

''(C) TRANSACTION WITH AFFILIATES.—Transactions between a branch, agency, or commercial lending company subsidiary of the foreign bank in the United States, and any securities affiliate or company in which the foreign bank (or any company that owns or controls such foreign bank) has invested pursuant to subsection (d) comply with the provisions of sections 23A and 23B of the Federal Reserve Act in the same manner and to the same extent as such transactions would be required to comply with such sections if the bank were a member bank.

''(3) TREATMENT AS A WHOLESALE FINANCIAL INSTITUTION.—Any foreign bank which is, or is affiliated with a company which is, treated as a wholesale financial holding company under this subsection shall be treated as a wholesale financial institution for purposes of subsection (c)(4) of this section and subsections (c)(1)(C) and (c)(3) of section 9B of the Federal Reserve Act, and any such foreign bank or company shall be subject to paragraphs (3), (4), and (5) of section 9B(d) of the Federal Reserve Act, except that the Board may adopt such modifications, conditions, or exemptions as the Board deems appropriate, giving due regard to the principle of national treatment and equality of competitive opportunity.

''(4) NONAPPLICABILITY OF OTHER EXEMPTION.—Any foreign bank or company which is treated as a wholesale financial holding company under this subsection shall not be eligible for any exception described in section 2(h).

''(5) SUPERVISION OF FOREIGN BANK WHICH MAINTAINS NO BANKING PRESENCE OTHER THAN CONTROL OF A WHOLESALE FINANCIAL INSTITUTION.—A foreign bank that owns or controls a wholesale financial institution but does not operate a branch, agency, or commercial lending company in the United States (and any company that owns or controls such foreign bank) may request a determination from the Board that such bank or company be treated as a wholesale financial holding company for purposes of subsection (c), except that such bank or company shall be subject to the restrictions of paragraphs (2)(A), (3), and (4) of this subsection.

''(6) NO EFFECT ON OTHER PROVISIONS.—This section shall not be construed as limiting the authority of the Board under the International Banking Act of 1978 with respect to the regulation, supervision, or examination of foreign banks and their offices and affiliates in the United States.

''(7) APPLICABILITY OF COMMUNITY REINVESTMENT ACT OF 1977.—The branches in the United States of a foreign bank that is, or is affiliated with a company that is, treated as a wholesale financial holding company shall be subject to section 9B(b)(11) of the Federal Reserve Act as if the foreign bank were a wholesale financial institution under such section. The Board and the Comptroller of the Currency shall apply the provisions of sections 803(2), 804, and 807(1) of the Community Reinvestment Act of 1977 to branches of foreign banks which receive only such deposits as are permissible for receipt by a corporation organized under section 25A of the Federal Reserve Act, in the same manner and to the same extent such sections apply to such a corporation.''.

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

''(24) ENFORCEMENT AUTHORITY OVER UNINSURED STATE MEMBER BANKS.—Section 3(u) of the Federal Deposit Insurance Act, subsections (j) and (k) of section 7 of such Act, and subsections (b) through (n), (s), (u), and (v) of section 8 of such Act shall apply to an uninsured State member bank in the same manner and to the same extent such provisions apply to an insured State member bank and any reference in any such provision to 'insured depository institution' shall be deemed to be a reference to 'uninsured State member bank' for purposes of this paragraph.''.

SEC. 132. AUTHORIZATION TO RELEASE REPORTS.

(a) FEDERAL RESERVE ACT.—The last sentence of the 8th undesignated paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 326) is amended to read as follows: ''The Board of Governors of the Federal Reserve System, at its discretion, may furnish reports of examination or other confidential supervisory information concerning State member banks or any other entities examined under any other authority of the Board to any Federal or State authorities with supervisory or regulatory authority over the examined entity, to officers, directors, or receivers of the examined entity, and to any other person that the Board determines to be proper.''.

(b) COMMODITY FUTURES TRADING COMMISSION.—

(1) Section 1101(7) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401(7)) is amended—

(A) by redesignating subparagraphs (G) and (H) as subparagraphs (H) and (I), respectively; and

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

''(G) the Commodity Futures Trading Commission; or'' and

(2) Section 1112(e) of the Right to Financial Privacy Act (12 U.S.C. 3412(e)) is amended by striking ''and the Securities and Exchange Commission'' and inserting '', the Securities and Exchange Commission, and the Commodity Futures Trading Commission''.

SEC. 133. CONFORMING AMENDMENTS.

(a) BANK HOLDING COMPANY ACT OF 1956.—

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

''(p) WHOLESALE FINANCIAL INSTITUTION.—The term 'wholesale financial institution' means a wholesale financial institution subject to section 9B of the Federal Reserve Act.

''(q) COMMISSION.—The term 'Commission' means the Securities and Exchange Commission.

''(r) DEPOSITORY INSTITUTION.—The term 'depository institution'—

''(1) has the meaning given to such term in section 3 of the Federal Deposit Insurance Act; and

''(2) includes a wholesale financial institution.''.

(2) DEFINITION OF BANK INCLUDES WHOLESALE FINANCIAL INSTITUTION.—Section 2(c)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(1)) is amended by adding at the end the following new subparagraph:

''(C) A wholesale financial institution.''.

(3) INCORPORATED DEFINITIONS.—Section 2(n) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(n)) is amended by inserting ''insured bank','' after ''in danger of default',''.

(4) EXCEPTION TO DEPOSIT INSURANCE REQUIREMENT.—Section 3(e) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(e)) is amended by adding at the end the following: ''This subsection shall not apply to a wholesale financial institution.''

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

''(A) any State member insured bank (except a District bank) and any wholesale financial institution as authorized pursuant to section 9B of the Federal Reserve Act;''.

CHAPTER 2—WHOLESALE FINANCIAL INSTITUTIONS

SEC. 136. WHOLESALE FINANCIAL INSTITUTIONS.

(a) NATIONAL WHOLESALE FINANCIAL INSTITUTIONS.—

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

''SEC. 5136B. NATIONAL WHOLESALE FINANCIAL INSTITUTIONS.

''(a) AUTHORIZATION OF THE COMPTROLLER REQUIRED.—A national bank may apply to the Comptroller on such forms and in accordance with such regulations as the Comptroller may prescribe, for permission to operate as a national wholesale financial institution.

''(b) REGULATION.—A national wholesale financial institution may exercise, in accordance with such institution's articles of incorporation and regulations issued by the Comptroller, all the powers and privileges of a national bank formed in accordance with section 5133 of the Revised Statutes of the United States, subject to section 9B of the Federal Reserve Act and the limitations and restrictions contained therein.

''(c) COMMUNITY REINVESTMENT ACT OF 1977.—A national wholesale financial institution shall be subject to the Community Reinvestment Act of 1977.

''(d) EXAMINATION REPORTS.—The Comptroller of the Currency shall, to the fullest extent possible, use the report of examinations made by the Board of Governors of the Federal Reserve System of a wholesale financial institution.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter one of title LXII of the Revised Statutes of the United States is amended by inserting after the item relating to section 5136A (as added by section 121(d) of this title) the following new item:

''5136B. National wholesale financial institutions.''.

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

''SEC. 9B. WHOLESALE FINANCIAL INSTITUTIONS.

''(a) APPLICATION FOR MEMBERSHIP AS WHOLESALE FINANCIAL INSTITUTION.—

''(1) APPLICATION REQUIRED.—

''(A) IN GENERAL.—Any bank may apply to the Board of Governors of the Federal Reserve System to become a wholesale financial institution and, as a wholesale financial institution, to subscribe to the stock of the Federal reserve bank organized within the district where the applying bank is located.

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

''(2) INSURANCE TERMINATION.—No bank the deposits of which are insured under the Federal Deposit Insurance Act may become a wholesale financial institution unless it has met all requirements under that Act for voluntary termination of deposit insurance.

''(b) GENERAL REQUIREMENTS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—

''(1) FEDERAL RESERVE ACT.—Except as otherwise provided in this section, wholesale financial institutions shall be member banks and shall be subject to the provisions of this Act that apply to member banks to the same extent and in the same manner as State member insured banks, except that a wholesale financial institution may terminate membership under this Act only with the prior written approval of the Board and on terms and conditions that the Board determines are appropriate to carry out the purposes of this Act.

''(2) PROMPT CORRECTIVE ACTION.—A wholesale financial institution shall be deemed to be an insured depository institution for purposes of section 38 of the Federal Deposit Insurance Act except that—

''(A) the relevant capital levels and capital measures for each capital category shall be the levels specified by the Board for wholesale financial institutions; and

''(B) all references to the appropriate Federal banking agency or to the Corporation in that section shall be deemed to be references to the Board.

''(3) ENFORCEMENT AUTHORITY.—Subsections (j) and (k) of section 7, subsections (b) through (n), (s), and (v) of section 8, and section 19 of the Federal Deposit Insurance Act shall apply to a wholesale financial institution in the same manner and to the same extent as such provisions apply to State member insured banks and any reference in such sections to an insured depository institution shall be deemed to include a reference to a wholesale financial institution.

''(4) CERTAIN OTHER STATUTES APPLICABLE.—A wholesale financial institution shall be deemed to be a banking institution, and the Board shall be the appropriate Federal banking agency for such bank and all such bank's affiliates, for purposes of the International Lending Supervision Act.

''(5) BANK MERGER ACT.—A wholesale financial institution shall be subject to sections 18(c) and 44 of the Federal Deposit Insurance Act in the same manner and to the same extent the wholesale financial institution would be subject to such sections if the institution were a State member insured bank.

''(6) BRANCHING.—Notwithstanding any other provision of law, a wholesale financial institution may establish and operate a branch at any location on such terms and conditions as established by the Board and, in the case of a State-chartered wholesale financial institution, with the approval of the Board, and, in the case of a national bank wholesale financial institution, with the approval of the Comptroller of the Currency.

''(7) ACTIVITIES OF OUT-OF-STATE BRANCHES OF WHOLESALE FINANCIAL INSTITUTIONS.—

''(A) GENERAL.—A State-chartered wholesale financial institution shall be deemed a State bank and an insured State bank and a national wholesale financial institution shall be deemed a national bank for purposes of paragraphs (1), (2), and (3) of section 24(j) of the Federal Deposit Insurance Act.

''(B) DEFINITIONS.—The following definitions shall apply solely for purposes of applying paragraph (1):

''(i) HOME STATE.—The term 'home State' means—

''(I) with respect to a national wholesale financial institution, the State in which the main office of the institution is located; and

''(II) with respect to a State-chartered wholesale financial institution, the State by which the institution is chartered.

''(ii) HOST STATE.—The term 'host State' means a State, other than the home State of the wholesale financial institution, in which the institution maintains, or seeks to establish and maintain, a branch.

''(iii) OUT-OF-STATE BANK.—The term 'out-of-State bank' means, with respect to any State, a wholesale financial institution whose home State is another State.

''(8) DISCRIMINATION REGARDING INTEREST RATES.—Section 27 of the Federal Deposit Insurance Act shall apply to State-chartered wholesale financial institutions in the same manner and to the same extent as such provisions apply to State member insured banks and any reference in such section to a State-chartered insured depository institution shall be deemed to include a reference to a State-chartered wholesale financial institution.

''(9) PREEMPTION OF STATE LAWS REQUIRING DEPOSIT INSURANCE FOR WHOLESALE FINANCIAL INSTITUTIONS.—The appropriate State banking authority may grant a charter to a wholesale financial institution notwithstanding any State constitution or statute requiring that the institution obtain insurance of its deposits and any such State constitution or statute is hereby preempted solely for purposes of this paragraph.

''(10) PARITY FOR WHOLESALE FINANCIAL INSTITUTIONS.—A State bank that is a wholesale financial institution under this section shall have all of the rights, powers, privileges, and immunities (including those derived from status as a federally chartered institution) of and as if it were a national bank, subject to such terms and conditions as established by the Board.

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

''(c) SPECIFIC REQUIREMENTS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—

''(1) LIMITATIONS ON DEPOSITS.—

''(A) MINIMUM AMOUNT.—

''(i) IN GENERAL.—No wholesale financial institution may receive initial deposits of $100,000 or less, other than on an incidental and occasional basis.

''(ii) LIMITATION ON DEPOSITS OF LESS THAN $100,000.—No wholesale financial institution may receive initial deposits of $100,000 or less if such deposits constitute more than 5 percent of the institution's total deposits.

''(B) NO DEPOSIT INSURANCE.—No deposits held by a wholesale financial institution shall be insured deposits under the Federal Deposit Insurance Act.

''(C) ADVERTISING AND DISCLOSURE.—The Board shall prescribe regulations pertaining to advertising and disclosure by wholesale financial institutions to ensure that each depositor is notified that deposits at the wholesale financial institution are not federally insured or otherwise guaranteed by the United States Government.

''(2) MINIMUM CAPITAL LEVELS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—The Board shall, by regulation, adopt capital requirements for wholesale financial institutions—

''(A) to account for the status of wholesale financial institutions as institutions that accept deposits that are not insured under the Federal Deposit Insurance Act; and

''(B) to provide for the safe and sound operation of the wholesale financial institution without undue risk to creditors or other persons, including Federal reserve banks, engaged in transactions with the bank.

''(3) ADDITIONAL REQUIREMENTS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—In addition to any requirement otherwise applicable to State member insured banks or applicable, under this section, to wholesale financial institutions, the Board may impose, by regulation or order, upon wholesale financial institutions—

''(A) limitations on transactions, direct or indirect, with affiliates to prevent—

''(i) the transfer of risk to the deposit insurance funds; or

''(ii) an affiliate from gaining access to, or the benefits of, credit from a Federal reserve bank, including overdrafts at a Federal reserve bank;

''(B) special clearing balance requirements; and

''(C) any additional requirements that the Board determines to be appropriate or necessary to—

''(i) promote the safety and soundness of the wholesale financial institution or any insured depository institution affiliate of the wholesale financial institution;

''(ii) prevent the transfer of risk to the deposit insurance funds; or

''(iii) protect creditors and other persons, including Federal reserve banks, engaged in transactions with the wholesale financial institution.

''(4) EXEMPTIONS FOR WHOLESALE FINANCIAL INSTITUTIONS.—The Board may, by regulation or order, exempt any wholesale financial institution from any provision applicable to a member bank that is not a wholesale financial institution, if the Board finds that such exemption is not inconsistent with—

''(A) the promotion of the safety and soundness of the wholesale financial institution or any insured depository institution affiliate of the wholesale financial institution;

''(B) the protection of the deposit insurance funds; and

''(C) the protection of creditors and other persons, including Federal reserve banks, engaged in transactions with the wholesale financial institution.

''(5) LIMITATION ON TRANSACTIONS BETWEEN A WHOLESALE FINANCIAL INSTITUTION AND AN INSURED BANK.—For purposes of section 23A(d)(1) of the Federal Reserve Act, a wholesale financial institution that is affiliated with an insured bank shall not be a bank.

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

''(d) CAPITAL AND MANAGERIAL REQUIREMENTS.—

''(1) IN GENERAL.—A wholesale financial institution shall be well capitalized and well managed.

''(2) NOTICE TO COMPANY.—The Board shall promptly provide notice to a company that controls a wholesale financial institution whenever such wholesale financial institution is not well capitalized or well managed.

''(3) AGREEMENT TO RESTORE INSTITUTION.—Within 45 days of receipt of a notice under paragraph (2) (or such additional period not to exceed 90 days as the Board may permit), the company shall execute an agreement acceptable to the Board to restore the wholesale financial institution to compliance with all of the requirements of paragraph (1).

''(4) LIMITATIONS UNTIL INSTITUTION RESTORED.—Until the wholesale financial institution is restored to compliance with all of the requirements of paragraph (1), the Board may impose such limitations on the conduct or activities of the company or any affiliate of the company as the Board determines to be appropriate under the circumstances.

''(5) FAILURE TO RESTORE.—If the company does not execute and implement an agreement in accordance with paragraph (3), comply with any limitation imposed under paragraph (4), restore the wholesale financial institution to well capitalized status within 180 days after receipt by the company of the notice described in paragraph (2), or restore the wholesale financial institution to well managed status within such period as the Board may permit, the company shall, under such terms and conditions as may be imposed by the Board and subject to such extension of time as may be granted in the Board's discretion, divest control of its subsidiary depository institutions.

''(6) WELL MANAGED DEFINED.—For purposes of this subsection, the term 'well managed' has the same meaning as in section 2 of the Bank Holding Company Act of 1956.

''(e) CONSERVATORSHIP AUTHORITY.—

''(1) IN GENERAL.—The Board may appoint a conservator to take possession and control of a wholesale financial institution to the same extent and in the same manner as the Comptroller of the Currency may appoint a conservator for a national bank under section 203 of the Bank Conservation Act, and the conservator shall exercise the same powers, functions, and duties, subject to the same limitations, as are provided under such Act for conservators of national banks.

''(2) BOARD AUTHORITY.—The Board shall have the same authority with respect to any conservator appointed under paragraph (1) and the wholesale financial institution for which such conservator has been appointed as the Comptroller of the Currency has under the Bank Conservation Act with respect to a conservator appointed under such Act and a national bank for which the conservator has been appointed.

''(f) EXCLUSIVE JURISDICTION.—Subsections (c) and (e) of section 43 of the Federal Deposit Insurance Act shall not apply to any wholesale financial institution.''.

(c) VOLUNTARY TERMINATION OF INSURED STATUS BY CERTAIN INSTITUTIONS.—

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

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (10) as paragraphs (1) through (9), respectively.

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

''SEC. 8A. VOLUNTARY TERMINATION OF STATUS AS INSURED DEPOSITORY INSTITUTION.

''(a) IN GENERAL.—Except as provided in subsection (b), an insured State bank or a national bank may voluntarily terminate such bank's status as an insured depository institution in accordance with regulations of the Corporation if—

''(1) the bank provides written notice of the bank's intent to terminate such insured status—

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

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

''(2) either—

''(A) the deposit insurance fund of which such bank is a member equals or exceeds the fund's designated reserve ratio as of the date the bank provides a written notice under paragraph (1) and the Corporation determines that the fund will equal or exceed the applicable designated reserve ratio for the 2 semiannual assessment periods immediately following such date; or

''(B) the Corporation and the Board of Governors of the Federal Reserve System approved the termination of the bank's insured status and the bank pays an exit fee in accordance with subsection (e).

''(b) EXCEPTION.—Subsection (a) shall not apply with respect to—

''(1) an insured savings association; or

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

''(c) ELIGIBILITY FOR INSURANCE TERMINATED.—Any bank that voluntarily elects to terminate the bank's insured status under subsection (a) shall not be eligible for insurance on any deposits or any assistance authorized under this Act after the period specified in subsection (f)(1).

''(d) INSTITUTION MUST BECOME WHOLESALE FINANCIAL INSTITUTION OR TERMINATE DEPOSIT-TAKING ACTIVITIES.—Any depository institution which voluntarily terminates such institution's status as an insured depository institution under this section may not, upon termination of insurance, accept any deposits unless the institution is a wholesale financial institution subject to section 9B of the Federal Reserve Act.

''(e) EXIT FEES.—

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

''(2) PROCEDURES.—The Corporation shall prescribe, by regulation, procedures for assessing any exit fee under this subsection.

''(f) TEMPORARY INSURANCE OF DEPOSITS INSURED AS OF TERMINATION.—

''(1) TRANSITION PERIOD.—The insured deposits of each depositor in a State bank or a

national bank on the effective date of the voluntary termination of the bank's insured status, less all subsequent withdrawals from any deposits of such depositor, shall continue to be insured for a period of not less than 6 months and not more than 2 years, as determined by the Corporation. During such period, no additions to any such deposits, and no new deposits in the depository institution made after the effective date of such termination shall be insured by the Corporation.

''(2) TEMPORARY ASSESSMENTS; OBLIGATIONS AND DUTIES.—During the period specified in paragraph (1) with respect to any bank, the bank shall continue to pay assessments under section 7 as if the bank were an insured depository institution. The bank shall, in all other respects, be subject to the authority of the Corporation and the duties and obligations of an insured depository institution under this Act during such period, and in the event that the bank is closed due to an inability to meet the demands of the bank's depositors during such period, the Corporation shall have the same powers and rights with respect to such bank as in the case of an insured depository institution.

''(g) ADVERTISEMENTS.—

''(1) IN GENERAL.—A bank that voluntarily terminates the bank's insured status under this section shall not advertise or hold itself out as having insured deposits, except that the bank may advertise the temporary insurance of deposits under subsection (f) if, in connection with any such advertisement, the advertisement also states with equal prominence that additions to deposits and new deposits made after the effective date of the termination are not insured.

''(2) CERTIFICATES OF DEPOSIT, OBLIGATIONS, AND SECURITIES.—Any certificate of deposit or other obligation or security issued by a State bank or a national bank after the effective date of the voluntary termination of the bank's insured status under this section shall be accompanied by a conspicuous, prominently displayed notice that such certificate of deposit or other obligation or security is not insured under this Act.

''(h) NOTICE REQUIREMENTS.—

''(1) NOTICE TO THE CORPORATION.—The notice required under subsection (a)(1)(A) shall be in such form as the Corporation may require.

''(2) NOTICE TO DEPOSITORS.—The notice required under subsection (a)(1)(B) shall be—

''(A) sent to each depositor's last address of record with the bank; and

''(B) in such manner and form as the Corporation finds to be necessary and appropriate for the protection of depositors.''.

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

Subtitle E—Streamlining Antitrust Review of Bank Acquisitions and Mergers

SEC. 141. AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956.

(a) AMENDMENTS TO SECTION 3 TO REQUIRE FILING OF APPLICATION COPIES WITH ANTITRUST AGENCIES.—Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) is amended—

(1) in subsection (b) by inserting after paragraph (2) the following new paragraph:

''(3) REQUIREMENT TO FILE INFORMATION WITH ANTITRUST AGENCIES.—Any applicant seeking prior approval of the Board to engage in an acquisition transaction under this section must file simultaneously with the Attorney General and, if the transaction also involves an acquisition under section 4 or 6, the Federal Trade Commission copies of any documents regarding the proposed transaction required by the Board.''; and

(2) in subsection (c)—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively.

(b) AMENDMENTS TO SECTION 11 TO MODIFY JUSTICE DEPARTMENT NOTIFICATION AND POST-APPROVAL WAITING PERIOD FOR SECTION 3 TRANSACTIONS.—Section 11 of the Bank Holding Company Act of 1956 (12 U.S.C. 1849) is amended—

(1) in subsection (b)(1)—

(A) by striking '', if the Board has not received any adverse comment from the Attorney General of the United States relating to competitive factors,'';

(B) by striking ''as may be prescribed by the Board with the concurrence of the Attorney General, but in no event less than 15 calendar days after the date of approval.'' and inserting ''as may be prescribed by the appropriate antitrust agency.''; and

(C) by striking the 3d to last sentence and the penultimate sentence; and

(2) by striking subsections (c) and (e) and redesignating subsections (d) and (f) as subsections (c) and (d), respectively.

(c) DEFINITIONS.—Section 2(o) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(o)) is amended by adding at the end the following new paragraphs:

''(8) ANTITRUST AGENCIES.—The term 'antitrust agencies' means the Attorney General and the Federal Trade Commission.

''(9) APPROPRIATE ANTITRUST AGENCY.—With respect to a particular transaction, the term 'appropriate antitrust agency' means the antitrust agency engaged in reviewing the competitive effects of such transaction.''.

SEC. 142. AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT TO VEST IN THE ATTORNEY GENERAL SOLE RESPONSIBILITY FOR ANTITRUST REVIEW OF DEPOSITORY INSTITUTION MERGERS.

Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended—

(1) in paragraph (3)(C) by striking ''during a period at least as long as the period allowed for furnishing reports under paragraph (4) of this subsection'';

(2) by striking paragraph (4) and inserting the following new paragraph:

''(4) FACTORS TO BE CONSIDERED.—In determining whether to approve a transaction, the responsible agency shall in every case take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served.'';

(3) by striking paragraph (5) and inserting the following new paragraph:

''(5) NOTICE TO ATTORNEY GENERAL.—The responsible agency shall immediately notify the Attorney General of any approval by it pursuant to this subsection of a proposed merger transaction. If the responsible agency has found that it must act immediately in order to prevent the probable failure of one of the banks involved, the transaction may be consummated immediately upon approval by the agency. If the responsible agency has notified the other Federal banking agencies referred to in this section of the existence of an emergency requiring expeditious action and has required the submission of views and recommendations within 10 days, the transaction may not be consummated before the 5th calendar day after the date of approval of the responsible agency. In all other cases, the transaction may not be consummated before the 30th calendar day after the date of approval by the agency, or such shorter period of time as may be prescribed by the Attorney General.'';

(4) by striking paragraph (6) and redesignating paragraphs (7) through (11) as paragraphs (6) through (10), respectively;

(5) in subparagraph (A) of paragraph (6) (as so redesignated by paragraph (4) of this section)—

(A) by striking ''(5)'' and inserting ''(4)''; and

(B) by striking ''(6)'' and inserting ''(5)'';

(C) by striking ''In any such action, the court shall review de novo the issues presented.'';

(6) in paragraph (6) (as so redesignated by paragraph (4) of this section)—

(A) by striking subparagraphs (B) and (D); and

(B) by redesignating subparagraph (C) as subparagraph (B);

(7) in paragraph (8) (as so redesignated by paragraph (4) of this section)—

(A) by inserting ''and'' after the semicolon at the end of subparagraph (A):

(B) by striking subparagraph (B); and

(C) by redesignating subparagraph (C) as subparagraph (B); and

(8) by inserting after paragraph (10) (as so redesignated by paragraph (4) of this section) the following new paragraph:

''(11) REQUIREMENT TO FILE INFORMATION WITH ATTORNEY GENERAL.—Any applicant seeking prior written approval of the responsible Federal banking agency to engage in a merger transaction under this subsection shall file simultaneously with the Attorney General copies of any documents regarding the proposed transaction required by the Federal banking agency.''.

SEC. 143. INFORMATION FILED BY DEPOSITORY INSTITUTIONS; INTERAGENCY DATA SHARING.

(a) FORMAT OF NOTICE.—

(1) IN GENERAL.—Notice of any proposed transaction for which approval is required under section 3 of the Bank Holding Company Act of 1956 or section 18(c) of the Federal Deposit Insurance Act shall be in a format designated and required by the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) and shall contain a section on the likely competitive effects of the proposed transaction.

(2) DESIGNATION BY AGENCY.—The appropriate Federal banking agency, with the concurrence of the antitrust agencies, shall designate and require the form and content of the competitive effects section.

(3) NOTICE OF SUSPENSION.—Upon notification by the appropriate antitrust agency that the competitive effects section of an application is incomplete, the appropriate Federal banking agency shall notify the applicant that the agency will suspend processing of the application until the appropriate antitrust agency notifies the agency that the application is complete.

(4) EMERGENCY ACTION.—This provision shall not affect the appropriate Federal banking agency's authority to act immediately—

(A) to prevent the probable failure of 1 of the banks involved; or

(B) to reduce or eliminate a post approval waiting period in case of an emergency requiring expeditious action.

(5) EXEMPTION FOR CERTAIN FILINGS.—With the concurrence of the antitrust agencies, the appropriate Federal banking agency may exempt classes of persons, acquisitions, or transactions that are not likely to violate the antitrust laws from the requirement that applicants file a competitive effects section.

(b) INTERAGENCY DATA SHARING REQUIREMENT.—

(1) IN GENERAL.—To the extent not prohibited by other law, the Federal banking agencies shall make available to the antitrust agencies any data in their possession that

the antitrust agencies deem necessary for antitrust reviews of transactions requiring approval under section 3 of the Bank Holding Company Act of 1956 or section 18(c) of the Federal Deposit Insurance Act.

(2) CONTINUATION OF DATA COLLECTION AND ANALYSIS.—The Federal banking agencies shall continue to provide market analysis, deposit share information, and other relevant information for determining market competition as needed by the Attorney General in the same manner such agencies provided analysis and information under section 18(c) of the Federal Deposit Insurance Act and 3(c) of the Bank Holding Company Act of 1956 (as such sections were in effect on the day before the date of the enactment of this Act) and shall continue to collect information necessary or useful for such analysis.

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

(1) ANTITRUST AGENCIES.—The term ''antitrust agencies'' means the Attorney General and the Federal Trade Commission.

(2) APPROPRIATE ANTITRUST AGENCY.—With respect to a particular transaction, the term ''appropriate antitrust agency'' means the antitrust agency engaged in reviewing the competitive effects of such transaction.

SEC. 144. APPLICABILITY OF ANTITRUST LAWS.

No provision of this subtitle shall be construed as affecting—

(1) the applicability of antitrust laws (as defined in section 11(d) of the Bank Holding Company Act of 1956; as so redesignated pursuant to this subtitle); or

(2) the applicability, if any, of any State law which is similar to the antitrust laws.

SEC. 145. CLARIFICATION OF STATUS OF SUBSIDIARIES AND AFFILIATES.

(a) CLARIFICATION OF FEDERAL TRADE COMMISSION JURISDICTION.—Any person which directly or indirectly controls, is controlled directly or indirectly by, or is directly or indirectly under common control with, any bank or savings association (as such terms are defined in section 3 of the Federal Deposit Insurance Act) and is not itself a bank or savings association shall not be deemed to be a bank or savings association for purposes of the Federal Trade Commission Act or any other law enforced by the Federal Trade Commission.

(b) SAVINGS PROVISION.—No provision of this section shall be construed as restricting the authority of any Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) under any Federal banking law, including section 8 of the Federal Deposit Insurance Act.

SEC. 146. EFFECTIVE DATE.

This subtitle shall take effect 6 months after the date of enactment of this Act.

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.

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

''(3) TERMINATION OF GRANDFATHERED RIGHTS.—

''(A) IN GENERAL.—If any foreign bank or foreign company files a declaration under section 6(b)(1)(E) or which receives a determination under section 10(d)(1) of the Bank Holding Company Act of 1956, any authority conferred by this subsection on any foreign bank or company to engage in any activity which the Board has determined to be permissible for financial holding companies under section 6 of such Act shall terminate immediately.

''(B) RESTRICTIONS AND REQUIREMENTS AUTHORIZED.—If a foreign bank or company that engages, directly or through an affiliate pursuant to paragraph (1), in an activity which the Board has determined to be permissible for financial holding companies under section 6 of the Bank Holding Company Act of 1956 has not filed a declaration with the Board of its status as a financial holding company under such section or received a determination under section 10(d)(1) by the end of the 2-year period beginning on the date of enactment of the Financial Services Act of 1998, the Board, giving due regard to the principle of national treatment and equality of competitive opportunity, may impose such restrictions and requirements on the conduct of such activities by such foreign bank or company as are comparable to those imposed on a financial holding company organized under the laws of the United States, including a requirement to conduct such activities in compliance with any prudential safeguards established under section 5(h) of the Bank Holding Company Act of 1956.''.

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.

Section 8A of the Federal Deposit Insurance Act (as added by section 136(c)(2) of this Act) is amended by adding at the end the following new subsection:

''(i) VOLUNTARY TERMINATION OF DEPOSIT INSURANCE.—The provisions on voluntary termination of insurance in this section shall apply to an insured branch of a foreign bank (including a Federal branch) in the same manner and to the same extent as they apply to an insured State bank or a national bank.''.

Subtitle G—Federal Home Loan Bank System

SEC. 161. FEDERAL HOME LOAN BANKS–

The 1st sentence of section 3 of the Federal Home Loan Bank Act (12 U.S.C. 1423) is amended—

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

(2) by inserting ''the States into not less than 1'' before ''nor''.

SEC. 162. MEMBERSHIP AND COLLATERAL.

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

''(f) FEDERAL HOME LOAN BANK MEMBERSHIP.—A Federal savings association may become a member, of the Federal Home Loan Bank System, and shall qualify for such membership in the manner provided by the Federal Home Loan Bank Act, beginning January 1, 1999.''.

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

(1) in the 2d sentence, by striking ''and the Board''; and

(2) in the 3d sentence, by striking ''Board'' and inserting ''Bank''.

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

(1) in the 2d sentence, by striking ''All long-term advances'' and inserting ''Except as provided in the succeeding sentence, all long-term advances'';

(2) by inserting after the 2d sentence, the following sentence: ''Notwithstanding the preceding sentence, long-term advances may be made to members insured by the Federal Deposit Insurance Corporation which have less than $500,000,000 in total assets for the purpose of funding small businesses, agriculture, rural development, or low-income community development (as defined by the Board).''; and

(3) by redesignating paragraph (5) as paragraph (6) and inserting after paragraph (4) the following new paragraph:

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

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

''(3) ELIGIBILITY REQUIREMENTS FOR COMMUNITY FINANCIAL INSTITUTIONS.—The requirements of paragraph (2) (other than subparagraph (B) of such paragraph) shall not apply to any insured depository institution which has total assets of less than $500,000,000.

(e) Section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430) is amended by striking the 1st of the 2 subsections designated as subsection (e) (relating to qualified thrift lender status).

SEC. 163. THE OFFICE OF FINANCE.

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

''SEC. 5. THE OFFICE OF FINANCE.

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

''(b) POWERS.—Subject to the other provisions of this Act and such safety and soundness regulations as the Finance Board may prescribe, the Office shall be authorized by the Federal home loan banks to act as the agent of such banks to issue Federal home loan bank notes, bonds and debentures pursuant to section 11 of this Act on behalf of the banks.

''(c) CENTRAL BOARD OF DIRECTORS.—

''(1) ESTABLISHMENT.—The Federal home loan banks shall establish a central board of directors of the Office to administer the affairs of the Office in accordance with the provisions of this Act.

''(2) COMPOSITION OF BOARD.—Each Federal home loan bank shall annually select 1 individual who, as of the time of the election, is an officer or director of such bank to serve as a member of the central board of directors of the Office.

''(d) STATUS.—Except to the extent expressly provided in this Act, the Office shall be treated as a Federal home loan bank for purposes of any law.''.

SEC. 164. MANAGEMENT OF BANKS.

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

''(a) The management of each Federal home loan bank shall be vested in a board of 15 directors, 9 of whom shall be elected by the members in accordance with this section, 6 of whom shall be appointed by the Board referred to in section 2A, and all of whom shall be citizens of the United States and bona fide residents of the district in which such bank is located. At least 2 of the Federal home loan bank directors who are appointed by the Board shall be representatives chosen from organizations with more than a 2-year history of representing consumer or community interests on banking services, credit needs, housing, or financial consumer

protections. No Federal home loan bank director who is appointed pursuant to this subsection may, during such bank director's term of office, serve as an officer of any Federal home loan bank or a director or officer of any member of a bank, or hold shares, or any other financial interest in, any member of a bank.

''(b) The elective directors shall be divided into three classes, designated as classes A, B, and C, as nearly equal in number as possible. Each directorship shall be filled by a person who is an officer or director of a member located in that bank's district. Each class shall represent members of similar asset size, and the Board shall, to the maximum extent possible, seek to achieve geographic diversity. The Finance Board shall establish the minimum and maximum asset size for each class. Any member shall be entitled to nominate and elect eligible persons for its class of directorship; such offices shall be filled from such nominees by a plurality of the votes which members of each class may cast for nominees in their corresponding class of directors in an election held for the purpose of filling such offices. Each member shall be permitted to cast one vote for each share of Federal home loan bank stock owned by that member. No person who is an officer or director of a member that fails to meet any applicable capital requirement is eligible to hold the office of Federal Home Loan Bank director. As used in this subsection, the term ''member'' means a member of a Federal home loan bank which was a member of such Bank as of a record date established by the Bank.''.

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

(1) by striking subsections (c) and (h); and

(2) by redesignating subsections (d), (e), (f), (g), (i), (j), and (k) as subsections (c), (d), (e), (f), (g), (h), and (i), respectively.

(c) Subsection (c) of section 7 of the Federal Home Loan Bank Act (12 U.S.C. 1427(d)) (as so redesignated by subsection (b) of this section) is amended by striking the 1st and 2d sentences and inserting the following 2 new sentences: ''The term of each position of director shall be 3 years. No director serving for 3 consecutive terms, nor any other officer, director or that member or any affiliated depository institution, shall be eligible for another term earlier than 3 years after the expiration of the last expiring of said 3-year terms. 3 elected directors of different classes as specified by the Finance Board shall be elected by ballot annually.''.

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

''(d) TRANSITION PROVISION.—In the 1st election after the date of the enactment of the Financial Services Act of 1998, 3 directors shall be elected in each of the 3 classes of elective directorship. The Finance Board may, in the 1st election after such date of enactment, designate the terms of each elected director in each class, not to exceed 3 years, to assure that, in each subsequent election, 3 directors from different classes of elective directorships are elected each year.''.

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

SEC. 165. ADVANCES TO NONMEMBER BORROWERS.

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

(1) in subsection (a), by striking ''(a) IN GENERAL.—'';

(2) by striking the 4th sentence of subsection (a), and inserting ''Notwithstanding the preceding sentence, if an advance is made for the purpose of facilitating mortgage lending that benefits individuals and families that meet the income requirements set forth in section 142(d) or 143(f) of the Internal Revenue Code of 1986, the advance may be collateralized as provided in section 10(a) of this Act.''; and

(3) by striking subsection (b).

SEC. 166. POWERS AND DUTIES OF BANKS.

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

(1) by inserting ''through the Office of Finance'' after ''to issue'';

(2) by striking ''Board'' after ''upon such terms and conditions as the'' and inserting ''board of directors of the bank''.

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

''(b) ISSUANCE OF FEDERAL HOME LOAN BANK CONSOLIDATED BONDS.—

''(1) IN GENERAL.— The Office of Finance may issue consolidated Federal home loan bank bonds and other consolidated obligations on behalf of the banks.

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

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

''(B) shall be issued upon such terms and conditions as shall be established by the Office of Finance subject to such rules and regulations as the Finance Board may prescribe.''.

(c) Section 11(f) of the Federal Home Loan Bank Act (12 U.S.C. 1430(f) (as designated before the redesignation by subsection (e) of this section) is amended by striking both commas immediately following ''permit'' and inserting ''or''.

(d) Subsection (i) of section 11 of the Federal Home Loan Bank Act (12 U.S.C. 1431(i)) is amended by striking the 2d undesignated paragraph.

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

(1) by striking subsection (c); and

(2) by redesignating subsections (d) through (k) as subsections (c) through (j), respectively.

SEC. 167. MERGERS AND CONSOLIDATIONS OF FEDERAL HOME LOAN BANKS.

Section 26 of the Federal Home Loan Bank Act (12 U.S.C. 1446) is amended by designating the current paragraph as ''(a)'' and adding the following new sections:

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

''(c) NUMBER OF ELECTED DIRECTORS OF RESULTING BANK.— Subject to section 7 of this Act, any bank resulting from a merger, combination, or consolidation pursuant to this section may have a number of elected directors equal to or less than the total number of elected directors of all the banks which participated in such transaction (as determined immediately before such transaction).

''(d) NUMBER OF APPOINTED DIRECTORS OF RESULTING BANK.—The number of appointed directors of any bank resulting from a merger, combination, or consolidation pursuant to this section shall be a number that is three less than the number of elected directors.

''(e) ADJUSTMENT OF DISTRICT BOUNDARIES.—After consummation of any merger, combination, or consolidation of 2 or more Federal home loan banks, the Finance Board shall adjust the districts established in section 3 of this Act to reflect such merger, combination, or consolidation.''.

SEC. 168. TECHNICAL AMENDMENTS.

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

(b) SECTION 12.—

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

(A) by striking ''subject to the approval of the Board'' immediately following ''transaction of its business''; and

(B) by striking ''and, by its Board of directors, to prescribe, amend, and repeal by-laws, rules, and regulations governing the manner in which its affairs may be administered; and the powers granted to it by law may be exercised and enjoyed subject to the approval of the Board. The president of a Federal Home Loan Bank may also be a member of the Board of directors thereof, but no other officer, employee, attorney, or agent of such bank,'' and inserting ''and, by the board of directors of the bank, to prescribe, amend, and repeal by-laws governing the manner in which its affairs may be administered, consistent with applicable statute and regulation, as administered by the Finance Board. No officer, employee, attorney, or agent of a Federal home loan bank''.

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

''(c) PROHIBITION ON EXCESSIVE COMPENSATION.—

''(1) IN GENERAL.—The Finance Board shall prohibit the Federal home loan banks from providing compensation to any officer, director, or employee that is not reasonable and comparable with the compensation for employment in other similar businesses involving similar duties and responsibilities. However, the Finance Board may not prescribe or set a specific level or range of compensation for any officer, director, or employee.

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

''(3) EXCEPTION FOR EXISTING CONTRACTS.—Paragraph (1) shall not apply to any contract entered into before June 1, 1997.''.

(c) POWERS AND DUTIES OF FEDERAL HOUSING FINANCE BOARD.—

(1) Subsection (a)(1) of section 2B of the Federal Home Loan Bank Act (12 U.S.C. 1422b(a)(1)) is amended by striking the period at the end of the sentence and inserting ''; and to have the same powers, rights, and duties to enforce this Act with respect to the Federal home loan banks and the senior officers and directors of such banks as the Office of Federal Housing Enterprise Oversight has over the Federal housing enterprises and the senior officers and directors of such enterprises under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.''.

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

(A) by striking ''(1) BOARD STAFF.—'';

(B) by striking ''function to any employee, administrative unit'' and inserting ''function to any employee or administrative unit'';

(C) by striking the 2d sentence in paragraph (1); and

(D) by striking paragraph (2).

(3) Section 111 of Public Law 93–495 (12 U.S.C. 250) is amended by striking ''Federal Home Loan Bank Board'' and inserting ''Federal Housing Finance Board''.

(d) ELIGIBILITY TO SECURE ADVANCES.—

(1) SECTION 9.—Section 9 of the Federal Home Loan Bank Act (12 U.S.C. 1429) is amended—

(A) in the second sentence, by striking ''with the approval of the Board''; and

(B) in the third sentence, by striking '', subject to the approval of the Board,''.

(2) SECTION 10.—

(A) Subsection (a) of section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430(a)) is amended in paragraph (3), by striking ''Deposits'' and inserting ''Cash or deposits''.

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

(i) in the 1st sentence by striking ''Board'' and inserting ''Federal home loan bank''; and

(ii) by striking the 2d sentence.

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

(i) in the 1st sentence, by striking ''and the approval of the Board'';

(ii) in the last sentence, by striking ''Subject to the approval of the Board, any'' and inserting ''Any''.

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

(i) in the 1st sentence of paragraph (1) by striking ''to subsidize the interest rate on advances'' and inserting ''to provide subsidies, including subsidized interest rates on advances'';

(ii) in paragraphs (2), (3), (4), (5), (9), (11), and (12) by striking ''advances'' and ''subsidized advances'' each place such terms appear and inserting ''subsidies, including subsidized advances'';

(iii) in paragraph (1), by inserting ''(A)'' before the 1st sentence, and inserting the following at the end of the paragraph:

''(B) Subject to such regulations as the Finance Board may prescribe, the board of directors of each Federal home loan bank may approve or disapprove requests from members for Affordable Housing Program subsidies, and may not delegate such authority.'';

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

''(B) finance the purchase, construction or rehabilitation of rental housing if, for a period of at least 15 years, either 20 percent or more of the units in such housing are occupied by and affordable for households whose income is 50 percent or less of area median income (as determined by the Secretary of Housing and Urban Development, and as adjusted for family size); or 40 percent or more of the units in such housing are occupied by and affordable for households whose income is 60 percent or less of area median income (as determined by the Secretary of Housing and Urban Development, and as adjusted for family size).'';

(v) in paragraph (5)—

(I) by striking the colon after ''Affordable Housing Program'';

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

(III) by striking ''(C) In 1995, and subsequent years,'';

(vi) in paragraph (11)—

(I) by inserting '', pursuant to a nomination process that is as broad and as participatory as possible, and giving consideration to the size of the District and the diversity of low- and moderate-income housing needs and activities within the District,'' after ''Advisory Council of 7 to 15 persons'';

(II) by inserting ''a diverse range of'' before ''community and nonprofit organizations''; and

(III) by inserting after the 1st sentence, the following new sentence: ''Representatives of no one group shall constitute an undue proportion of the membership of the Advisory Council.''; and

(vii) in paragraph (13), by striking subparagraph (D) and inserting the following new subparagraph:

''(D) AFFORDABLE.—For purposes of paragraph (2)(B), the term ''affordable'' means that the rent with respect to a unit shall not exceed 30 percent of the income limitation under paragraph (2)(B) applicable to occupants of such unit.''.

(e) SECTION 16.—Subsection (a) of section 16 of the Federal Home Loan Bank Act (12 U.S.C. 1436) is amended in the 3d sentence by striking ''net earnings'' and inserting ''previously retained earnings or current net earnings''; by striking '', and then only with the approval of the Federal Housing Finance Board''; and by striking the 4th sentence.

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

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

''(k) PROHIBITION ON OTHER ACTIVITIES.—

''(1) A Federal home loan bank may not engage in any activity other than the activities authorized under this Act and activities incidental to such authorized activities.

''(2) All activities specified in paragraph (1) are subject to Finance Board approval.''.

SEC. 169. DEFINITIONS.

Paragraph (3) of section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422(3)) is amended to read as follows:

''(3) The term ''State'' in addition to the states of the United States, includes the District of Columbia, Guam, Puerto Rico, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.''

SEC. 170. RESOLUTION FUNDING CORPORATION

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

''(C) PAYMENTS BY FEDERAL HOME LOAN BANKS.—To the extent the amounts available pursuant to subparagraphs (A) and (B) are insufficient to cover the amount of interest payments, each Federal home loan bank shall pay to the Funding Corporation each calendar year 20.75 percent of the net earnings of such bank (after deducting expenses relating to subsection (j) of section 10 and operating expenses).''.

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

SEC. 171. CAPITAL STRUCTURE OF THE FEDERAL HOME LOAN BANKS.

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

''SEC. 6. CAPITAL STRUCTURE OF FEDERAL HOME LOAN BANKS.

''(a) CAPITAL STRUCTURE PLAN.—On or before January 1, 1999, the board of directors of each Federal home loan bank shall submit for Finance Board approval a plan establishing and implementing a capital structure for such bank which—

''(1) the board of directors determines is the best suited for the condition and operation of the bank and the interests of the shareholders of the bank;

''(2) meets the requirements of subsection (b); and

''(3) meets the minimum capital standards and requirements established under subsection (c) and any regulations prescribed by the Finance Board pursuant to such subsection.

''(b) CONTENTS OF PLAN.—The capital structure plan of each Federal home loan bank shall meet the following requirements:

''(1) STOCK PURCHASE REQUIREMENTS.—

''(A) IN GENERAL.—Each capital structure plan of a Federal home loan bank shall require the shareholders of the bank to maintain an investment in the stock of the bank in amount not less than—

''(i) a minimum percentage of the total assets of the shareholder; and

''(ii) a minimum percentage of the outstanding advances from the bank to the shareholder.

''(B) MINIMUM PERCENTAGE LEVELS.—The minimum percentages established pursuant to subparagraph (A) shall be set at levels sufficient to meet the bank's minimum capital requirements established by the Finance Board under subsection (c).

''(C) MAXIMUM ASSET BASED CAPITAL REQUIREMENT.—The asset-based capital requirement applicable to any shareholder of a Federal home loan bank in any year shall not exceed the lesser of—

''(i) 0.6 percent of a shareholder's total assets at the close of the preceding year; or

''(ii) $300,000,000.

''(D) MAXIMUM ADVANCE-BASED REQUIREMENT.—The advance-based capital requirement applicable to any shareholder of a Federal home loan bank shall not exceed 6 percent of the total outstanding advances from the bank to the shareholder.

''(E) MINIMUM STOCK PURCHASE REQUIREMENT AUTHORIZED.—A capital structure plan may establish a minimum dollar amount of stock of a Federal home loan bank in which a shareholder shall be required to invest.

''(2) ADJUSTMENTS TO STOCK PURCHASE REQUIREMENTS.—The capital structure plan adopted by each Federal home loan bank shall impose a continuing obligation on the board of directors of the bank to review and adjust as necessary member stock purchase requirements in order to ensure that the bank remains in compliance with applicable minimum capital levels established by the Finance Board.

''(3) TRANSITION RULE FOR STOCK PURCHASE REQUIREMENTS.—

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

''(B) INTERIM PURCHASE REQUIREMENTS.—A capital structure plan may establish interim asset-based stock purchase requirements applicable to members referred to in subparagraph (A) during a transition period established under subparagraph (A).

''(4) CLASSES OF STOCK.—

''(A) IN GENERAL.—Each capital structure plan shall afford each shareholder of a Federal home loan bank the option of meeting the shareholder's stock purchase requirements through the purchase of any combination of Class A or Class B stock.

''(B) CLASS A STOCK.—Class A stock shall be stock of a Federal home loan bank that shall be redeemed in cash and at par by the bank no later than 12 months following submission of a written notice by a shareholder of the shareholder's intention to divest all shares of stock in the bank.

''(C) CLASS B STOCK.—Class B stock shall be stock of a Federal home loan bank that shall be redeemed in cash and at par by the bank no later than 5 years following submission of a written notice by a shareholder of the shareholder's intention to divest all shares of stock in the bank.

''(D) RIGHTS REQUIREMENT.—The Class B stock of a Federal home loan bank may receive a dividend premium over that paid on Class A stock, and may have preferential

voting rights in the election of Federal home loan bank directors.

''(E) LOWER STOCK PURCHASE REQUIREMENTS FOR CLASS B STOCK.—A capital structure plan may provide for lower stock purchase requirements with respect to those shareholder's that elect to purchase Class B stock in a manner that is consistent with meeting the bank's own minimum capital requirements as established by the Finance Board.

''(F) NO OTHER CLASSES OF STOCK PERMITTED.—No class of stock other than the Class A and Class B stock described in subparagraphs (B) and (C) may be issued by a Federal home loan bank.

''(5) LIMITED TRANSFERABILITY OF STOCK.—Each capital structure plan shall provide that any equity securities issued by the bank shall be available only to, held only by, and tradable only among shareholders of the bank.

''(c) CAPITAL STANDARDS.—

''(1) IN GENERAL.—The Finance Board shall prescribe, by regulation, uniform capital standards applicable to each Federal home loan bank which shall include—

''(A) a leverage limit in accordance with paragraph (2); and

''(B) a risk-based capital requirement in accordance with paragraph (3).

''(2) MINIMUM LEVERAGE LIMIT.—The leverage limit established by the Finance Board shall require each Federal home loan bank to maintain total capital in an amount not less than 5 percent of the total assets of the bank. In determining compliance with the minimum leverage ratio, the amount of retained earnings and the paid-in value of Class B stock, if any, shall be multiplied by 1.5 and such higher amount shall be deemed to be capital for purposes of meeting the 5 percent minimum leverage ratio.

''(3) RISK-BASED CAPITAL STANDARD.—The risk-based capital requirement shall be composed of the following components:

''(A) Capital sufficient to meet the credit risk to which a Federal home loan bank is subject, based on an amount which is not less than the amount of tier 1, risk-based capital required by regulations prescribed, or guidelines issued under section 38 of the Federal Deposit Insurance Act for a well capitalized insured depository institution.

''(B) Capital sufficient to meet the interest rate risk to which a Federal home loan bank is subject, based on an interest rate stress test applied by the Finance Board that rigorously tests for changes in interest rates, rate volatility, and changes in the shape of the yield curve.

''(d) REDEMPTION OF CAPITAL.—

''(1) IN GENERAL.—Any shareholder of a Federal home loan bank shall have the right to withdraw the shareholder's membership from a Federal home loan bank and to redeem the shareholder's stock in accordance with the redemption rights associated with the class of stock the shareholder holds, if—

''(A) such shareholder has filed a written notice of an intention to redeem all such shares; and

''(B) the shareholder has no outstanding advances from any Federal home loan bank at the time of such redemption.

''(2) PARTIAL REDEMPTION.—A shareholder who files notice of intention to redeem all shares of stock in a Federal home loan bank may redeem not more than 1/2 of all such shares, in cash and at par, 6 months before the date by which the bank is required to redeem such stock pursuant to subparagraph (B) or (C) of subsection (b)(4).

''(3) DIVESTITURE.—The board of directors of any Federal home loan bank may, after a hearing, order the divestiture by any shareholder of all ownership interests of such shareholder in the bank, if—

''(A) in the opinion of the board of directors, such shareholder has failed to comply with a provision of this Act or any regulation prescribed under this Act; or

''(B) the shareholder has been determined to be insolvent, or otherwise subject to the appointment of a conservator, receiver, or other legal custodian, by a State or Federal authority with regulatory and supervisory responsibility for such shareholder.

''(4) RETIREMENT OF EXCESS STOCK.—Any shareholder may—

''(A) retire shares of Class A stock or, at the option of the shareholder, shares of Class B stock, or any combination of Class A and Class B stock, that are excess to the minimum stock purchase requirements applicable to the shareholder; and

''(B) receive from the Federal home loan bank a prompt payment in cash equal to the par value of such stock.

''(5) IMPAIRMENT OF CAPITAL.—If the Finance Board or the board of directors of a Federal home loan bank determines that the paid-in capital of the bank is, or is likely to be, impaired as a result of losses in or depreciation of the assets of the bank, the Federal home loan bank shall withhold that portion of the amount due any shareholder with respect to any redemption or retirement of any class of stock which bears the same ratio to the total of such amount as the amount of the impaired capital bears to the total amount of capital allocable to such class of stock.

''(6) POLICIES.—Subject to the requirements of this section, the board of directors of each Federal home loan bank shall promptly establish policies, consistent with this Act, governing the capital stock of such bank and other provisions of this section.''.

SEC. 172. INVESTMENTS.

Subsection (j) of section 11 of the Federal Home Loan Bank Act (12 U.S.C. 1431) (as so redesignated by section 166(e) of this subtitle) is amended to read as follows:

''(j) INVESTMENTS.—Each bank shall reduce its investments to those necessary for liquidity purposes, for safe and sound operation of the banks, or for housing finance, as administered by the Finance Board.''.

SEC. 173. FEDERAL HOUSING FINANCE BOARD.

Section 2A(b)(1) of the Federal Home Loan Bank Act (12 U.S.C. 1422(b)(1)) is amended—

(1) by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively;

(2) by inserting before subparagraph (B) (as so redesignated by paragraph (1) of this section) the following new subparagraph:

''(A) The Secretary of the Treasury (or the Secretary of the Treasury's designee), who shall serve without additional compensation.''; and

(3) in subparagraph (C) (as so redesignated by paragraph (1) of this section) by striking ''Four'' and inserting ''3''.

Subtitle H—Direct Activities of Banks

SEC. 181. AUTHORITY OF NATIONAL BANKS TO UNDERWRITE CERTAIN MUNICIPAL BONDS

The paragraph designated the Seventh of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24(7)) is amended by adding at the end the following new sentence: ''In addition to the provisions in this paragraph for dealing in, underwriting or purchasing securities, the limitations and restrictions contained in this paragraph as to dealing in, underwriting, and purchasing investment securities for the national bank's own account shall not apply to obligations (including limited obligation bonds, revenue bonds, and obligations that satisfy the requirements of section 142(b)(1) of the Internal Revenue Code of 1986) issued by or on behalf of any state or political subdivision of a state, including any municipal corporate instrumentality of 1 or more states, or any public agency or authority of any state or political subdivision of a state, if the national banking association is well capitalized (as defined in section 38 of the Federal Deposit Insurance Act).''.

Subtitle I—Effective Date of Title

SEC. 191. EFFECTIVE DATE.

Except with regard to any subtitle or other provision of this title for which a specific effective date is provided, this title and the amendments made by this title shall take effect at the end of the 270-day period beginning on the date of the enactment of this Act.

TITLE II—FUNCTIONAL REGULATION

Subtitle A—Brokers and Dealers

SEC. 201. DEFINITION OF BROKER.

Section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)) is amended to read as follows:

''(4) BROKER.—

''(A) IN GENERAL.—The term 'broker' means any person engaged in the business of effecting transactions in securities for the account of others.

''(B) EXCEPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a broker because the bank engages in any of the following activities under the conditions described:

''(i) THIRD PARTY BROKERAGE ARRANGEMENTS.—The bank enters into a contractual or other arrangement with a broker or dealer registered under this title under which the broker or dealer offers brokerage services on or off the premises of the bank if—

''(I) such broker or dealer is clearly identified as the person performing the brokerage services;

''(II) the broker or dealer performs brokerage services in an area that is clearly marked and, to the extent practicable, physically separate from the routine deposit-taking activities of the bank;

''(III) any materials used by the bank to advertise or promote generally the availability of brokerage services under the contractual or other arrangement clearly indicate that the brokerage services are being provided by the broker or dealer and not by the bank;

''(IV) any materials used by the bank to advertise or promote generally the availability of brokerage services under the contractual or other arrangement are in compliance with the Federal securities laws before distribution;

''(V) bank employees (other than associated persons of a broker or dealer who are qualified pursuant to the rules of a self-regulatory organization) perform only clerical or ministerial functions in connection with brokerage transactions including scheduling appointments with the associated persons of a broker or dealer, except that bank employees may forward customer funds or securities and may describe in general terms the range of investment vehicles available from the bank and the broker or dealer under the contractual or other arrangement;

''(VI) bank employees do not directly receive incentive compensation for any brokerage transaction unless such employees are associated persons of a broker or dealer and are qualified pursuant to the rules of a self-regulatory organization, except that the bank employees may receive compensation for the referral of any customer if the compensation is a nominal one-time cash fee of a fixed dollar amount and the payment of the fee is not contingent on whether the referral results in a transaction;

''(VII) such services are provided by the broker or dealer on a basis in which all customers which receive any services are fully disclosed to the broker or dealer;

''(VIII) the bank does not carry a securities account of the customer except in a customary custodian or trustee capacity; and

''(IX) the bank, broker, or dealer informs each customer that the brokerage services are provided by the broker or dealer and not by the bank and that the securities are not deposits or other obligations of the bank, are not guaranteed by the bank, and are not insured by the Federal Deposit Insurance Corporation.

''(ii) TRUST ACTIVITIES.—The bank—

''(I) effects transactions in a trustee capacity and is primarily compensated based on an annual fee (payable on a monthly, quarterly, or other basis) or percentage of assets under management, or both; or

''(II) effects transactions in a fiduciary capacity in its trust department or other department that is regularly examined by bank examiners for compliance with fiduciary principles and standards and—

''(aa) is primarily compensated on the basis of either an annual fee (payable on a monthly, quarterly, or other basis), a percentage of assets under management, or both, and does not receive brokerage commissions or other similar remuneration based on effecting transactions in securities, other than the cost incurred by the bank in connection with executing securities transactions for fiduciary customers; and

''(bb) does not publicly solicit brokerage business, other than by advertising that it effects transactions in securities in conjunction with advertising its other trust activities.

''(iii) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank effects transactions in—

''(I) commercial paper, bankers acceptances, or commercial bills;

''(II) exempted securities;

''(III) qualified Canadian government obligations as defined in section 5136 of the Revised Statutes, in conformity with section 15C of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or

''(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.

''(iv) CERTAIN STOCK PURCHASE PLANS.—

''(I) IN GENERAL.—The bank effects transactions, as part of its transfer agency activities, in—

''(aa) the securities of an issuer as part of any pension, retirement, profit-sharing, bonus, thrift, savings, incentive, or other similar benefit plan for the employees of that issuer or its subsidiaries, if the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan;

''(bb) the securities of an issuer as part of that issuer's dividend reinvestment plan, if the bank does not—

''(AA) solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan;

''(BB) net shareholders' buy and sell orders, other than for programs for odd-lot holders or plans registered with the Commission; or

''(cc) the securities of an issuer as part of a plan or program for the purchase or sale of that issuer's shares, if—

''(AA) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan or program;

''(BB) the bank does not net shareholders' buy and sell orders, other than for programs for odd-lot holders or plans registered with the Commission; and

''(CC) the bank's compensation for such plan or program consists of administration fees, or flat or capped per order processing fees, or both, plus the cost incurred by the bank in connection with executing securities transactions resulting from such plan or program.

''(II) PERMISSIBLE DELIVERY OF MATERIALS.—The exception to being considered a broker for a bank engaged in activities described in subclause (I) will not be affected by a bank's delivery of written or electronic plan materials to employees of the issuer, shareholders of the issuer, or members of affinity groups of the issuer, so long as such materials are—

''(aa) comparable in scope or nature to that permitted by the Commission as of the date of the enactment of the Financial Services Act of 1998; or

''(bb) otherwise permitted by the Commission.

''(v) SWEEP ACCOUNTS.—The bank effects transactions as part of a program for the investment or reinvestment of bank deposit funds into any no-load, open-end management investment company registered under the Investment Company Act of 1940 that holds itself out as a money market fund.

''(vi) AFFILIATE TRANSACTIONS.—The bank effects transactions for the account of any affiliate of the bank (as defined in section 2 of the Bank Holding Company Act of 1956) other than—

''(I) a registered broker or dealer; or

''(II) an affiliate that is engaged in merchant banking, as described in section 6(c)(3)(H) of the Bank Holding company Act of 1956.

''(vii) PRIVATE SECURITIES OFFERINGS.—The bank—

''(I) effects sales as part of a primary offering of securities not involving a public offering, pursuant to section 3(b), 4(2), or 4(6) of the Securities Act of 1933 or the rules and regulations issued thereunder;

''(II) at any time after one year after the date of enactment of the Financial Services Act of 1998, is not affiliated with a broker or dealer that has been registered for more than one year; and

''(III) effects transactions exclusively with qualified investors.

''(viii) SAFEKEEPING AND CUSTODY ACTIVITIES.—

''(I) IN GENERAL.—The bank, as part of customary banking activities—

''(aa) provides safekeeping or custody services with respect to securities, including the exercise of warrants and other rights on behalf of customers;

''(bb) facilitates the transfer of funds or securities, as a custodian or a clearing agency, in connection with the clearance and settlement of its customers' transactions in securities;

''(cc) effects securities lending or borrowing transactions with or on behalf of customers as part of services provided to customers pursuant to division (aa) or (bb) or invests cash collateral pledged in connection with such transactions; or

''(dd) holds securities pledged by a customer to another person or securities subject to purchase or resale agreements involving a customer, or facilitates the pledging or transfer of such securities by book entry or as otherwise provided under applicable law.

''(II) EXCEPTION FOR CARRYING BROKER ACTIVITIES.—The exception to being considered a broker for a bank engaged in activities described in subclause (I) shall not apply if the bank, in connection with such activities, acts in the United States as a carrying broker (as such term, and different formulations thereof, are used in section 15(c)(3) and the rules and regulations thereunder) for any broker or dealer, unless such carrying broker activities are engaged in with respect to government securities (as defined in paragraph (42) of this subsection).

''(ix) BANKING PRODUCTS.—The bank effects transactions in traditional banking products, as defined in section 206(a) of the Financial Services Act of 1998.

''(x) DE MINIMIS EXCEPTION.—The bank effects, other than in transactions referred to in clauses (i) through (ix), not more than 500 transactions in securities in any calendar year, and such transactions are not effected by an employee of the bank who is also an employee of a broker or dealer.

''(C) BROKER DEALER EXECUTION.—The exception to being considered a broker for a bank engaged in activities described in clauses (ii), (iv), and (viii) of subparagraph (B) shall not apply if the activities described in such provisions result in the trade in the United States of any security that is a publicly traded security in the United States, unless—

''(i) the bank directs such trade to a registered or broker dealer for execution;

''(ii) the trade is a cross trade or other substantially similar trade of a security that—

''(I) is made by the bank or between the bank and an affiliated fiduciary; and

''(II) is not in contravention of fiduciary principles established under applicable Federal or State law; or

''(iii) the trade is conducted in some other manner permitted under rules, regulations, or orders as the Commission may prescribe or issue.

''(D) NO EFFECT OF BANK EXEMPTIONS ON OTHER COMMISSION AUTHORITY.—The exception to being considered a broker for a bank engaged in activities described in subparagraphs (B) and (C) shall not affect the commission's authority under any other provision of this Act or any other securities law.

''(E) FIDUCIARY CAPACITY.—For purposes of subparagraph (B)(ii), the term 'fiduciary capacity' means—

''(i) in the capacity as trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, or custodian under a uniform gift to minor act, or as an investment adviser if the bank receives a fee for its investment advice;

''(ii) in any capacity in which the bank possesses investment discretion on behalf of another; or

''(iii) in any other similar capacity.

''(F) EXCEPTION FOR ENTITIES SUBJECT TO SECTION 15(e).—The term 'broker' does not include a bank that—

''(i) was, immediately prior to the enactment of the Financial Services Act of 1998, subject to section 15(e); and

''(ii) is subject to such restrictions and requirements as the Commission considers appropriate.''.

SEC. 202. DEFINITION OF DEALER.

Section 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(5)) is amended to read as follows:

''(5) DEALER.—

''(A) IN GENERAL.—The term 'dealer' means any person engaged in the business of buying and selling securities for such person's own account through a broker or otherwise.

''(B) EXCEPTION FOR PERSON NOT ENGAGED IN THE BUSINESS OF DEALING.—The term 'dealer' does not include a person that buys or sells securities for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.

''(C) EXCEPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a

dealer because the bank engages in any of the following activities under the conditions described:

''(i) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank buys or sells—

''(I) commercial paper, bankers acceptances, or commercial bills;

''(II) exempted securities;

''(III) qualified Canadian government obligations as defined in section 5136 of the Revised Statutes of the United States, in conformity with section 15C of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or

''(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.

''(ii) INVESTMENT, TRUSTEE, AND FIDUCIARY TRANSACTIONS.—The bank buys or sells securities for investment purposes—

''(I) for the bank; or

''(II) for accounts for which the bank acts as a trustee or fiduciary.

''(iii) ASSET-BACKED TRANSACTIONS.—The bank engages in the issuance or sale to qualified investors, through a grantor trust or otherwise, of securities backed by or representing an interest in notes, drafts, acceptances, loans, leases, receivables, other obligations, or pools of any such obligations predominantly originated by the bank, or a syndicate of banks of which the bank is a member, or an affiliate of any such bank other than a broker or dealer.

''(iv) BANKING PRODUCTS.—The bank buys or sells traditional banking products, as defined in section 206(a) of the Financial Services Act of 1998.

''(v) DERIVATIVE INSTRUMENTS.—The bank issues, buys, or sells any derivative instrument to which the bank is a party—

''(I) to or from a corporation, limited liability company, or partnership that owns and invests on a discretionary basis, not less than $10,000,000 in investments, or to or from a qualified investor, except that if the instrument provides for the delivery of one or more securities (other than a derivative instrument or government security), the transaction shall be effected with or through a registered broker or dealer; or

''(II) to or from other persons, except that if the derivative instrument provides for the delivery of one or more securities (other than a derivative instrument or government security), or is a security (other than a government security), the transaction shall be effected with or through a registered broker or dealer; or

''(III) to or from any person if the instrument is neither a security nor provides for the delivery of one or more securities (other than a derivative instrument).''.

SEC. 203. REGISTRATION FOR SALES OF PRIVATE SECURITIES OFFERINGS.

Section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–3) is amended by inserting after subsection (i) the following new subsection:

''(j) REGISTRATION FOR SALES OF PRIVATE SECURITIES OFFERINGS.—A registered securities association shall create a limited qualification category for any associated person of a member who effects sales as part of a primary offering of securities not involving a public offering, pursuant to section 3(b), 4(2), or 4(6) of the Securities Act of 1933 and the rules and regulations thereunder, and shall deem qualified in such limited qualification category, without testing, any bank employee who, in the six month period preceding the date of enactment of this Act, engaged in effecting such sales.''.

SEC. 204. SALES PRACTICES AND COMPLAINT PROCEDURES.

Section 18 of the Federal Deposit Insurance Act is amended by adding at the end the following new subsection:

''(s) SALES PRACTICES AND COMPLAINT PROCEDURES WITH RESPECT TO BANK SECURITIES ACTIVITIES.—

''(1) REGULATIONS REQUIRED.—Each Federal banking agency shall prescribe and publish in final form, not later than 6 months after the date of enactment of the Financial Services Act of 1998, regulations which apply to retail transactions, solicitations, advertising, or offers of any security by any insured depository institution or any affiliate thereof other than a registered broker or dealer or an individual acting on behalf of such a broker or dealer who is an associated person of such broker or dealer. Such regulations shall include—

''(A) requirements that sales practices comply with just and equitable principles of trade that are substantially similar to the Rules of Fair Practice of the National Association of Securities Dealers; and

''(B) requirements prohibiting (i) conditioning an extension of credit on the purchase or sale of a security; and (ii) any conduct leading a customer to believe that an extension of credit is conditioned upon the purchase or sale of a security.

''(2) PROCEDURES REQUIRED.—The appropriate Federal banking agencies shall jointly establish procedures and facilities for receiving and expeditiously processing complaints against any bank or employee of a bank arising in connection with the purchase or sale of a security by a customer, including a complaint alleging a violation of the regulations prescribed under paragraph (1), but excluding a complaint involving an individual acting on behalf of such a broker or dealer who is an associated person of such broker or dealer. The use of any such procedures and facilities by such a customer shall be at the election of the customer. Such procedures shall include provisions to refer a complaint alleging fraud to the Securities and Exchange Commission and appropriate State securities commissions.

''(3) REQUIRED ACTIONS.—The actions required by the Federal banking agencies under paragraph (2) shall include the following:

''(A) establishing a group, unit, or bureau within each such agency to receive such complaints;

''(B) developing and establishing procedures for investigating, and permitting customers to investigate, such complaints;

''(C) developing and establishing procedures for informing customers of the rights they may have in connection with such complaints;

''(D) developing and establishing procedures that allow customers a period of at least 6 years to make complaints and that do not require customers to pay the costs of the proceeding; and

''(E) developing and establishing procedures for resolving such complaints, including procedures for the recovery of losses to the extent appropriate.

''(4) CONSULTATION AND JOINT REGULATIONS.—The Federal banking agencies shall consult with each other and prescribe joint regulations pursuant to paragraphs (1) and (2), after consultation with the Securities and Exchange Commission.

''(5) PROCEDURES IN ADDITION TO OTHER REMEDIES.—The procedures and remedies provided under this subsection shall be in addition to, and not in lieu of, any other remedies available under law.

''(6) DEFINITION.—As used in this subsection—

''(A) the term 'security' has the meaning provided in section 3(a)(10) of the Securities Exchange Act of 1934;

''(B) the term 'registered broker or dealer' has the meaning provided in section 3(a)(48) of such Act; and

''(C) the term 'associated person' has the meaning provided in section 3(a)(18) of such Act.''.

SEC. 205. INFORMATION SHARING.

Section 18 of the Federal Deposit Insurance Act is amended by adding at the end the following new subsection:

''(t) RECORDKEEPING REQUIREMENTS.—

''(1) REQUIREMENTS.—Each appropriate Federal banking agency, after consultation with and consideration of the views of the Commission, shall establish recordkeeping requirements for banks relying on exceptions contained in paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934. Such recordkeeping requirements shall be sufficient to demonstrate compliance with the terms of such exceptions and be designed to facilitate compliance with such exceptions. Each appropriate Federal banking agency shall make any such information available to the Commission upon request.

''(2) DEFINITIONS.—As used in this subsection the term 'Commission' means the Securities and Exchange Commission.''.

SEC. 206. DEFINITION AND TREATMENT OF BANKING PRODUCTS.

(a) DEFINITION OF TRADITIONAL BANKING PRODUCT.—

(1) IN GENERAL.—For purposes of paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4), (5)), the term 'traditional banking product' means—

(A) a deposit account, savings account, certificate of deposit, or other deposit instrument issued by a bank;

(B) a banker's acceptance;

(C) a letter of credit issued or loan made by a bank;

(D) a debit account at a bank arising from a credit card or similar arrangement;

(E) a participation in a loan which the bank or an affiliate of the bank (other than a broker or dealer) funds, participates in, or owns that is sold—

(i) to qualified investors; or

(ii) to other persons that—

''(I) have the opportunity to review and assess any material information, including information regarding the borrower's creditworthiness; and

''(II) based on such factors as financial sophistication, net worth, and knowledge and experience in financial matters, have the capability to evaluate the information available, as determined under generally applicable banking standards or guidelines; or

(F) any derivative instrument, whether or not individually negotiated, involving or relating to—

(i) foreign currencies, except options on foreign currencies that trade on a national securities exchange;

(ii) interest rates, except interest rate derivative instruments (I) that are based on a security; or (II) that provide for the delivery of one or more securities; or

(iii) commodities, other rates, indices, or other assets, except derivative instruments that are securities or that provide for the delivery of one or more securities.

(2) CLASSIFICATION LIMITED.—Classification of a particular product as a traditional banking product pursuant to this subsection shall not be construed as finding or implying that such product is oris not a security for any purpose under the securities laws, or is or is not an account, agreement, contract, or transaction for any purpose under the Commodity Exchange Act.

(3) DEFINITIONS.—For purposes of this subsection—

(A) the term ''bank'' has the meaning provided in section 3(a)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(6);

(B) the term ''qualified investor'' has the meaning provided in section 3(a)(55) of such Act; and

(C) the term ''Federal banking agency'' has the meaning provided in section 3(z) of the Federal Deposit Insurance Act (12 U.S.C. 1813(z)).

(b) TREATMENT OF NEW BANKING PRODUCTS FOR PURPOSES OF BROKER/DEALER REQUIREMENTS.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following new subsection:

''(i) RULEMAKING TO EXTEND REQUIREMENTS TO NEW BANKING PRODUCTS.—

''(1) LIMITATION.—The Commission shall not—

''(A) require a bank to register as a broker or dealer under this section because the bank engages in any transaction in, or buys or sells, a new banking product; or

''(B) bring an action against a bank for a failure to comply with a requirement described in subparagraph (A);

unless the Commission has imposed such requirement by rule or regulation issued in accordance with this section.

''(2) CRITERIA FOR RULEMAKING.—The Commission shall not impose a requirement under paragraph (1) of this subsection with respect to any new banking product unless the Commission determines that—

''(A) the new banking product is a security; and

''(B) imposing such requirement is necessary or appropriate in the public interest and for the protection of investors, consistent with the requirements of section 3(f).

''(3) NEW BANKING PRODUCT.—For purposes of this subsection, the term 'new banking product' means a product that—

''(A) was not subjected to regulation by the Commission as a security prior to the date of enactment of this subsection; and

''(B) is not a traditional banking product, as such term is defined in section 206(a) of the Financial Services Act of 1998.

''(4) CONSULTATION.—In promulgating rules under this subsection, the Commission shall consult with and consider the views of the appropriate regulatory agencies concerning the proposed rule and the impact on the banking industry.''.

SEC. 207. DERIVATIVE INSTRUMENT AND QUALIFIED INVESTOR DEFINED.

Section 3(a) of the Securities Exchange Act of 1934 is amended by adding at the end the following new paragraphs:

''(54) DERIVATIVE INSTRUMENT.—

''(A) DEFINITION.—The term 'derivative instrument' means any individually negotiated contract, agreement, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets, but does not include a traditional banking product, as defined in section 206(a) of the Financial Services Act of 1998.

''(B) CLASSIFICATION LIMITED.— Classification of a particular contract as a derivative instrument pursuant to this paragraph shall not be construed as finding or implying that such instrument is or is not a security for any purpose under the securities laws, or is or is not an account, agreement, contract, or transaction for any purpose under the Commodity Exchange Act.

''(55) QUALIFIED INVESTOR.—

''(A) DEFINITION.—For purposes of this title and section 206(a)(1)(E) of the Financial Services Act of 1998, the term 'qualified investor' means—

''(i) any investment company registered with the Commission under section 8 of the Investment Company Act of 1940;

''(ii) any issuer eligible for an exclusion from the definition of investment company pursuant to section 3(c)(7) of the Investment Company Act of 1940;

''(iii) any bank (as defined in paragraph (6) of this subsection), savings and loan association (as defined in section 3(b) of the Federal Deposit Insurance Act), broker, dealer, insurance company (as defined in section 2(a)(13) of the Securities Act of 1933), or business development company (as defined in section 2(a)(48) of the Investment Company Act of 1940);

''(iv) any small business investment company licensed by the United States Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958;

''(v) any State sponsored employee benefit plan, or any other employee benefit plan, within the meaning of the Employee Retirement Income Security Act of 1974, other than an individual retirement account, if the investment decisions are made by a plan fiduciary, as defined in section 3(21) of that Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser;

''(vi) any trust whose purchases of securities are directed by a person described in clauses (i) through (v) of this subparagraph;

''(vii) any market intermediary exempt under section 3(c)(2) of the Investment Company Act of 1940;

''(viii) any associated person of a broker or dealer other than a natural person; or

''(ix) any foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978).

''(B) ADDITIONAL QUALIFICATIONS DEFINED.—For purposes of paragraphs (4)(B)(vii) and (5)(C)(iii) of this subsection, and section 206(a)(1)(E) of the Financial Services Act of 1998, the term 'qualified investor' also means—

''(i) any corporation, company, or partnership that owns and invests on a discretionary basis, not less than $10,000,000 in investments;

''(ii) any natural person who owns and invests on a discretionary basis, not less than $10,000,000 in investments;

''(iii) any government or political subdivision, agency, or instrumentality of a government who owns and invests on a discretionary basis not less than $50,000,000 in investments; or

''(iv) any multinational or supranational entity or any agency or instrumentality thereof.

''(C) ADDITIONAL AUTHORITY.—The Commission may, by rule or order, define a 'qualified investor' as any other person, other than a natural person, taking into consideration such factors as the person's financial sophistication, net worth, and knowledge and experience in financial matters.''.

SEC. 208. GOVERNMENT SECURITIES DEFINED.

Section 3(a)(42) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(42)) is amended—

(1) by striking ''or'' at the end of subparagraph (C);

(2) by striking the period at the end of subparagraph (D) and inserting ''; or''; and

(3) by adding at the end the following new subparagraph:

''(E) for purposes of section 15C as applied to a bank, a qualified Canadian government obligation as defined in section 5136 of the Revised Statutes.''.

SEC. 209. EFFECTIVE DATE.

This subtitle shall take effect at the end of the 270-day period beginning on the date of the enactment of this Act.

Subtitle B—Bank Investment Company Activities

SEC. 211. CUSTODY OF INVESTMENT COMPANY ASSETS BY AFFILIATED BANK.

(a) MANAGEMENT COMPANIES.—Section 17(f) of the Investment Company Act of 1940 (15 U.S.C. 80a–17(f)) is amended—

(1) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(2) by striking ''(f) Every registered'' and inserting the following:

''(f) CUSTODY OF SECURITIES.—

''(1) Every registered'';

(3) by redesignating the 2d, 3d, 4th, and 5th sentences of such subsection as paragraphs (2) through (5), respectively, and indenting the left margin of such paragraphs appropriately; and

(4) by adding at the end the following new paragraph:

''(6) The Commission may adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the conditions under which a bank, or an affiliated person of a bank, either of which is an affiliated person, promoter, organizer, or sponsor of, or principal underwriter for, a registered management company may serve as custodian of that registered management company.''.

(b) UNIT INVESTMENT TRUSTS.—Section 26 of the Investment Company Act of 1940 (15 U.S.C. 80a–26) is amended—

(1) by redesignating subsections (b) through (e) as subsections (c) through (f), respectively; and

(2) by inserting after subsection (a) the following new subsection:

''(b) The Commission may adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the conditions under which a bank, or an affiliated person of a bank, either of which is an affiliated person of a principal underwriter for, or depositor of, a registered unit investment trust, may serve as trustee or custodian under subsection (a)(1).''.

(c) FIDUCIARY DUTY OF CUSTODIAN.—Section 36(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–35(a)) is amended—

(1) in paragraph (1), by striking ''or'' at the end;

(2) in paragraph (2), by striking the period at the end and inserting ''; or''; and

(3) by inserting after paragraph (2) the following:

''(3) as custodian.''.

SEC. 212. LENDING TO AN AFFILIATED INVESTMENT COMPANY.

Section 17(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–17(a)) is amended—

(1) by striking ''or'' at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting ''; or''; and

(3) by adding at the end the following new paragraph:

''(4) to loan money or other property to such registered company, or to any company controlled by such registered company, in contravention of such rules, regulations, or orders as the Commission may prescribe or issue consistent with the protection of investors.''.

SEC. 213. INDEPENDENT DIRECTORS.

(a) IN GENERAL.—Section 2(a)(19)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)(A)) is amended—

(1) by striking clause (v) and inserting the following new clause:

''(v) any person or any affiliated person of a person (other than a registered investment

company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

''(I) the investment company,

''(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services, or

''(III) any account over which the investment company's investment adviser has brokerage placement discretion,'';

(2) by redesignating clause (vi) as clause (vii); and

(3) by inserting after clause (v) the following new clause:

''(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to—

''(I) the investment company,

''(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services, or

''(III) any account for which the investment company's investment adviser has borrowing authority,''.

(b) CONFORMING AMENDMENT.—Section 2(a)(19)(B) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)(B)) is amended—

(1) by striking clause (v) and inserting the following new clause:

''(v) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

''(I) any investment company for which the investment adviser or principal underwriter serves as such,

''(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such, or

''(III) any account over which the investment adviser has brokerage placement discretion,'';

(2) by redesignating clause (vi) as clause (vii); and

(3) by inserting after clause (v) the following new clause:

''(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to—

''(I) any investment company for which the investment adviser or principal underwriter serves as such,

''(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such, or

''(III) any account for which the investment adviser has borrowing authority,''.

(c) AFFILIATION OF DIRECTORS.—Section 10(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–10(c)) is amended by striking ''bank, except'' and inserting ''bank (together with its affiliates and subsidiaries) or any one bank holding company (together with its affiliates and subsidiaries) (as such terms are defined in section 2 of the Bank Holding Company Act of 1956), except''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect at the end of the 1-year period beginning on the date of enactment of this subtitle.

SEC. 214. ADDITIONAL SEC DISCLOSURE AUTHORITY.

Section 35(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–34(a)) is amended to read as follows:

''(a) MISREPRESENTATION OF GUARANTEES.—

''(1) IN GENERAL.—It shall be unlawful for any person, issuing or selling any security of which a registered investment company is the issuer, to represent or imply in any manner whatsoever that such security or company—

''(A) has been guaranteed, sponsored, recommended, or approved by the United States, or any agency, instrumentality or officer of the United States;

''(B) has been insured by the Federal Deposit Insurance Corporation; or

''(C) is guaranteed by or is otherwise an obligation of any bank or insured depository institution.

''(2) DISCLOSURES.—Any person issuing or selling the securities of a registered investment company that is advised by, or sold through, a bank shall prominently disclose that an investment in the company is not insured by the Federal Deposit Insurance Corporation or any other government agency. The Commission may adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the manner in which the disclosure under this paragraph shall be provided.

''(3) DEFINITIONS.—The terms 'insured depository institution' and 'appropriate Federal banking agency' have the meaning given to such terms in section 3 of the Federal Deposit Insurance Act.''.

SEC. 215. DEFINITION OF BROKER UNDER THE INVESTMENT COMPANY ACT OF 1940.

Section 2(a)(6) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(6)) is amended to read as follows:

''(6) The term 'broker' has the same meaning as in the Securities Exchange Act of 1934, except that such term does not include any person solely by reason of the fact that such person is an underwriter for one or more investment companies.''.

SEC. 216. DEFINITION OF DEALER UNDER THE INVESTMENT COMPANY ACT OF 1940.

Section 2(a)(11) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(11)) is amended to read as follows:

''(11) The term 'dealer' has the same meaning as in the Securities Exchange Act of 1934, but does not include an insurance company or investment company.''.

SEC. 217. REMOVAL OF THE EXCLUSION FROM THE DEFINITION OF INVESTMENT ADVISER FOR BANKS THAT ADVISE INVESTMENT COMPANIES.

(a) INVESTMENT ADVISER.—Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)) is amended in subparagraph (A), by striking ''investment company'' and inserting ''investment company, except that the term 'investment adviser' includes any bank or bank holding company to the extent that such bank or bank holding company serves or acts as an investment adviser to a registered investment company, but if, in the case of a bank, such services or actions are performed through a separately identifiable department or division, the department or division, and not the bank itself, shall be deemed to be the investment adviser''.

(b) SEPARATELY IDENTIFIABLE DEPARTMENT OR DIVISION.—Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)) is amended by adding at the end the following:

''(26) The term 'separately identifiable department or division' of a bank means a unit—

''(A) that is under the direct supervision of an officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's investment adviser activities for one or more investment companies, including the supervision of all bank employees engaged in the performance of such activities; and

''(B) for which all of the records relating to its investment adviser activities are separately maintained in or extractable from such unit's own facilities or the facilities of the bank, and such records are so maintained or otherwise accessible as to permit independent examination and enforcement by the Commission of this Act or the Investment Company Act of 1940 and rules and regulations promulgated under this Act or the Investment Company Act of 1940.''.

SEC. 218. DEFINITION OF BROKER UNDER THE INVESTMENT ADVISERS ACT OF 1940.

Section 202(a)(3) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(3)) is amended to read as follows:

''(3) The term 'broker' has the same meaning as in the Securities Exchange Act of 1934.''.

SEC. 219. DEFINITION OF DEALER UNDER THE INVESTMENT ADVISERS ACT OF 1940.

Section 202(a)(7) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(7)) is amended to read as follows:

''(7) The term 'dealer' has the same meaning as in the Securities Exchange Act of 1934, but does not include an insurance company or investment company.''.

SEC. 220. INTERAGENCY CONSULTATION.

The Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) is amended by inserting after section 210 the following new section:

''SEC. 210A. CONSULTATION.

''(a) EXAMINATION RESULTS AND OTHER INFORMATION.—

''(1) The appropriate Federal banking agency shall provide the Commission upon request the results of any examination, reports, records, or other information to which such agency may have access with respect to the investment advisory activities—

''(A) of any—

''(i) bank holding company,

''(ii) bank, or

''(iii) separately identifiable department or division of a bank,

that is registered under section 203 of this title; and

''(B) in the case of a bank holding company or bank that has a subsidiary or a separately identifiable department or division registered under that section, of such bank or bank holding company.

''(2) The Commission shall provide to the appropriate Federal banking agency upon request the results of any examination, reports, records, or other information with respect to the investment advisory activities of any bank holding company, bank, or separately identifiable department or division of a bank, any of which is registered under section 203 of this title.

''(b) EFFECT ON OTHER AUTHORITY.—Nothing in this section shall limit in any respect the authority of the appropriate Federal banking agency with respect to such bank holding company, bank, or department or division under any provision of law.

''(c) DEFINITION.—For purposes of this section, the term 'appropriate Federal banking agency' shall have the same meaning as in

section 3 of the Federal Deposit Insurance Act.''.

SEC. 221. TREATMENT OF BANK COMMON TRUST FUNDS.

(a) SECURITIES ACT OF 1933.—Section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is amended by striking ''or any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian'' and inserting ''or any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term 'investment company' under section 3(c)(3) of the Investment Company Act of 1940''.

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a)(12)(A)(iii) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)(A)(iii)) is amended to read as follows:

''(iii) any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term 'investment company' under section 3(c)(3) of the Investment Company Act of 1940;''.

(c) INVESTMENT COMPANY ACT OF 1940.—Section 3(c)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(3)) is amended by inserting before the period the following: '', if—

''(A) such fund is employed by the bank solely as an aid to the administration of trusts, estates, or other accounts created and maintained for a fiduciary purpose;

''(B) except in connection with the ordinary advertising of the bank's fiduciary services, interests in such fund are not—

''(i) advertised; or

''(ii) offered for sale to the general public; and

''(C) fees and expenses charged by such fund are not in contravention of fiduciary principles established under applicable Federal or State law''.

SEC. 222. INVESTMENT ADVISERS PROHIBITED FROM HAVING CONTROLLING INTEREST IN REGISTERED INVESTMENT COMPANY.

Section 15 of the Investment Company Act of 1940 (15 U.S.C. 80a–15) is amended by adding at the end the following new subsection:

''(g) CONTROLLING INTEREST IN INVESTMENT COMPANY PROHIBITED.—

''(1) IN GENERAL.—If an investment adviser to a registered investment company, or an affiliated person of that investment adviser, holds a controlling interest in that registered investment company in a trustee or fiduciary capacity, such person shall—

''(A) if it holds the shares in a trustee or fiduciary capacity with respect to any employee benefit plan subject to the Employee Retirement Income Security Act of 1974, transfer the power to vote the shares of the investment company through to another person acting in a fiduciary capacity with respect to the plan who is not an affiliated person of that investment adviser or any affiliated person thereof; or

''(B) if it holds the shares in a trustee or fiduciary capacity with respect to any person or entity other than an employee benefit plan subject to the Employee Retirement Income Security Act of 1974—

''(i) transfer the power to vote the shares of the investment company through to—

''(I) the beneficial owners of the shares;

''(II) another person acting in a fiduciary capacity who is not an affiliated person of that investment adviser or any affiliated person thereof; or

''(III) any person authorized to receive statements and information with respect to the trust who is not an affiliated person of that investment adviser or any affiliated person thereof;

''(ii) vote the shares of the investment company held by it in the same proportion as shares held by all other shareholders of the investment company; or

''(iii) vote the shares of the investment company as otherwise permitted under such rules, regulations, or orders as the Commission may prescribe or issue consistent with the protection of investors.

''(2) EXEMPTION.—Paragraph (1) shall not apply to any investment adviser to a registered investment company, or any affiliated person of that investment adviser, that holds shares of the investment company in a trustee or fiduciary capacity if that registered investment company consists solely of assets held in such capacities.

''(3) SAFE HARBOR.—No investment adviser to a registered investment company or any affiliated person of such investment adviser shall be deemed to have acted unlawfully or to have breached a fiduciary duty under State or Federal law solely by reason of acting in accordance with clause (i), (ii), or (iii) of paragraph (1)(B).''.

SEC. 223. CONFORMING CHANGE IN DEFINITION.

Section 2(a)(5) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(5)) is amended by striking ''(A) a banking institution organized under the laws of the United States'' and inserting ''(A) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or a branch or agency of a foreign bank (as such terms are defined in section 1(b) of the International Banking Act of 1978)''.

SEC. 224. CONFORMING AMENDMENT.

Section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2) is amended by adding at the end the following new subsection:

''(c) CONSIDERATION OF PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION.—Whenever pursuant to this title the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.''.

SEC. 225. EFFECTIVE DATE.

This subtitle shall take effect 90 days after the date of the enactment of this Act.

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.

(a) AMENDMENT.—Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended—

(1) by redesignating subsection (i) as subsection (l); and

(2) by inserting after subsection (h) the following new subsections:

''(i) INVESTMENT BANK HOLDING COMPANIES.—

''(1) ELECTIVE SUPERVISION OF AN INVESTMENT BANK HOLDING COMPANY NOT HAVING A BANK OR SAVINGS ASSOCIATION AFFILIATE.—

''(A) IN GENERAL.—An investment bank holding company that is not—

''(i) an affiliate of a wholesale financial institution, an insured bank (other than an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956), or a savings association,

''(ii) a foreign bank, foreign company, or company that is described in section 8(a) of the International Banking Act of 1978, or

''(iii) a foreign bank that controls, directly or indirectly, a corporation chartered under section 25A of the Federal Reserve Act,

may elect to become supervised by filing with the Commission a notice of intention to become supervised, pursuant to subparagraph (B) of this paragraph. Any investment bank holding company filing such a notice shall be supervised in accordance with this section and comply with the rules promulgated by the Commission applicable to supervised investment bank holding companies.

''(B) NOTIFICATION OF STATUS AS A SUPERVISED INVESTMENT BANK HOLDING COMPANY.—An investment bank holding company that elects under subparagraph (A) to become supervised by the Commission shall file with the Commission a written notice of intention to become supervised by the Commission in such form and containing such information and documents concerning such investment bank holding company as the Commission, by rule, may prescribe as necessary or appropriate in furtherance of the purposes of this section. Unless the Commission finds that such supervision is not necessary or appropriate in furtherance of the purposes of this section, such supervision shall become effective 45 days after receipt of such written notice by the Commission or within such shorter time period as the Commission, by rule or order, may determine.

''(2) ELECTION NOT TO BE SUPERVISED BY THE COMMISSION AS AN INVESTMENT BANK HOLDING COMPANY.—

''(A) VOLUNTARY WITHDRAWAL.—A supervised investment bank holding company that is supervised pursuant to paragraph (1) may, upon such terms and conditions as the Commission deems necessary or appropriate, elect not to be supervised by the Commission by filing a written notice of withdrawal from Commission supervision. Such notice shall not become effective until one year after receipt by the Commission, or such shorter or longer period as the Commission deems necessary or appropriate to ensure effective supervision of the material risks to the supervised investment bank holding company and to the affiliated broker or dealer, or to prevent evasion of the purposes of this section.

''(B) DISCONTINUATION OF COMMISSION SUPERVISION.—If the Commission finds that any supervised investment bank holding company that is supervised pursuant to paragraph (1) is no longer in existence or has ceased to be an investment bank holding company, or if the Commission finds that continued supervision of such a supervised investment bank holding company is not consistent with the purposes of this section, the Commission may discontinue the supervision pursuant to a rule or order, if any, promulgated by the Commission under this section.

''(3) SUPERVISION OF INVESTMENT BANK HOLDING COMPANIES.—

''(A) RECORDKEEPING AND REPORTING.—

''(i) IN GENERAL.—Every supervised investment bank holding company and each affiliate thereof shall make and keep for prescribed periods such records, furnish copies thereof, and make such reports, as the Commission may require by rule, in order to keep the Commission informed as to—

''(I) the company's or affiliate's activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and transactions and relationships between any broker or dealer affiliate of the supervised investment bank holding company; and

''(II) the extent to which the company or affiliate has complied with the provisions of this Act and regulations prescribed and orders issued under this Act.

''(ii) FORM AND CONTENTS.—Such records and reports shall be prepared in such form and according to such specifications (including certification by an independent public

accountant), as the Commission may require and shall be provided promptly at any time upon request by the Commission. Such records and reports may include—

''(I) a balance sheet and income statement;

''(II) an assessment of the consolidated capital of the supervised investment bank holding company;

''(III) an independent auditor's report attesting to the supervised investment bank holding company's compliance with its internal risk management and internal control objectives; and

''(IV) reports concerning the extent to which the company or affiliate has complied with the provisions of this title and any regulations prescribed and orders issued under this title.

''(B) USE OF EXISTING REPORTS.—

''(i) IN GENERAL.—The Commission shall, to the fullest extent possible, accept reports in fulfillment of the requirements under this paragraph that the supervised investment bank holding company or its affiliates have been required to provide to another appropriate regulatory agency or self-regulatory organization.

''(ii) AVAILABILITY.—A supervised investment bank holding company or an affiliate of such company shall provide to the Commission, at the request of the Commission, any report referred to in clause (i).

''(C) EXAMINATION AUTHORITY.—

''(i) FOCUS OF EXAMINATION AUTHORITY.—The Commission may make examinations of any supervised investment bank holding company and any affiliate of such company in order to—

''(I) inform the Commission regarding—

''(aa) the nature of the operations and financial condition of the supervised investment bank holding company and its affiliates;

''(bb) the financial and operational risks within the supervised investment bank holding company that may affect any broker or dealer controlled by such supervised investment bank holding company; and

''(cc) the systems of the supervised investment bank holding company and its affiliates for monitoring and controlling those risks; and

''(II) monitor compliance with the provisions of this subsection, provisions governing transactions and relationships between any broker or dealer affiliated with the supervised investment bank holding company and any of the company's other affiliates, and applicable provisions of subchapter II of chapter 53, title 31, United States Code (commonly referred to as the 'Bank Secrecy Act') and regulations thereunder.

''(ii) RESTRICTED FOCUS OF EXAMINATIONS.—The Commission shall limit the focus and scope of any examination of a supervised investment bank holding company to—

''(I) the company; and

''(II) any affiliate of the company that, because of its size, condition, or activities, the nature or size of the transactions between such affiliate and any affiliated broker or dealer, or the centralization of functions within the holding company system, could, in the discretion of the Commission, have a materially adverse effect on the operational or financial condition of the broker or dealer.

''(iii) DEFERENCE TO OTHER EXAMINATIONS.—For purposes of this subparagraph, the Commission shall, to the fullest extent possible, use the reports of examination of an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956 made by the appropriate regulatory agency, or of a licensed insurance company made by the appropriate State insurance regulator.

''(4) HOLDING COMPANY CAPITAL.—

''(A) AUTHORITY.—If the Commission finds that it is necessary to adequately supervise investment bank holding companies and their broker or dealer affiliates consistent with the purposes of this subsection, the Commission may adopt capital adequacy rules for supervised investment bank holding companies.

''(B) METHOD OF CALCULATION.—In developing rules under this paragraph:

''(i) DOUBLE LEVERAGE.—The Commission shall consider the use by the supervised investment bank holding company of debt and other liabilities to fund capital investments in affiliates.

''(ii) NO UNWEIGHTED CAPITAL RATIO.—The Commission shall not impose under this section a capital ratio that is not based on appropriate risk-weighting considerations.

''(iii) NO CAPITAL REQUIREMENT ON REGULATED ENTITIES.—The Commission shall not, by rule, regulation, guideline, order or otherwise, impose any capital adequacy provision on a nonbanking affiliate (other than a broker or dealer) that is in compliance with applicable capital requirements of another Federal regulatory authority or State insurance authority.

''(iv) APPROPRIATE EXCLUSIONS.—The Commission shall take full account of the applicable capital requirements of another Federal regulatory authority or State insurance regulator.

''(C) INTERNAL RISK MANAGEMENT MODELS.—The Commission may incorporate internal risk management models into its capital adequacy rules for supervised investment bank holding companies.

''(5) FUNCTIONAL REGULATION OF BANKING AND INSURANCE ACTIVITIES OF SUPERVISED INVESTMENT BANK HOLDING COMPANIES.—The Commission shall defer to—

''(A) the appropriate regulatory agency with regard to all interpretations of, and the enforcement of, applicable banking laws relating to the activities, conduct, ownership, and operations of banks, and institutions described in subparagraph (D), (F), and (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956; and

''(B) the appropriate State insurance regulators with regard to all interpretations of, and the enforcement of, applicable State insurance laws relating to the activities, conduct, and operations of insurance companies and insurance agents.

''(6) DEFINITIONS.—For purposes of this subsection—

''(A) The term 'investment bank holding company' means—

''(i) any person other than a natural person that owns or controls one or more brokers or dealers; and

''(ii) the associated persons of the investment bank holding company.

''(B) The term 'supervised investment bank holding company' means any investment bank holding company that is supervised by the Commission pursuant to this subsection.

''(C) The terms 'affiliate', 'bank', 'bank holding company', 'company', 'control', and 'savings association' have the meanings given to those terms in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

''(D) The term 'insured bank' has the meaning given to that term in section 3 of the Federal Deposit Insurance Act.

''(E) The term 'foreign bank' has the meaning given to that term in section 1(b)(7) of the International Banking Act of 1978.

''(F) The terms ''person associated with an investment bank holding company' and ''associated person of an investment bank holding company' means any person directly or indirectly controlling, controlled by, or under common control with, an investment bank holding company.

''(j) AUTHORITY TO LIMIT DISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be reported under subsection (h) or (i) or any information supplied to the Commission by any domestic or foreign regulatory agency that relates to the financial or operational condition of any associated person of a broker or dealer, investment bank holding company, or any affiliate of an investment bank holding company. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. In prescribing regulations to carry out the requirements of this subsection, the Commission shall designate information described in or obtained pursuant to subparagraphs (A), (B), and (C) of subsection (i)(5) as confidential information for purposes of section 24(b)(2) of this title.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 3(a)(34) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34)) is amended by adding at the end the following new subparagraphs:

''(H) When used with respect to an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956—

''(i) the Comptroller of the Currency, in the case of a national bank or a bank in the District of Columbia examined by the Comptroller of the Currency;

''(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System or any corporation chartered under section 25A of the Federal Reserve Act;

''(iii) the Federal Deposit Insurance Corporation, in the case of any other bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act; or

''(iv) the Commission in the case of all other such institutions.''.

(2) Section 1112(e) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3412(e)) is amended—

(A) by striking ''this title'' and inserting ''law''; and

(B) by inserting '', examination reports'' after ''financial records''.

Subtitle D—Study

SEC. 241. STUDY OF METHODS TO INFORM INVESTORS AND CONSUMERS OF UNINSURED PRODUCTS.

Within one year after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to the Congress regarding the efficacy, costs, and benefits of requiring that any depository institution that accepts federally insured deposits and that, directly or through a contractual or other arrangement with a broker, dealer, or agent, buys from, sells to, or effects transactions for retail investors in securities or consumers of insurance to inform such investors and consumers through the use of a logo or seal that the security or insurance is not insured by the Federal Deposit Insurance Corporation.

TITLE III—INSURANCE

Subtitle A—State Regulation of Insurance

SEC. 301. STATE REGULATION OF THE BUSINESS OF INSURANCE.

The Act entitled ''An Act to express the intent of the Congress with reference to the regulation of the business of insurance'' and approved March 9, 1945 (15 U.S.C. 1011 et seq.), commonly referred to as the ''McCarran—Ferguson Act'') remains the law of the United States.

SEC. 302. MANDATORY INSURANCE LICENSING REQUIREMENTS.

No person or entity shall provide insurance in a State as principal or agent unless such person or entity is licensed as required by the appropriate insurance regulator of such State in accordance with the relevant State insurance law, subject to section 104 of this Act.

SEC. 303. FUNCTIONAL REGULATION OF INSURANCE.

The insurance sales activity of any person or entity shall be functionally regulated by the States, subject to section 104 of this Act.

SEC. 304. INSURANCE UNDERWRITING IN NATIONAL BANKS.

(a) IN GENERAL.—Except as provided in section 306, a national bank and the subsidiaries of a national bank may not provide insurance in a State as principal except that this prohibition shall not apply to authorized products.

(b) AUTHORIZED PRODUCTS.—For the purposes of this section, a product is authorized if—

(1) as of January 1, 1997, the Comptroller of the Currency had determined in writing that national banks may provide such product as principal, or national banks were in fact lawfully providing such product as principal;

(2) no court of relevant jurisdiction had, by final judgment, overturned a determination of the Comptroller of the Currency that national banks may provide such product as principal; and

(3) the product is not title insurance, or an annuity contract the income of which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986.

(c) DEFINITION.—For purposes of this section, the term ''insurance'' means—

(1) any product regulated as insurance as of January 1, 1997, in accordance with the relevant State insurance law, in the State in which the product is provided;

(2) any product first offered after January 1, 1997, which—

(A) a State insurance regulator determines shall be regulated as insurance in the State in which the product is provided because the product insures, guarantees, or indemnifies against liability, loss of life, loss of health, or loss through damage to or destruction of property, including, but not limited to, surety bonds, life insurance, health insurance, title insurance, and property and casualty insurance (such as private passenger or commercial automobile, homeowners, mortgage, commercial multiperil, general liability, professional liability, workers' compensation, fire and allied lines, farm owners multiperil, aircraft, fidelity, surety, medical malpractice, ocean marine, inland marine, and boiler and machinery insurance); and

(B) is not a product or service of a bank that is—

(i) a deposit product;

(ii) a loan, discount, letter of credit, or other extension of credit;

(iii) a trust or other fiduciary service;

(iv) a qualified financial contract (as defined in or determined pursuant to section 11(e)(8)(D)(i) of the Federal Deposit Insurance Act); or

(v) a financial guaranty, except that this subparagraph (B) shall not apply to a product that includes an insurance component such that if the product is offered or proposed to be offered by the bank as principal—

(I) it would be treated as a life insurance contract under section 7702 of the Internal Revenue Code of 1986, as amended; or

(II) in the event that the product is not a letter of credit or other similar extension of credit, a qualified financial contract, or a financial guaranty, it would qualify for treatment for losses incurred with respect to such product under section 832(b)(5) of the Internal Revenue Code of 1986, as amended, if the bank were subject to tax as an insurance company under section 831 of such Code; or

(3) any annuity contract the income on which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986, as amended.

SEC. 305. NEW BANK AGENCY ACTIVITIES ONLY THROUGH ACQUISITION OF EXISTING LICENSED AGENTS.

If a national bank or a subsidiary of a national bank is not providing insurance as agent in a State as of the date of the enactment of this Act, the national bank and the subsidiary of the national bank may provide insurance (which such bank or subsidiary is otherwise authorized to provide) as agent in such State after such date only by acquiring a company which has been licensed by the appropriate State regulator to provide insurance as agent in such State for not less than 2 years before such acquisition.

SEC. 306. TITLE INSURANCE ACTIVITIES OF NATIONAL BANKS AND THEIR AFFILIATES.

(a) AUTHORITY.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act or any other law, no national bank, and no subsidiary of a national bank, may engage in any activity involving the underwriting or sale of title insurance other than title insurance activities in which such national bank or subsidiary was actively and lawfully engaged before the date of the enactment of this Act.

(2) INSURANCE AFFILIATE.—In the case of a national bank which has an affiliate which provides insurance as principal and is not a subsidiary of the bank, the national bank and any subsidiary of the national bank may not engage in any activity involving the underwriting or sale of title insurance pursuant to paragraph (1).

(3) INSURANCE SUBSIDIARY.—In the case of a national bank which has a subsidiary which provides insurance as principal and has no affiliate which provides insurance as principal and is not a subsidiary, the national bank may not engage in any activity involving the underwriting or sale of title insurance pursuant to paragraph (1).

(4) AFFILIATE AND SUBSIDIARY DEFINED.—For purposes of this section, the terms ''affiliate'' and ''subsidiary'' have the meaning given such terms in section 2 of the Bank Holding Company Act of 1956.

(b) PARITY EXCEPTION.—Notwithstanding subsection (a), in the case of any State in which banks organized under the laws of such State were authorized to sell title insurance as agent as of January 1, 1997, a national bank and a subsidiary of a national bank may sell title insurance as agent in such State in the same manner and to the same extent such State banks are authorized to sell title insurance as agent in such State.

SEC. 307. EXPEDITED AND EQUALIZED DISPUTE RESOLUTION FOR FINANCIAL REGULATORS.

(a) FILING IN COURT OF APPEAL.—In the case of a regulatory conflict between a State insurance regulator and a Federal regulator as to whether any product is or is not insurance as defined in section 304(c) of this Act, or whether a State statute, regulation, order, or interpretation regarding any insurance sales or solicitation activity is properly treated as preempted under Federal law, either regulator may seek expedited judicial review of such determination by the United States Court of Appeals for the circuit in which the State is located or in the United States Court of Appeals for the District of Columbia Circuit by filing a petition for review in such court.

(b) EXPEDITED REVIEW.—The United States court of appeals in which a petition for review is filed in accordance with paragraph (1) shall complete all action on such petition, including rendering a judgment, before the end of the 60-day period beginning on the date such petition is filed, unless all parties to such proceeding agree to any extension of such period.

(c) SUPREME COURT REVIEW.—Any request for certiori to the Supreme Court of the United States of any judgment of a United States court of appeals with respect to a petition for review under this section shall be filed with the United States Supreme Court as soon as practicable after such judgment is issued.

(d) STATUTE OF LIMITATION.—No action may be filed under this section challenging an order, ruling, determination, or other action of a Federal financial regulator or State insurance regulator after the later of—

(1) the end of the 12-month period beginning on the date the first public notice is made of such order, ruling, or determination in its final form; or

(2) the end of the 6-month period beginning on the date such order, ruling, or determination takes effect.

(e) STANDARD OF REVIEW.—The court shall decide an action filed under this section based on its review on the merits of all questions presented under State and Federal law, including the nature of the product or activity and the history and purpose of its regulation under State and Federal law, without unequal deference.

SEC. 308. CONSUMER PROTECTION REGULATIONS.

(a) REGULATIONS REQUIRED.—

(1) IN GENERAL.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

''SEC. 45. CONSUMER PROTECTION REGULATIONS.

''(a) REGULATIONS REQUIRED.—

''(1) IN GENERAL.—The Federal banking agencies shall prescribe and publish in final form, before the end of the 1-year period beginning on the date of the enactment of this Act, consumer protection regulations (which the agencies jointly determine to be appropriate) that—

''(A) apply to retail sales, solicitations, advertising, or offers of any insurance product by any insured depository institution or wholesale financial institution or any person who is engaged in such activities at an office of the institution or on behalf of the institution; and

''(B) are consistent with the requirements of this Act and provide such additional protections for consumers to whom such sales, solicitations, advertising, or offers are directed as the agency determines to be appropriate.

''(2) APPLICABILITY TO SUBSIDIARIES.—The regulations prescribed pursuant to paragraph (1) shall extend such protections to any subsidiaries of an insured depository institution, as deemed appropriate by the regulators referred to in paragraph (3), where such extension is determined to be necessary to ensure the consumer protections provided by this section.

''(3) CONSULTATION AND JOINT REGULATIONS.—The Federal banking agencies shall

consult with each other and prescribe joint regulations pursuant to paragraph (1), after consultation with the State insurance regulators, as appropriate.

''(b) SALES PRACTICES.—The regulations prescribed pursuant to subsection (a) shall include anticoercion rules applicable to the sale of insurance products which prohibit an insured depository institution from engaging in any practice that would lead a consumer to believe an extension of credit, in violation of section 106(b) of the Bank Holding Company Act Amendments of 1970, is conditional upon—

''(1) the purchase of an insurance product from the institution or any of its affiliates or subsidiaries; or

''(2) an agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product from an unaffiliated entity.

''(c) DISCLOSURES AND ADVERTISING.—The regulations prescribed pursuant to subsection (a) shall include the following provisions relating to disclosures and advertising in connection with the initial purchase of an insurance product:

''(1) DISCLOSURES.—

''(A) IN GENERAL.—Requirements that the following disclosures be made orally and in writing before the completion of the initial sale and, in the case of clause (iv), at the time of application for an extension of credit:

''(i) UNINSURED STATUS.—As appropriate, the product is not insured by the Federal Deposit Insurance Corporation, the United States Government, or the insured depository institution.

''(ii) INVESTMENT RISK.—In the case of a variable annuity or other insurance product which involves an investment risk, that there is an investment risk associated with the product, including possible loss of value.

''(iv) COERCION.—The approval of an extension of credit may not be conditioned on—

''(I) the purchase of an insurance product from the institution in which the application for credit is pending or any of its affiliates or subsidiaries; or

''(II) an agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product from an unaffiliated entity.

''(B) MAKING DISCLOSURE READILY UNDERSTANDABLE.—Regulations prescribed under subparagraph (A) shall encourage the use of disclosure that is conspicuous, simple, direct, and readily understandable, such as the following:

''(i) 'NOT FDIC–INSURED'.

''(ii) 'NOT GUARANTEED BY THE BANK'.

''(iii) 'MAY GO DOWN IN VALUE'.

''(C) ADJUSTMENTS FOR ALTERNATIVE METHODS OF PURCHASE.—In prescribing the requirements under subparagraphs (A) and (D), necessary adjustments shall be made for purchase in person, by telephone, or by electronic media to provide for the most appropriate and complete form of disclosure and acknowledgments.

''(D) CONSUMER ACKNOWLEDGMENT.—A requirement that an insured depository institution shall require any person selling an insurance product at any office of, or on behalf of, the institution to obtain, at the time a consumer receives the disclosures required under this paragraph or at the time of the initial purchase by the consumer of such product, an acknowledgment by such consumer of the receipt of the disclosure required under this subsection with respect to such product.

''(2) PROHIBITION ON MISREPRESENTATIONS.—A prohibition on any practice, or any advertising, at any office of, or on behalf of, the insured depository institution, or any subsidiary as appropriate, which could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to—

''(A) the uninsured nature of any insurance product sold, or offered for sale, by the institution or any subsidiary of the institution; or

''(B) in the case of a variable annuity or other insurance product that involves an investment risk, the investment risk associated with any such product.

''(d) SEPARATION OF BANKING AND NONBANKING ACTIVITIES.—

''(1) REGULATIONS REQUIRED.—The regulations prescribed pursuant to subsection (a) shall include such provisions as the Federal banking agencies consider appropriate to ensure that the routine acceptance of deposits and the making of loans is kept, to the extent practicable, physically segregated from insurance product activity.

''(2) REQUIREMENTS.—Regulations prescribed pursuant to paragraph (1) shall include the following requirements:

''(A) SEPARATE SETTING.—A clear delineation of the setting in which, and the circumstances under which, transactions involving insurance products should be conducted in a location physically segregated from an area where retail deposits are routinely accepted.

''(B) REFERRALS.—Standards which permit any person accepting deposits from, or making loans to, the public in an area where such transactions are routinely conducted in an insured depository institution to refer a customer who seeks to purchase any insurance product to a qualified person who sells such product, only if the person making the referral receives no more than a one-time nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

''(C) QUALIFICATION AND LICENSING REQUIREMENTS.—Standards prohibiting any insured depository institution from permitting any person to sell or offer for sale any insurance product in any part of any office of the institution, or on behalf of the institution, unless such person is appropriately qualified and licensed.

''(e) DOMESTIC VIOLENCE DISCRIMINATION PROHIBITION.—

''(1) IN GENERAL.—In the case of an applicant for, or an insured under, any insurance product described in paragraph (2), the status of the applicant or insured as a victim of domestic violence, or as a provider of services to victims of domestic violence, shall not be considered as a criterion in any decision with regard to insurance underwriting, pricing, renewal, or scope of coverage of insurance policies, or payment of insurance claims, except as required or expressly permitted under State law.

''(2) SCOPE OF APPLICATION.—The prohibition contained in paragraph (1) shall apply to any insurance product which is sold or offered for sale, as principal, agent, or broker, by any insured depository institution or any person who is engaged in such activities at an office of the institution or on behalf of the institution.

''(3) SENSE OF THE CONGRESS.—It is the sense of the Congress that, by the end of the 30-month period beginning on the date of the enactment of this Act, the States should enact prohibitions against discrimination with respect to insurance products that are at least as strict as the prohibitions contained in paragraph (1).

''(4) DOMESTIC VIOLENCE DEFINED.—For purposes of this subsection, the term 'domestic violence' means the occurrence of 1 or more of the following acts by a current or former family member, household member, intimate partner, or caretaker:

''(A) Attempting to cause or causing or threatening another person physical harm, severe emotional distress, psychological trauma, rape, or sexual assault.

''(B) Engaging in a course of conduct or repeatedly committing acts toward another person, including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm.

''(C) Subjecting another person to false imprisonment.

''(D) Attempting to cause or cause damage to property so as to intimidate or attempt to control the behavior of another person.

''(f) CONSUMER GRIEVANCE PROCESS.—The Federal banking agencies shall jointly establish a consumer complaint mechanism, for receiving and expeditiously addressing consumer complaints alleging a violation of regulations issued under the section, which shall—

''(1) establish a group within each regulatory agency to receive such complaints;

''(2) develop procedures for investigating such complaints;

''(3) develop procedures for informing consumers of rights they may have in connection with such complaints; and

''(4) develop procedures for addressing concerns raised by such complaints, as appropriate, including procedures for the recovery of losses to the extent appropriate.

''(g) EFFECT ON OTHER AUTHORITY.—

''(1) No provision of this section shall be construed as granting, limiting, or otherwise affecting—

''(A) any authority of the Securities and Exchange Commission, any self-regulatory organization, the Municipal Securities Rulemaking Board, or the Secretary of the Treasury under any Federal securities law; or

''(B) any authority of any State insurance commissioner or other State authority under any State law.

''(2) Regulations prescribed by a Federal banking agency under this section shall not apply to retail sales, solicitations, advertising, or offers of any insurance product by any insured depository institution or wholesale financial institution or to any person who is engaged in such activities at an office of such institution or on behalf of the institution, in a State where the State has in effect statutes, regulations, orders, or interpretations, that are inconsistent with or contrary to the regulations prescribed by the Federal banking agencies.

''(h) INSURANCE PRODUCT DEFINED.—For purposes of this section, the term 'insurance product' includes an annuity contract the income of which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986.''.

SEC. 309. CERTAIN STATE AFFILIATION LAWS PREEMPTED FOR INSURANCE COMPANIES AND AFFILIATES.

No State may, by law, regulation, order, interpretation, or otherwise—

(1) prevent or restrict any insurer, or any affiliate of an insurer (whether such affiliate is organized as a stock company, mutual holding company, or otherwise), from becoming a financial holding company or acquiring control of an insured depository institution;

(2) limit the amount of an insurer's assets that may be invested in the voting securities of an insured depository institution (or any company which controls such institution), except that the laws of an insurer's State of domicile may limit the amount of such investment to an amount that is not less than 5 percent of the insurer's admitted assets; or

(3) prevent, restrict, or have the authority to review, approve, or disapprove a plan of reorganization by which an insurer proposes to reorganize from mutual form to become a stock insurer (whether as a direct or indirect

subsidiary of a mutual holding company or otherwise) unless such State is the State of domicile of the insurer.

Subtitle B—Redomestication of Mutual Insurers

SEC. 311. GENERAL APPLICATION.

This subtitle shall only apply to a mutual insurance company in a State which has not enacted a law which expressly establishes reasonable terms and conditions for a mutual insurance company domiciled in such State to reorganize into a mutual holding company.

SEC. 312. REDOMESTICATION OF MUTUAL INSURERS.

(a) REDOMESTICATION.—A mutual insurer organized under the laws of any State may transfer its domicile to a transferee domicile as a step in a reorganization in which, pursuant to the laws of the transferee domicile and consistent with the standards in subsection (f), the mutual insurer becomes a stock insurer that is a direct or indirect subsidiary of a mutual holding company.

(b) RESULTING DOMICILE.—Upon complying with the applicable law of the transferee domicile governing transfers of domicile and completion of a transfer pursuant to this section, the mutual insurer shall cease to be a domestic insurer in the transferor domicile and, as a continuation of its corporate existence, shall be a domestic insurer of the transferee domicile.

(c) LICENSES PRESERVED.—The certificate of authority, agents' appointments and licenses, rates, approvals and other items that a licensed State allows and that are in existence immediately prior to the date that a redomesticating insurer transfers its domicile pursuant to this subtitle shall continue in full force and effect upon transfer, if the insurer remains duly qualified to transact the business of insurance in such licensed State.

(d) EFFECTIVENESS OF OUTSTANDING POLICIES AND CONTRACTS.—

(1) IN GENERAL.—All outstanding insurance policies and annuities contracts of a redomesticating insurer shall remain in full force and effect and need not be endorsed as to the new domicile of the insurer, unless so ordered by the State insurance regulator of a licensed State, and then only in the case of outstanding policies and contracts whose owners reside in such licensed State.

(2) FORMS.—

(A) Applicable State law may require a redomesticating insurer to file new policy forms with the State insurance regulator of a licensed State on or before the effective date of the transfer.

(B) Notwithstanding subparagraph (A), a redomesticating insurer may use existing policy forms with appropriate endorsements to reflect the new domicile of the redomesticating insurer until the new policy forms are approved for use by the State insurance regulator of such licensed State.

(e) NOTICE.—A redomesticating insurer shall give notice of the proposed transfer to the State insurance regulator of each licensed State and shall file promptly any resulting amendments to corporate documents required to be filed by a foreign licensed mutual insurer with the insurance regulator of each such licensed State.

(f) PROCEDURAL REQUIREMENTS.—No mutual insurer may redomesticate to another State and reorganize into a mutual holding company pursuant to this section unless the State insurance regulator of the transferee domicile determines that the plan of reorganization of the insurer includes the following requirements:

(1) APPROVAL BY BOARD OF DIRECTORS AND POLICYHOLDERS.—The reorganization is approved by at least a majority of the board of directors of the mutual insurer and at least a majority of the policyholders who vote after notice, disclosure of the reorganization and the effects of the transaction on policyholder contractual rights, and reasonable opportunity to vote, in accordance with such notice, disclosure, and voting procedures as are approved by the State insurance regulator of the transferee domicile.

(2) CONTINUED VOTING CONTROL BY POLICYHOLDERS; REVIEW OF PUBLIC STOCK OFFERING.—After the consummation of a reorganization, the policyholders of the reorganized insurer shall have the same voting rights with respect to the mutual holding company as they had before the reorganization with respect to the mutual insurer. With respect to an initial public offering of stock, the offering shall be conducted in compliance with applicable securities laws and in a manner approved by the State insurance regulator of the transferee domicile.

(3) AWARD OF STOCK OR GRANT OF OPTIONS TO OFFICERS AND DIRECTORS.—For a period of 6 months after completion of an initial public offering, neither a stock holding company nor the converted insurer shall award any stock options or stock grants to persons who are elected officers or directors of the mutual holding company, the stock holding company, or the converted insurer, except with respect to any such awards or options to which a person is entitled as a policyholder and as approved by the State insurance regulator of the transferee domicile.

(4) CONTRACTUAL RIGHTS.—Upon reorganization into a mutual holding company, the contractual rights of the policyholders are preserved.

(5) FAIR AND EQUITABLE TREATMENT OF POLICYHOLDERS.—The reorganization is approved as fair and equitable to the policyholders by the insurance regulator of the transferee domicile.

SEC. 313. EFFECT ON STATE LAWS RESTRICTING REDOMESTICATION.

(a) IN GENERAL.—Unless otherwise permitted by this subtitle, State laws of any transferor domicile that conflict with the purposes and intent of this subtitle are preempted, including but not limited to—

(1) any law that has the purpose or effect of impeding the activities of, taking any action against, or applying any provision of law or regulation to, any insurer or an affiliate of such insurer because that insurer or any affiliate plans to redomesticate, or has redomesticated, pursuant to this subtitle;

(2) any law that has the purpose or effect of impeding the activities of, taking action against, or applying any provision of law or regulation to, any insured or any insurance licensee or other intermediary because such person or entity has procured insurance from or placed insurance with any insurer or affiliate of such insurer that plans to redomesticate, or has redomesticated, pursuant to this subtitle, but only to the extent that such law would treat such insured licensee or other intermediary differently than if the person or entity procured insurance from, or placed insurance with, an insured licensee or other intermediary which had not redomesticated;

(3) any law that has the purpose or effect of terminating, because of the redomestication of a mutual insurer pursuant to this subtitle, any certificate of authority, agent appointment or license, rate approval, or other approval, of any State insurance regulator or other State authority in existence immediately prior to the redomestication in any State other than the transferee domicile.

(b) DIFFERENTIAL TREATMENT PROHIBITED.—No State law, regulation, interpretation, or functional equivalent thereof, of a State other than a transferee domicile may treat a redomesticating or redomesticated insurer or any affiliate thereof any differently than an insurer operating in that State that is not a redomesticating or redomesticated insurer.

(c) LAWS PROHIBITING OPERATIONS.—If any licensed State fails to issue, delays the issuance of, or seeks to revoke an original or renewal certificate of authority of a redomesticated insurer immediately following redomestication, except on grounds and in a manner consistent with its past practices regarding the issuance of certificates of authority to foreign insurers that are not redomesticating, then the redomesticating insurer shall be exempt from any State law of the licensed State to the extent that such State law or the operation of such State law would make unlawful, or regulate, directly or indirectly, the operation of the redomesticated insurer, except that such licensed State may require the redomesticated insurer to—

(1) comply with the unfair claim settlement practices law of the licensed State;

(2) pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on licensed insurers or policyholders under the laws of the licensed State;

(3) register with and designate the State insurance regulator as its agent solely for the purpose of receiving service of legal documents or process;

(4) submit to an examination by the State insurance regulator in any licensed state in which the redomesticated insurer is doing business to determine the insurer's financial condition, if—

(A) the State insurance regulator of the transferee domicile has not begun an examination of the redomesticated insurer and has not scheduled such an examination to begin before the end of the 1-year period beginning on the date of the redomestication; and

(B) any such examination is coordinated to avoid unjustified duplication and repetition;

(5) comply with a lawful order issued in—

(A) a delinquency proceeding commenced by the State insurance regulator of any licensed State if there has been a judicial finding of financial impairment under paragraph (7); or

(B) a voluntary dissolution proceeding;

(6) comply with any State law regarding deceptive, false, or fraudulent acts or practices, except that if the licensed State seeks an injunction regarding the conduct described in this paragraph, such injunction must be obtained from a court of competent jurisdiction as provided in section 314(a);

(7) comply with an injunction issued by a court of competent jurisdiction, upon a petition by the State insurance regulator alleging that the redomesticating insurer is in hazardous financial condition or is financially impaired;

(8) participate in any insurance insolvency guaranty association on the same basis as any other insurer licensed in the licensed State; and

(9) require a person acting, or offering to act, as an insurance licensee for a redomesticated insurer in the licensed State to obtain a license from that State, except that such State may not impose any qualification or requirement that discriminates against a nonresident insurance licensee.

SEC. 314. OTHER PROVISIONS.

(a) JUDICIAL REVIEW.—The appropriate United States district court shall have exclusive jurisdiction over litigation arising under this section involving any redomesticating or redomesticated insurer.

(b) SEVERABILITY.—If any provision of this section, or the application thereof to any person or circumstances, is held invalid, the remainder of the section, and the application

of such provision to other persons or circumstances, shall not be affected thereby.

SEC. 315. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) COURT OF COMPETENT JURISDICTION.—The term ''court of competent jurisdiction'' means a court authorized pursuant to section 314(a) to adjudicate litigation arising under this subtitle.

(2) DOMICILE.—The term ''domicile'' means the State in which an insurer is incorporated, chartered, or organized.

(3) INSURANCE LICENSEE.—The term ''insurance licensee'' means any person holding a license under State law to act as insurance agent, subagent, broker, or consultant.

(4) INSTITUTION.—The term ''institution'' means a corporation, joint stock company, limited liability company, limited liability partnership, association, trust, partnership, or any similar entity.

(5) LICENSED STATE.—The term ''licensed State'' means any State, the District of Columbia, American Samoa, Guam, Puerto Rico, or the United States Virgin Islands in which the redomesticating insurer has a certificate of authority in effect immediately prior to the redomestication.

(6) MUTUAL INSURER.—The term ''mutual insurer'' means a mutual insurer organized under the laws of any State.

(7) PERSON.—The term ''person'' means an individual, institution, government or governmental agency, State or political subdivision of a State, public corporation, board, association, estate, trustee, or fiduciary, or other similar entity.

(8) POLICYHOLDER.—The term ''policyholder'' means the owner of a policy issued by a mutual insurer, except that, with respect to voting rights, the term means a member of a mutual insurer or mutual holding company granted the right to vote, as determined under applicable State law.

(9) REDOMESTICATED INSURER.—The term ''redomesticated insurer'' means a mutual insurer that has redomesticated pursuant to this subtitle.

(10) REDOMESTICATING INSURER.—The term ''redomesticating insurer'' means a mutual insurer that is redomesticating pursuant to this subtitle.

(11) REDOMESTICATION OR TRANSFER.—The terms ''redomestication'' and ''transfer'' mean the transfer of the domicile of a mutual insurer from one State to another State pursuant to this subtitle.

(12) STATE INSURANCE REGULATOR.—The term ''State insurance regulator'' means the principal insurance regulatory authority of a State, the District of Columbia, American Samoa, Guam, Puerto Rico, or the United States Virgin Islands.

(13) STATE LAW.—The term ''State law'' means the statutes of any State, the District of Columbia, American Samoa, Guam, Puerto Rico, or the United States Virgin Islands and any regulation, order, or requirement prescribed pursuant to any such statute.

(14) TRANSFEREE DOMICILE.—The term ''transferee domicile'' means the State to which a mutual insurer is redomesticating pursuant to this subtitle.

(15) TRANSFEROR DOMICILE.—The term ''transferor domicile'' means the State from which a mutual insurer is redomesticating pursuant to this subtitle.

SEC. 316. EFFECTIVE DATE.

This subtitle shall take effect on the date of enactment of this Act.

Subtitle C—National Association of Registered Agents and Brokers

SEC. 321. STATE FLEXIBILITY IN MULTISTATE LICENSING REFORMS.

(a) IN GENERAL.—The provisions of this subtitle shall take effect unless by the end of the 3-year period beginning on the date of the enactment of this Act at least a majority of the States—

(1) have enacted uniform laws and regulations governing the licensure of individuals and entities authorized to sell and solicit the purchase of insurance within the State; or

(2) have enacted reciprocity laws and regulations governing the licensure of nonresident individuals and entities authorized to sell and solicit insurance within those States.

(b) UNIFORMITY REQUIRED.—States shall be deemed to have established the uniformity necessary to satisfy subsection (a)(1) if the States—

(1) establish uniform criteria regarding the integrity, personal qualifications, education, training, and experience of licensed insurance producers, including the qualification and training of sales personnel in ascertaining the appropriateness of a particular insurance product for a prospective customer;

(2) establish uniform continuing education requirements for licensed insurance producers;

(3) establish uniform ethics course requirements for licensed insurance producers in conjunction with the continuing education requirements under paragraph (2);

(4) establish uniform criteria to ensure that an insurance product, including any annuity contract, sold to a consumer is suitable and appropriate for the consumer based on financial information disclosed by the consumer; and

(5) do not impose any requirement upon any insurance producer to be licensed or otherwise qualified to do business as a nonresident that has the effect of limiting or conditioning that producer's activities because of its residence or place of operations, except that counter-signature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section.

(c) RECIPROCITY REQUIRED.—States shall be deemed to have established the reciprocity required to satisfy subsection (a)(2) if the following conditions are met:

(1) ADMINISTRATIVE LICENSING PROCEDURES.—At least a majority of the States permit a producer that has a resident license for selling or soliciting the purchase of insurance in its home State to receive a license to sell or solicit the purchase of insurance in such majority of States as a nonresident to the same extent such producer is permitted to sell or solicit the purchase of insurance in its State, without satisfying any additional requirements other than submitting—

(A) a request for licensure;

(B) the application for licensure that the producer submitted to its home State;

(C) proof that the producer is licensed and in good standing in its home State; and

(D) the payment of any requisite fee to the appropriate authority,

if the producer's home State also awards such licenses on such a reciprocal basis.

(2) CONTINUING EDUCATION REQUIREMENTS.—A majority of the States accept an insurance producer's satisfaction of its home State's continuing education requirements for licensed insurance producers to satisfy the States' own continuing education requirements if the producer's home State also recognizes the satisfaction of continuing education requirements on such a reciprocal basis.

(3) NO LIMITING NONRESIDENT REQUIREMENTS.—A majority of the States do not impose any requirement upon any insurance producer to be licensed or otherwise qualified to do business as a nonresident that has the effect of limiting or conditioning that producer's activities because of its residence or place of operations, except that countersignature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section.

(4) RECIPROCAL RECIPROCITY.—Each of the States that satisfies paragraphs (1), (2), and (3) grants reciprocity to residents of all of the other States that satisfy such paragraphs.

(d) DETERMINATION.—

(1) NAIC DETERMINATION.—At the end of the 3-year period beginning on the date of the enactment of this Act, the National Association of Insurance Commissioners shall determine, in consultation with the insurance commissioners or chief insurance regulatory officials of the States, whether the uniformity or reciprocity required by subsections (b) and (c) has been achieved.

(2) JUDICIAL REVIEW.—The appropriate United States district court shall have exclusive jurisdiction over any challenge to the National Association of Insurance Commissioners' determination under this section and such court shall apply the standards set forth in section 706 of title 5, United States Code, when reviewing any such challenge.

(e) CONTINUED APPLICATION.—If, at any time, the uniformity or reciprocity required by subsections (b) and (c) no longer exists, the provisions of this subtitle shall take effect within 2 years, unless the uniformity or reciprocity required by those provisions is satisfied before the expiration of that 2-year period.

(f) SAVINGS PROVISION.—No provision of this section shall be construed as requiring that any law, regulation, provision, or action of any State which purports to regulate insurance producers, including any such law, regulation, provision, or action which purports to regulate unfair trade practices or establish consumer protections, including countersignature laws, be altered or amended in order to satisfy the uniformity or reciprocity required by subsections (b) and (c), unless any such law, regulation, provision, or action is inconsistent with a specific requirement of any such subsection and then only to the extent of such inconsistency.

SEC. 322. NATIONAL ASSOCIATION OF REGISTERED AGENTS AND BROKERS.

(a) ESTABLISHMENT.—There is established the National Association of Registered Agents and Brokers (hereafter in this subtitle referred to as the ''Association'')

(b) STATUS.—The Association shall—

(1) be a nonprofit corporation and be presumed to have the status of an organization described in section 501(c)(6) of the Internal Revenue Code of 1986 unless the Secretary of the Treasury determines that the Association does not meet the requirements of such section;

(2) have succession until dissolved by an Act of Congress;

(3) not be an agency or establishment of the United States Government; and

(4) except as otherwise provided in this Act, be subject to, and have all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (D.C. Code, sec. 29y–1001 et seq.).

SEC. 323. PURPOSE.

The purpose of the Association shall be to provide a mechanism through which uniform licensing, appointment, continuing education, and other insurance producer sales qualification requirements and conditions can be adopted and applied on a multistate basis, while preserving the right of States to

license, supervise, and discipline insurance producers and to prescribe and enforce laws and regulations with regard to insurance-related consumer protection and unfair trade practices.

SEC. 324. RELATIONSHIP TO THE FEDERAL GOVERNMENT.

The Association shall be subject to the supervision and oversight of the National Association of Insurance Commissioners (hereafter in this subtitle referred to as the ''NAIC'') and shall not be an agency or an instrumentality of the United States Government.

SEC. 325. MEMBERSHIP.

(a) ELIGIBILITY.—

(1) IN GENERAL.—Any State-licensed insurance producer shall be eligible to become a member in the Association.

(2) INELIGIBILITY FOR SUSPENSION OR REVOCATION OF LICENSE.—Notwithstanding paragraph (1), a State-licensed insurance producer shall not be eligible to become a member if a State insurance regulator has suspended or revoked such producer's license in that State during the 3-year preceding the date such producer applies for membership.

(3) RESUMPTION OF ELIGIBILITY.—Paragraph (2) shall cease to apply to any insurance producer if—

(A) the State insurance regulator renews the license of such producer in the State in which the license was suspended or revoked; or

(B) the suspension or revocation is subsequently overturned.

(b) AUTHORITY TO ESTABLISH MEMBERSHIP CRITERIA.—The Association shall have the authority to establish membership criteria that—

(1) bear a reasonable relationship to the purposes for which the Association was established; and

(2) do not unfairly limit the access of smaller agencies to the Association membership.

(c) ESTABLISHMENT OF CLASSES AND CATEGORIES.—

(1) CLASSES OF MEMBERSHIP.—The Association may establish separate classes of membership, with separate criteria, if the Association reasonably determines that performance of different duties requires different levels of education, training, or experience.

(2) CATEGORIES.—The Association may establish separate categories of membership for individuals and for other persons. The establishment of any such categories of membership shall be based either on the types of licensing categories that exist under State laws or on the aggregate amount of business handled by an insurance producer. No special categories of membership, and no distinct membership criteria, shall be established for members which are insured depository institutions or wholesale financial institutions or for their employees, agents, or affiliates.

(d) MEMBERSHIP CRITERIA.—

(1) IN GENERAL.—The Association may establish criteria for membership which shall include standards for integrity, personal qualifications, education, training, and experience.

(2) MINIMUM STANDARD.—In establishing criteria under paragraph (1), the Association shall consider the highest levels of insurance producer qualifications established under the licensing laws of the States.

(e) EFFECT OF MEMBERSHIP.—Membership in the Association shall entitle the member to licensure in each State for which the member pays the requisite fees, including licensing fees and, where applicable, bonding requirements, set by such State.

(f) ANNUAL RENEWAL.—Membership in the Association shall be renewed on an annual basis.

(g) CONTINUING EDUCATION.—The Association shall establish, as a condition of membership, continuing education requirements which shall be comparable to or greater than the continuing education requirements under the licensing laws of a majority of the States.

(h) SUSPENSION AND REVOCATION.—The Association may—

(1) inspect and examine the records and offices of the members of the Association to determine compliance with the criteria for membership established by the Association; and

(2) suspend or revoke the membership of an insurance producer if—

(A) the producer fails to meet the applicable membership criteria of the Association: or

(B) the producer has been subject to disciplinary action pursuant to a final adjudicatory proceeding under the jurisdiction of a State insurance regulator, and the Association concludes that retention of membership in the Association would not be in the public interest.

(i) OFFICE OF CONSUMER COMPLAINTS.—

(1) IN GENERAL.—The Association shall establish an office of consumer complaints that shall—

(A) receive and investigate complaints from both consumers and State insurance regulators related to members of the Association; and

(B) recommend to the Association any disciplinary actions that the office considers appropriate, to the extent that any such recommendation is not inconsistent with State law.

(2) RECORDS AND REFERRALS.—The office of consumer complaints of the Association shall—

(A) maintain records of all complaints received in accordance with paragraph (1) and make such records available to the NAIC and to each State insurance regulator for the State of residence of the consumer who filed the complaint; and

(B) refer, when appropriate, any such complaint to any appropriate State insurance regulator.

(3) TELEPHONE AND OTHER ACCESS.—The office of consumer complaints shall maintain a toll-free telephone number for the purpose of this subsection and, as practicable, other alternative means of communication with consumers, such as an Internet home page.

SEC. 326. BOARD OF DIRECTORS.

(a) ESTABLISHMENT.—There is established the board of directors of the Association (hereafter in this subtitle referred to as the ''Board'') for the purpose of governing and supervising the activities of the Association and the members of the Association.

(b) POWERS.—The Board shall have such powers and authority as may be specified in the bylaws of the Association.

(c) COMPOSITION.—

(1) MEMBERS.—The Board shall be composed of 7 members appointed by the NAIC.

(2) REQUIREMENT.—At least 4 of the members of the Board shall have significant experience with the regulation of commercial lines of insurance in at least 1 of the 20 States in which the greatest total dollar amount of commercial-lines insurance is placed in the United States.

(3) INITIAL BOARD MEMBERSHIP.—

(A) IN GENERAL.—If, by the end of the 2-year period beginning on the date of the enactment of this Act, the NAIC has not appointed the initial 7 members of the Board of the Association, the initial Board shall consist of the 7 State insurance regulators of the 7 States with the greatest total dollar amount of commercial-lines insurance in place as of the end of such period.

(B) ALTERNATE COMPOSITION.—If any of the State insurance regulators described in subparagraph (A) declines to serve on the Board, the State insurance regulator with the next greatest total dollar amount of commercial-lines insurance in place, as determined by the NAIC as of the end of such period, shall serve as a member of the Board.

(C) INOPERABILITY.—If fewer than 7 State insurance regulators accept appointment to the Board, the Association shall be established without NAIC oversight pursuant to section 332.

(d) TERMS.—The term of each director shall, after the initial appointment of the members of the Board, be for 3 years, with ⅓ of the directors to be appointed each year.

(e) BOARD VACANCIES.—A vacancy on the Board shall be filled in the same manner as the original appointment of the initial Board for the remainder of the term of the vacating member.

(f) MEETINGS.—The Board shall meet at the call of the chairperson, or as otherwise provided by the bylaws of the Association.

SEC. 327. OFFICERS.

(a) IN GENERAL.—

(1) POSITIONS.—The officers of the Association shall consist of a chairperson and a vice chairperson of the Board, a president, secretary, and treasurer of the Association, and such other officers and assistant officers as may be deemed necessary.

(2) MANNER OF SELECTION.—Each officer of the Board and the Association shall be elected or appointed at such time and in such manner and for such terms not exceeding 3 years as may be prescribed in the bylaws of the Association.

(b) CRITERIA FOR CHAIRPERSON.— Only individuals who are members of the National Association of Insurance Commissioners shall be eligible to serve as the chairperson of the board of directors.

SEC. 328. BYLAWS, RULES, AND DISCIPLINARY ACTION.

(a) ADOPTION AND AMENDMENT OF BYLAWS.—

(1) COPY REQUIRED TO BE FILED WITH THE NAIC.—The board of directors of the Association shall file with the NAIC a copy of the proposed bylaws or any proposed amendment to the bylaws, accompanied by a concise general statement of the basis and purpose of such proposal.

(2) EFFECTIVE DATE.—Except as provided in paragraph (3), any proposed bylaw or proposed amendment shall take effect—

(A) 30 days after the date of the filing of a copy with the NAIC;

(B) upon such later date as the Association may designate; or

(C) such earlier date as the NAIC may determine.

(3) DISAPPROVAL BY THE NAIC.—Notwithstanding paragraph (2), a proposed bylaw or amendment shall not take effect if, after public notice and opportunity to participate in a public hearing—

(A) the NAIC disapproves such proposal as being contrary to the public interest or contrary to the purposes of this subtitle and provides notice to the Association setting forth the reasons for such disapproval; or

(B) the NAIC finds that such proposal involves a matter of such significant public interest that public comment should be obtained, in which case it may, after notifying the Association in writing of such finding, require that the procedures set forth in subsection (b) be followed with respect to such proposal, in the same manner as if such proposed bylaw change were a proposed rule change within the meaning of such paragraph.

(b) ADOPTION AND AMENDMENT OF RULES.—

(1) FILING PROPOSED REGULATIONS WITH THE NAIC.—

(A) IN GENERAL.—The board of directors of the Association shall file with the NAIC a copy of any proposed rule or any proposed amendment to a rule of the Association which shall be accompanied by a concise general statement of the basis and purpose of such proposal.

(B) OTHER RULES AND AMENDMENTS INEFFECTIVE.—No proposed rule or amendment shall take effect unless approved by the NAIC or otherwise permitted in accordance with this paragraph.

(2) INITIAL CONSIDERATION BY THE NAIC.—Within 35 days after the date of publication of notice of filing of a proposal, or before the end of such longer period not to exceed 90 days as the NAIC may designate after such date if the NAIC finds such longer period to be appropriate and sets forth its reasons for so finding, or as to which the Association consents, the NAIC shall—

(A) by order approve such proposed rule or amendment; or

(B) institute proceedings to determine whether such proposed rule or amendment should be modified or disapproved.

(3) NAIC PROCEEDINGS.—

(A) IN GENERAL.—Proceedings instituted by the NAIC with respect to a proposed rule or amendment pursuant to paragraph (2) shall—

(i) include notice of the grounds for disapproval under consideration;

(ii) provide opportunity for hearing; and

(iii) be concluded within 180 days after the date of the Association's filing of such proposed rule or amendment.

(B) DISPOSITION OF PROPOSAL.—At the conclusion of any proceeding under subparagraph (A), the NAIC shall, by order, approve or disapprove the proposed rule or amendment.

(C) EXTENSION OF TIME FOR CONSIDERATION.—The NAIC may extend the time for concluding any proceeding under subparagraph (A) for—

(i) not more than 60 days if the NAIC finds good cause for such extension and sets forth its reasons for so finding; or

(ii) for such longer period as to which the Association consents.

(4) STANDARDS FOR REVIEW.—

(A) GROUNDS FOR APPROVAL.—The NAIC shall approve a proposed rule or amendment if the NAIC finds that the rule or amendment is in the public interest and is consistent with the purposes of this Act.

(B) APPROVAL BEFORE END OF NOTICE PERIOD.—The NAIC shall not approve any proposed rule before the end of the 30-day period beginning on the date the Association files proposed rules or amendments in accordance with paragraph (1) unless the NAIC finds good cause for so doing and sets forth the reasons for so finding.

(5) ALTERNATE PROCEDURE.—

(A) IN GENERAL.—Notwithstanding any provision of this subsection other than subparagraph (B), a proposed rule or amendment relating to the administration or organization of the Association may take effect—

(i) upon the date of filing with the NAIC, if such proposed rule or amendment is designated by the Association as relating solely to matters which the NAIC, consistent with the public interest and the purposes of this subsection, determines by rule do not require the procedures set forth in this paragraph; or

(ii) upon such date as the NAIC shall for good cause determine.

(B) ABROGATION BY THE NAIC.—

(i) IN GENERAL.—At any time within 60 days after the date of filing of any proposed rule or amendment under subparagraph (A)(i) or (B)(ii), the NAIC may repeal such rule or amendment and require that the rule or amendment be refiled and reviewed in accordance with this paragraph, if the NAIC finds that such action is necessary or appropriate in the public interest, for the protection of insurance producers or policyholders, or otherwise in furtherance of the purposes of this subtitle.

(ii) EFFECT OF RECONSIDERATION BY THE NAIC.—Any action of the NAIC pursuant to clause (i) shall—

(I) not affect the validity or force of a rule change during the period such rule or amendment was in effect; and

(II) not be considered to be final action.

(c) ACTION REQUIRED BY THE NAIC.—The NAIC may, in accordance with such rules as the NAIC determines to be necessary or appropriate to the public interest or to carry out the purposes of this subtitle, require the Association to adopt, amend, or repeal any bylaw, rule or amendment of the Association, whenever adopted.

(d) DISCIPLINARY ACTION BY THE ASSOCIATION.—

(1) SPECIFICATION OF CHARGES.—In any proceeding to determine whether membership shall be denied, suspended, revoked, and not renewed (hereafter in this section referred to as a ''disciplinary action''), the Association shall bring specific charges, notify such member of such charges and give the member an opportunity to defend against the charges, and keep a record.

(2) SUPPORTING STATEMENT.—A determination to take disciplinary action shall be supported by a statement setting forth—

(A) any act or practice in which such member has been found to have been engaged;

(B) the specific provision of this subtitle, the rules or regulations under this subtitle, or the rules of the Association which any such act or practice is deemed to violate; and

(C) the sanction imposed and the reason for such sanction.

(e) NAIC REVIEW OF DISCIPLINARY ACTION.—

(1) NOTICE TO THE NAIC.—If the Association orders any disciplinary action, the Association shall promptly notify the NAIC of such action.

(2) REVIEW BY THE NAIC.—Any disciplinary action taken by the Association shall be subject to review by the NAIC—

(A) on the NAIC's own motion; or

(B) upon application by any person aggrieved by such action if such application is filed with the NAIC not more than 30 days after the later of—

(i) the date the notice was filed with the NAIC pursuant to paragraph (1); or

(ii) the date the notice of the disciplinary action was received by such aggrieved person.

(f) EFFECT OF REVIEW.—The filing of an application to the NAIC for review of a disciplinary action, or the institution of review by the NAIC on the NAIC's own motion, shall not operate as a stay of disciplinary action unless the NAIC otherwise orders.

(g) SCOPE OF REVIEW.—

(A) IN GENERAL.—In any proceeding to review such action, after notice and the opportunity for hearing, the NAIC shall—

(i) determine whether the action should be taken;

(ii) affirm, modify, or rescind the disciplinary sanction; or

(iii) remand to the Association for further proceedings.

(B) DISMISSAL OF REVIEW.—The NAIC may dismiss a proceeding to review disciplinary action if the NAIC finds that—

(i) the specific grounds on which the action is based exist in fact;

(ii) the action is in accordance with applicable rules and regulations; and

(iii) such rules and regulations are, and were, applied in a manner consistent with the purposes of this Act.

SEC. 329. ASSESSMENTS.

(a) INSURANCE PRODUCERS SUBJECT TO ASSESSMENT.—The Association may establish such application and membership fees as the Association finds necessary to cover the costs of its operations, including fees made reimbursable to the NAIC under subsection (b), except that, in setting such fees, the Association may not discriminate against smaller insurance producers.

(b) NAIC ASSESSMENTS.—The NAIC may assess the Association for any costs it incurs under this subtitle.

SEC. 330. FUNCTIONS OF THE NAIC.

(a) ADMINISTRATIVE PROCEDURE.—Determinations of the NAIC, for purposes of making rules pursuant to section 328, shall be made after appropriate notice and opportunity for a hearing and for submission of views of interested persons.

(b) EXAMINATIONS AND REPORTS.—

(1) The NAIC may make such examinations and inspections of the Association and require the Association to furnish it with such reports and records or copies thereof as the NAIC may consider necessary or appropriate in the public interest or to effectuate the purposes of this subtitle.

(2) As soon as practicable after the close of each fiscal year, the Association shall submit to the NAIC a written report regarding the conduct of its business, and the exercise of the other rights and powers granted by this subtitle, during such fiscal year. Such report shall include financial statements setting forth the financial position of the Association at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year. The NAIC shall transmit such report to the President and the Congress with such comment thereon as the NAIC determines to be appropriate.

SEC. 331. LIABILITY OF THE ASSOCIATION AND THE DIRECTORS, OFFICERS, AND EMPLOYEES OF THE ASSOCIATION.

(a) IN GENERAL.—The Association shall not be deemed to be an insurer or insurance producer within the meaning of any State law, rule, regulation, or order regulating or taxing insurers, insurance producers, or other entities engaged in the business of insurance, including provisions imposing premium taxes, regulating insurer solvency or financial condition, establishing guaranty funds and levying assessments, or requiring claims settlement practices.

(b) LIABILITY OF THE ASSOCIATION, ITS DIRECTORS, OFFICERS, AND EMPLOYEES.—Neither the Association nor any of its directors, officers, or employees shall have any liability to any person for any action taken or omitted in good faith under or in connection with any matter subject to this subtitle.

SEC. 332. ELIMINATION OF NAIC OVERSIGHT.

(a) IN GENERAL.—The Association shall be established without NAIC oversight and the provisions set forth in section 324, subsections (a), (b), (c), and (e) of section 328, and sections 329(b) and 330 of this subtitle shall cease to be effective if, at the end of the 2-year period after the date on which the provisions of this subtitle take effect pursuant to section 321—

(1) at least a majority of the States representing at least 50 percent of the total United States commercial-lines insurance premiums have not satisfied the uniformity or reciprocity requirements of subsections (a) and (b) of section 321; and

(2) the NAIC has not approved the Association's bylaws as required by section 328, the NAIC is unable to operate or supervise the Association, or the Association is not conducting its activities as required under this Act.

(b) BOARD APPOINTMENTS.—If the repeals required by subsection (a) are implemented—

(1) GENERAL APPOINTMENT POWER.—The President, with the advice and consent of the United States Senate, shall appoint the members of the Association's Board established under section 326 from lists of candidates recommended to the President by the National Association of Insurance Commissioners.

(2) PROCEDURES FOR OBTAINING NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS APPOINTMENT RECOMMENDATIONS.—

(A) INITIAL DETERMINATION AND RECOMMENDATIONS.—After the date on which the provisions of part a of this section take effect, then the National Association of Insurance Commissioners shall have 60 days to provide a list of recommended candidates to the President. If the National Association of Insurance Commissioners fails to provide a list by that date, or if any list that is provided does not include at least 14 recommended candidates or comply with the requirements of section 326(c), the President shall, with the advice and consent of the United States Senate, make the requisite appointments without considering the views of the NAIC.

(B) SUBSEQUENT APPOINTMENTS.—After the initial appointments, the National Association of Insurance Commissioners shall provide a list of at least 6 recommended candidates for the Board to the President by January 15 of each subsequent year. If the National Association of Insurance Commissioners fails to provide a list by that date, or if any list that is provided does not include at least 6 recommended candidates or comply with the requirements of section 326(c), the President, with the advice and consent of the Senate, shall make the requisite appointments without considering the views of the NAIC.

(C) PRESIDENTIAL OVERSIGHT.—

(i) REMOVAL.—If the President determines that the Association is not acting in the interests of the public, the President may remove the entire existing Board for the remainder of the term to which the members of the Board were appointed and appoint, with the advice and consent of the Senate, new members to fill the vacancies on the Board for the remainder of such terms.

(ii) SUSPENSION OF RULES OR ACTIONS.—The President, or a person designated by the President for such purpose, may suspend the effectiveness of any rule, or prohibit any action, of the Association which the President or the designee determines is contrary to the public interest.

(d) ANNUAL REPORT.—As soon as practicable after the close of each fiscal year, the Association shall submit to the President and to Congress a written report relative to the conduct of its business, and the exercise of the other rights and powers granted by this subtitle, during such fiscal year. Such report shall include financial statements setting forth the financial position of the Association at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year.

SEC. 333. RELATIONSHIP TO STATE LAW.

(a) PREEMPTION OF STATE LAWS.—State laws, regulations, provisions, or actions purporting to regulate insurance producers shall be preempted in the following instances:

(1) No State shall impede the activities of, take any action against, or apply any provision of law or regulation to, any insurance producer because that insurance producer or any affiliate plans to become, has applied to become, or is a member of the Association.

(2) No State shall impose any requirement upon a member of the Association that it pay different fees to be licensed or otherwise qualified to do business in that State, including bonding requirements, based on its residency.

(3) No State shall impose any licensing, appointment, integrity, personal or corporate qualifications, education, training, experience, residency, or continuing education requirement upon a member of the Association that is different than the criteria for membership in the Association or renewal of such membership, except that counter-signature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section.

(4) No State shall implement the procedures of such State's system of licensing or renewing the licenses of insurance producers in a manner different from the authority of the Association under section 325.

(b) SAVINGS PROVISION.—Except as provided in subsection (a), no provision of this section shall be construed as altering or affecting the continuing effectiveness of any law, regulation, provision, or action of any State which purports to regulate insurance producers, including any such law, regulation, provision, or action which purports to regulate unfair trade practices or establish consumer protections, including, but not limited to, countersignature laws.

SEC. 334. COORDINATION WITH OTHER REGULATORS.

(a) COORDINATION WITH STATE INSURANCE REGULATORS.—The Association shall have the authority to—

(1) issue uniform insurance producer applications and renewal applications that may be used to apply for the issuance or removal of State licenses, while preserving the ability of each State to impose such conditions on the issuance or renewal of a license as are consistent with section 333;

(2) establish a central clearinghouse through which members of the Association may apply for the issuance or renewal of licenses in multiple States; and

(3) establish or utilize a national database for the collection of regulatory information concerning the activities of insurance producers.

(b) COORDINATION WITH THE NATIONAL ASSOCIATION OF SECURITIES DEALERS.—The Association shall coordinate with the National Association of Securities Dealers in order to ease any administrative burdens that fall on persons that are members of both associations, consistent with the purposes of this subtitle and the Federal securities laws.

SEC. 335. JUDICIAL REVIEW.

(a) JURISDICTION.—The appropriate United States district court shall have exclusive jurisdiction over litigation involving the Association, including disputes between the Association and its members that arise under this subtitle. Suits brought in State court involving the Association shall be deemed to have arisen under Federal law and therefore be subject to jurisdiction in the appropriate United States district court.

(b) EXHAUSTION OF REMEDIES.—An aggrieved person must exhaust all available administrative remedies before the Association and the NAIC before it may seek judicial review of an Association decision.

(c) STANDARDS OF REVIEW.—The standards set forth in section 553 of title 5, United States Code, shall be applied whenever a rule or bylaw of the Association is under judicial review, and the standards set forth in section 554 of title 5, United States Code, shall be applied whenever a disciplinary action of the Association is judicially reviewed.

SEC. 336. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) INSURANCE.—The term ''insurance'' means any product defined or regulated as insurance by the appropriate State insurance regulatory authority.

(2) INSURANCE PRODUCER.—The term ''insurance producer'' means any insurance agent or broker, surplus lines broker, insurance consultant, limited insurance representative, and any other person that solicits, negotiates, effects, procures, delivers, renews, continues or binds policies of insurance or offers advice, counsel, opinions or services related to insurance.

(3) STATE LAW.—The term ''State law'' includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(4) STATE.—The term ''State'' includes any State, the District of Columbia, American Samoa, Guam, Puerto Rico, and the United States Virgin Islands.

(5) HOME STATE.—The term ''home State'' means the State in which the insurance producer maintains its principal place of residence and is licensed to act as an insurance producer.

TITLE IV—UNITARY SAVINGS AND LOAN HOLDING COMPANIES

SEC. 401. TERMINATION OF EXPANDED POWERS FOR NEW UNITARY S&L HOLDING COMPANIES.

(a) IN GENERAL.—Section 10(c) of the Home Owners' Loan Act (12 U.S.C. 1467a(c)) is amended by adding at the end the following new paragraph:

''(9) TERMINATION OF EXPANDED POWERS FOR NEW UNITARY S&L HOLDING COMPANY.—

''(A) IN GENERAL.—Subject to subparagraph (B), paragraph (3) shall not apply with respect to any company that becomes a savings and loan holding company pursuant to an application filed after March 31, 1998.

''(B) EXISTING UNITARY S&L HOLDING COMPANIES AND THE SUCCESSORS TO SUCH COMPANIES.—Subparagraph (A) shall not apply, and paragraph (3) shall continue to apply, to a company (or any subsidiary of such company) that—

''(i) either—

''(I) acquired 1 or more savings associations described in paragraph (3) pursuant to applications at least 1 of which was filed before April 1, 1998; or

''(II) became a savings and loan holding company by acquiring ownership or control of the company described in subclause (I); and

''(ii) continues to control the savings associations referred to in clause (i)(I) or the successor to any such savings association.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 10(c)(3) of the Home Owners' Loan Act (12 U.S.C. 1467a(c)(3)) is amended by striking ''Notwithstanding'' and inserting ''Except as provided in paragraph (9) and notwithstanding''.

The CHAIRMAN. No amendment to that amendment in the nature of a substitute is in order unless printed in part 2 of that report. Each amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered read, shall be considered debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

The Chair may postpone a request for a recorded vote on any amendment and may reduce to a minimum of 5 minutes the time for voting on any postponed

question that immediately follows another vote, provided that the time for voting on the first question shall be a minimum of 15 minutes.

It is now in order to consider Amendment No. 1 printed in part 2 of House Report 105–531.

AMENDMENT NO. 1 OFFERED BY MR. BLILEY

Mr. BLILEY. Madam Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 printed in part 2 of House Report 105–531 offered by Mr. BLILEY:

[1. CUSTOMER FEE DISCLOSURE]

At the end of title II of the Amendment in the Nature of a Substitute, insert the following new subtitle (and conform the table of contents accordingly):

Subtitle E—Disclosure of Customer Costs of Acquiring Financial Products

SEC. 251. IMPROVED AND CONSISTENT DISCLOSURE.

(a) REVISED REGULATIONS REQUIRED.—Within one year after the date of enactment of this Act, each Federal financial regulatory authority shall prescribe rules, or revisions to its rules, to improve the accuracy, simplicity, and completeness, and to make more consistent, the disclosure of information by persons subject to the jurisdiction of such regulatory authority concerning any commissions, fees, markups, or other costs incurred by customers in the acquisition of financial products.

(b) CONSULTATION.—In prescribing rules and revisions under subsection (a), the Federal financial regulatory authorities shall consult with each other and with appropriate State financial regulatory authorities.

(c) CONSIDERATION OF EXISTING DISCLOSURES.—In prescribing rules and revisions under subsection (a), the Federal financial regulatory authorities shall consider the sufficiency and appropriateness of then existing laws and rules applicable to persons subject to their jurisdiction, and may prescribe exemptions from the rules and revisions required by subsection (a) to the extent appropriate in light of the objective of this section to increase the consistency of disclosure practices.

(d) ENFORCEMENT.—Any rule prescribed by a Federal financial regulatory authority pursuant to this section shall, for purposes of enforcement, be treated as a rule prescribed by such regulatory authority pursuant to the statute establishing such regulatory authority's jurisdiction over the persons to whom such rule applies.

(e) DEFINITION.—As used in this section, the term ''Federal financial regulatory authority'' means the Board of Governors of the Federal Reserve System, the Securities and Exchange Commission, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Commodity Futures Trading Commission, and any self-regulatory organization under the supervision of any of the foregoing.

[2. SEC BACKUP AUTHORITY]

In section 17(i)(6) of the Securities Exchange Act of 1934, as amended by section 231(a) of the Amendment in the Nature of a Substitute, after ''For purposes of this subsection'' insert ''and subsection (j)''.

In section 17 of the Securities Exchange Act of 1934, as amended by section 231(a) of the Amendment in the Nature of a Substitute, redesignate subsection (j) as subsection (k) and before such redesignated subsection (k) insert the following new subsection:

''(j) COMMISSION BACKUP AUTHORITY.—

''(1) AUTHORITY.—The Commission may make inspections of any wholesale financial holding company that—

''(A) controls a wholesale financial institution,

''(B) is not a foreign bank, and

''(C) does not control an insured bank (other than an institution permitted under subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956) or a savings association,

and any affiliate of such company, for the purpose of monitoring and enforcing compliance by the wholesale financial holding company with the Federal securities laws.

''(2) LIMITATION.—The Commission shall limit the focus and scope of any inspection under paragraph (1) to those transactions, policies, procedures, or records that are reasonably necessary to monitor and enforce compliance by the wholesale financial holding company or any affiliate with the Federal securities laws.

''(3) DEFERENCE TO EXAMINATIONS.—To the fullest extent possible, the Commission shall use, for the purposes of this subsection, the reports of examinations—

''(A) made by the Board of Governors of the Federal Reserve System of any wholesale financial holding company that is supervised by the Board;

''(B) made by or on behalf of any State regulatory agency responsible for the supervision of an insurance company of any licensed insurance company; and

''(C) made by any Federal or State banking agency of any bank or institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956.

''(4) NOTICE.—To the fullest extent possible, the Commission shall notify the appropriate regulatory agency prior to conducting an inspection of a wholesale financial institution or institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956.

[3. SAVINGS CLAUSE FOR CFTC]

At the end of subtitle A of title II of the Amendment in the Nature of a Substitute, insert the following new section (and conform the table of contents accordingly):

SEC. 210. RULE OF CONSTRUCTION.

Nothing in this Act shall supersede, affect, or otherwise limit the scope and applicability of the Commodity Exchange Act (7 U.S.C. 1 et seq.).

[4. CONSUMER PROTECTION]

In subparagraph (A) of section 45(a)(1) of the Federal Deposit Insurance Act, as added by section 308(a) of the Amendment in the Nature of a Substitute, insert ''practices'' after ''retail sales''.

In paragraph (1) of section 45(g) of the Federal Deposit Insurance Act, as added by section 308(a) of the Amendment in the Nature of a Substitute, strike ''(1) No provision'' and insert ''(1) IN GENERAL.—No provision''.

In paragraph (1)(B) of section 45(g) of the Federal Deposit Insurance Act, as added by section 308(a) of the Amendment in the Nature of a Substitute, insert ''except as provided in paragraph (2),'' after ''(B)''.

In paragraph (2) of section 45(g) of the Federal Deposit Insurance Act, as added by section 308(a) of the Amendment in the Nature of a Substitute, strike ''(2) Regulations'' and insert '''(2) COORDINATION WITH STATE LAW.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), regulations''.

At the end of paragraph (2) of section 45(g) of the Federal Deposit Insurance Act, as added by section 308(a) of the Amendment in the Nature of a Substitute, add the following new subparagraph:

(B) PREEMPTION.—If, with respect to any provision of the regulations prescribed under this section, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Board of Directors of the Federal Deposit Insurance Corporation determine jointly that the protection afforded by such provision for consumers is greater than the protection provided by a comparable provision of the statutes, regulations, orders, or interpretations referred to in subparagraph (A) of any State, such provision of the regulations prescribed under this section shall supersede the comparable provision of such State statute, regulation, order, or interpretation.

[5. LIFELINE BANKING]

In paragraph (1) of section 6(d) of the Bank Holding Company Act of 1956, as added by section 103(a) of the Amendment in the Nature of a Substitute, strike ''or (C)'' and insert ''(C), or (D)''.

In paragraph (4)(D) of section 6(d) of the Bank Holding Company Act of 1956, as added by section 103(a) of the Amendment in the Nature of a Substitute, strike ''or (C)'' and insert ''(C), or (D)''.

[6. STATE SECURITIES AND INSURANCE]

In section 104(a)(1) of the Amendment in the Nature of a Substitute, strike ''restrict'' and insert ''significantly interfere with the ability of''.

In section 104(a)(1) of the Amendment in the Nature of a Substitute, strike ''from being'' and insert ''to be''.

In section 104(b)(1) of the Amendment in the Nature of a Substitute, strike ''paragraphs (2) and (3) and subject to section 18(c) of the Securities Act of 1933'' and insert ''paragraphs (2), (3), and (4)''.

In section 104(b)(1) of the Amendment in the Nature of a Substitute, strike ''restrict'' and insert ''significantly interfere with the ability of''.

In section 104(b)(1) of the Amendment in the Nature of a Substitute, strike ''from engaging,'' and insert ''to engage,''.

In section 104(b)(2) of the Amendment in the Nature of a Substitute, strike ''As stated by the United States Supreme Court'' and insert ''In accordance with the decision of the Supreme Court of the United States''.

In section 104(b)(2) of the Amendment in the Nature of a Substitute, strike subparagraph (B) and insert the following new subparagraph:

(B) subparagraph (A) shall not create any inference regarding State statutes and regulations governing insurance sales and solicitations other than State statutes and regulations described in subparagraph (A).

In section 104(b) of the Amendment in the Nature of a Substitute, strike paragraph (3) and insert the following new paragraph:

(3) State statutes, regulations, orders, and interpretations or otherwise shall not be preempted under paragraph (1) if they—

(A) relate to, or are enacted or issued for the purpose of regulating, the business of insurance in accordance with the McCarran-Ferguson Act;

(B) apply only to entities that are not insured depository institutions or wholesale financial institutions but which are engaged in the business of insurance;

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

(i) cross-marketing; or

(ii) activities, including cross-marketing, which are subject to paragraph (2);

(D) are applicable to and are applied in the same manner with respect to an affiliate of an insured depository institution or a wholesale financial institution as they are applicable to and are applied to those entities that are not affiliated with an insured depository institution or a wholesale financial institution; and

(E) do not prevent or significantly interfere with the ability of an insured depository institution or wholesale financial institution to engage in activities authorized for such institution under this Act or any other provision of Federal law.

In section 104(b) of the Amendment in the Nature of a Substitute, after paragraph (3) insert the following new paragraph:

(4) Paragraphs (1) and (2) shall not be construed as affecting the jurisdiction of the securities commission (or any agency or office performing like functions) of any State, under the laws of such State, to investigate and bring enforcement actions, consistent with section 18(c) of the Securities Act of 1933, with respect to fraud or deceit or unlawful conduct by any person, in connection with securities or securities transactions.

After section 116 of the Amendment in the Nature of a Substitute, insert the following new section (and amend the table of contents accordingly):

SEC. 117. INTERAGENCY CONSULTATION.

(a) PURPOSE.—It is the intention of Congress that the Board of Governors of the Federal Reserve System, as the umbrella supervisor for financial holding companies, and the State insurance regulators, as the functional regulators of companies engaged in insurance activities, coordinate efforts to supervise companies that control both a depository institution and a company engaged in insurance activities regulated under State law. In particular, Congress believes that the Board and the State insurance regulators should share, on a confidential basis, information relevant to the supervision of companies that control both a depository institution and a company engaged in insurance activities, including information regarding the financial health of the consolidated organization and information regarding transactions and relationships between insurance companies and affiliated depository institutions. The appropriate Federal banking agencies for depository institutions should also share, on a confidential basis, information with the relevant State insurance regulators regarding transactions and relationships between depository institutions and affiliated companies engaged in insurance activities. The purpose of this section is to encourage this coordination and confidential sharing of information, and to thereby improve both the efficiency and the quality of the supervision of financial holding companies and their affiliated depository institutions and companies engaged in insurance activities.

(b) EXAMINATION RESULTS AND OTHER INFORMATION.—

(1) INFORMATION OF THE BOARD.—Upon the request of the appropriate insurance regulator of any State, the Board may provide any information of the Board regarding the financial condition, risk management policies, and operations of any financial holding company that controls a company that is engaged in insurance activities and is regulated by such State insurance regulator, and regarding any transaction or relationship between such an insurance company and any affiliated depository institution. The Board may provide any other information to the appropriate State insurance regulator that the Board believes is necessary or appropriate to permit the State insurance regulator to administer and enforce applicable State insurance laws.

(2) BANKING AGENCY INFORMATION.—Upon the request of the appropriate insurance regulator of any State, the appropriate Federal banking agency may provide any information of the agency regarding any transaction or relationship between a depository institution supervised by such Federal banking agency and any affiliated company that is engaged in insurance activities regulated by such State insurance regulator. The appropriate Federal banking agency may provide any other information to the appropriate State insurance regulator that the agency believes is necessary or appropriate to permit the State insurance regulator to administer and enforce applicable State insurance laws.

(3) STATE INSURANCE REGULATOR INFORMATION.—Upon the request of the Board or the appropriate Federal banking agency, a State insurance regulator may provide any examination or other reports, records, or other information to which such insurance regulator may have access with respect to a company which—

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

(B) is an affiliate of an insured depository institution, wholesale financial institution, or financial holding company.

(c) CONSULTATION.—Before making any determination relating to the initial affiliation of, or the continuing affiliation of, an insured depository institution, wholesale financial institution, or financial holding company with a company engaged in insurance activities, the appropriate Federal banking agency shall consult with the appropriate State insurance regulator of such company and take the views of such insurance regulator into account in making such determination.

(d) EFFECT ON OTHER AUTHORITY.—Nothing in this section shall limit in any respect the authority of the appropriate Federal banking agency with respect to an insured depository institution, wholesale financial institution, or bank holding company or any affiliate thereof under any provision of law.

(e) CONFIDENTIALITY AND PRIVILEGE.—

(1) CONFIDENTIALITY.—The appropriate Federal banking agency shall not provide any information or material that is entitled to confidential treatment under applicable Federal banking agency regulations, or other applicable law, to a State insurance regulator unless such regulator agrees to maintain the information or material in confidence and to take all reasonable steps to oppose any effort to secure disclosure of the information or material by the regulator. The appropriate Federal banking agency shall treat as confidential any information or material obtained from a State insurance regulator that is entitled to confidential treatment under applicable State regulations, or other applicable law, and take all reasonable steps to oppose any effort to secure disclosure of the information or material by the Federal banking agency.

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

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

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

(2) BOARD; FINANCIAL HOLDING COMPANY; AND WHOLESALE FINANCIAL INSTITUTION.—The terms ''Board'', ''financial holding company'', and ''wholesale financial institution'' shall have the same meanings as in section 2 of the Bank Holding Company Act of 1956.

In paragraph (1) of section 309 of the Amendment in the Nature of a Substitute, strike ''restrict'' and insert ''significantly interfere with the ability of''.

In paragraph (1) of section 309 of the Amendment in the Nature of a Substitute, strike ''from becoming'' and insert ''to become''.

In paragraph (1) of section 309 of the Amendment in the Nature of a Substitute, strike ''from acquiring'' and insert ''to acquire''.

In paragraph (3) of section 309 of the Amendment in the Nature of a Substitute, strike ''restrict'' and insert ''significantly interfere with''.

[7. BROKERAGE COMMISSIONS]

In section 3(a)(4)(B) of the Securities Exchange Act of 1934, as amended by section 201 of the Amendment in the Nature of a Substitute, strike clause (ii) (relating to trust activities) and insert the following:

''(ii) TRUST ACTIVITIES.—The bank effects transactions in a trustee capacity, or effects transactions in a fiduciary capacity in its trust department or other department that is regularly examined by bank examiners for compliance with fiduciary principles and standards, and (in either case)—

''(I) is primarily compensated on the basis of an administration or annual fee (payable on a monthly, quarterly, or other basis), a percentage of assets under management, or a flat or capped per order processing fee, or any combination of such fees, but does not otherwise receive brokerage commissions, or other similar remuneration based on effecting transactions in securities, that exceed the cost incurred by the bank in connection with executing securities transactions for trustee or fiduciary customers; and

''(II) does not publicly solicit brokerage business, other than by advertising that it effects transactions in securities in conjunction with advertising its other trust activities.

In section 3(a)(4)(B) of the Securities Exchange Act of 1934, as amended by section 201 of the Amendment in the Nature of a Substitute, strike clause (iv) (relating to certain stock purchase plans) and insert the following:

''(iv) CERTAIN STOCK PURCHASE PLANS.—

''(I) EMPLOYEE BENEFIT PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of any pension, retirement, profit-sharing, bonus, thrift, savings, incentive, or other similar benefit plan for the employees of that issuer or its subsidiaries, if—

(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan; and

''(bb) the bank's compensation for such plan or program consists of administration fees, or flat or capped per order processing fees, or both, but the bank does not otherwise receive brokerage commissions, or other similar remuneration based on effecting transactions in securities, that exceed the cost incurred by the bank in connection with executing securities transactions under this subclause (I).

''(II) DIVIDEND REINVESTMENT PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of that issuer's dividend reinvestment plan, if—

''(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan;

''(bb) the bank does not net shareholders' buy and sell orders, other than for programs for odd-lot holders or plans registered with the Commission; and

''(cc) the bank's compensation for such plan or program consists of administration fees, or flat or capped per order processing fees, or both, but the bank does not otherwise receive brokerage commissions, or other similar remuneration based on effecting transactions in securities, that exceed the cost incurred by the bank in connection with executing securities transactions under this subclause (II).

''(III) ISSUER PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of a plan or program for the purchase or sale of that issuer's shares, if—

''(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan or program;

''(bb) the bank does not net shareholders' buy and sell orders, other than for programs for odd-lot holders or plans registered with the Commission; and

''(cc) the bank's compensation for such plan or program consists of administration fees, or flat or capped per order processing fees, or both, but the bank does not otherwise receive brokerage commissions, or other similar remuneration based on effecting transactions in securities, that exceed the cost incurred by the bank in connection with executing securities transactions under this subclause (III).

''(IV) PERMISSIBLE DELIVERY OF MATERIALS.—The exception to being considered a broker for a bank engaged in activities described in subclauses (I), (II), and (III) will not be affected by a bank's delivery of written or electronic plan materials to employees of the issuer, shareholders of the issuer, or members of affinity groups of the issuer, so long as such materials are—

''(aa) comparable in scope or nature to that permitted by the Commission as of the date of the enactment of the Financial Services Act of 1998; or

''(bb) otherwise permitted by the Commission.

[8. ANTITRUST]

Strike subtitle E of title I of the Amendment in the Nature of a Substitute and insert the following new subtitle (and conform the table of contents accordingly):

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.

Section 11(b)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1849(b)(1)) is amended by inserting ''and, if the transaction also involves an acquisition under section 4 or section 6, the Board shall also notify the Federal Trade Commission of such approval'' before the period at the end of the 1st sentence.

SEC. 142. INTERAGENCY DATA SHARING.

To the extent not prohibited by other law, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the Board of Governors of the Federal Reserve System shall make available to the Attorney General and the Federal Trade Commission any data in the possession of any such banking agency that the antitrust agency deems necessary for antitrust review of any transaction requiring notice to any such antitrust agency or the approval of such agency under section 3, 4, or 6 of the Bank Holding Company Act of 1956, section 18(c) of the Federal Deposit Insurance Act, the National Bank Consolidation and Merger Act, section 10 of the Home Owners' Loan Act, or the antitrust laws.

SEC. 143. CLARIFICATION OF STATUS OF SUBSIDIARIES AND AFFILIATES.

(a) CLARIFICATION OF FEDERAL TRADE COMMISSION JURISDICTION.—Any person which directly or indirectly controls, is controlled directly or indirectly by, or is directly or indirectly under common control with, any bank or savings association (as such terms are defined in section 3 of the Federal Deposit Insurance Act) and is not itself a bank or savings association shall not be deemed to be a bank or savings association for purposes of the Federal Trade Commission Act or any other law enforced by the Federal Trade Commission.

(b) SAVINGS PROVISION.—No provision of this section shall be construed as restricting the authority of any Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) under any Federal banking law, including section 8 of the Federal Deposit Insurance Act.

(c) HART–SCOTT–RODINO AMENDMENT.—Section 7A(c)(7) of the Clayton Act (15 U.S.C. 18a(c)(7)) is amended by inserting before the semicolon at the end thereof the following: '', except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) requires notice under section 6 of the Bank Holding Company Act of 1956; and (B) does not require approval under section 3 or 4 of the Bank Holding Company Act of 1956''.

SEC. 144. ANNUAL GAO REPORT.

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

(b) ANALYSIS.—Each report submitted under subsection (a) shall contain an analysis of—

(1) the positive and negative effects of affiliations between various types of financial companies, and of acquisitions pursuant to this Act and the amendments made by this Act to other provisions of law, including any positive or negative effects on consumers, area markets, and submarkets thereof or on registered securities brokers and dealers which have been purchased by depository institutions or depository institution holding companies;

(2) the changes in business practices and the effects of any such changes on the availability of venture capital, consumer credit, and other financial services or products and the availability of capital and credit for small businesses; and

(3) the acquisition patterns among depository institutions, depository institution holding companies, securities firms, and insurance companies including acquisitions among the largest 20 percent of firms and acquisitions within regions or other limited geographical areas.

[9. DERIVATIVE INSTRUMENTS]

In section 206(a)(1)(F) of the Amendment in the Nature of a Substitute, strike clauses (ii) and (iii), and insert the following:

(ii) interest rates, except interest rate derivative instruments (I) that are based on a security or a group or index of securities (other than government securities or a group or index of government securities); (II) that provide for the delivery of one or more securities (other than government securities); or (III) that trade on a national securities exchange; or

(iii) commodities, other rates, indices, or other assets, except derivative instruments (I) that are securities or that are based on a group or index of securities (other than government securities or a group or index of government securities); (II) that provide for the delivery of one or more securities (other than government securities); or (III) that trade on a national securities exchange.

In section 206(a)(3) of the Amendment in the Nature of a Substitute, strike ''and'' at the end of subparagraph (B); redesignate subparagraph (C) as subparagraph (D); and after subparagraph (B), insert the following new subparagraph:

(C) the term 'government securities' has the meaning provided in section 3(a)(42) of such Act, and, for purposes of this subsection, commercial paper, bankers acceptances, and commercial bills shall be treated in the same manner as government securities; and

[10. QUALIFIED INVESTOR]

In paragraph (55)(A) of section 3(a) of the Securities Exchange Act of 1934, as added by section 207 of the Amendment in the Nature of a Substitute, strike ''or'' at the end of clause (viii).

In paragraph (55)(A) of section 3(a) of the Securities Exchange Act of 1934, as added by section 207 of the Amendment in the Nature of a Substitute, strike the period at the end of clause (ix) and insert ''; or''.

In paragraph (55)(A) of section 3(a) of the Securities Exchange Act of 1934, as added by section 207 of the Amendment in the Nature of a Substitute, insert the following new clause after clause (ix):

''(x) the government of any foreign country.

[11. COMMUNITY NEEDS]

At the end of subtitle A of title I of the Amendment in the Nature of a Substitute, insert the following new section (and amend the table of contents accordingly):

SEC. 109. RESPONSIVENESS TO COMMUNITY NEEDS FOR FINANCIAL SERVICES.

(a) STUDY.—The Secretary of the Treasury, in consultation with the Federal banking agencies (as defined in section 3(z) of the Federal Deposit Insurance Act) and the Securities and Exchange Commission, shall conduct a study of the extent to which adequate services are being provided as intended by the Community Reinvestment Act of 1977, including services in low- and moderate-income neighborhoods and for persons of modest means, as a result of the enactment of this Act.

(b) REPORT.—Before the end of the 2-year period beginning on the date of the enactment of this Act, the Secretary of the Treasury, in consultation with the Federal banking agencies and the Securities and Exchange Commission, shall submit a report to the Congress on the study conducted pursuant to subsection (a) and shall include such recommendations as the Secretary determines to be appropriate for administrative and legislative action with respect to institutions covered under the Community Reinvestment Act of 1977.

[12. PRIVACY STUDY]

After section 109 (as so added) of the Amendment in the Nature of a Substitute, insert the following new section (and amend the table of contents accordingly):

SEC. 110. REPORTS ON ONGOING FTC STUDY OF CONSUMER PRIVACY ISSUES.

With respect to the ongoing multistage study being conducted by the Federal Trade Commission on consumer privacy issues, the Commission shall submit to the Congress an interim report on the findings and conclusions of the Commission, together with such recommendations for legislative and administrative action as the Commission determines to be appropriate, at the conclusion of each stage of such study and a final report at the conclusion of the study.

[13. TECHNICAL CORRECTION]

In section 322(b) of the Amendment in the Nature of a Substitute, strike paragraph (1) and insert the following:

(1) be a nonprofit corporation;

The CHAIRMAN. Is the gentleman from Virginia (Mr. BLILEY) the designee of the gentleman from Iowa (Mr. LEACH)?

Mr. LEACH. Yes, Madam Chairman, he certainly is. With great pride I designate him such.

The CHAIRMAN. Under the rule, the gentleman from Virginia (Mr. BLILEY) does offer the amendment in his own right.

Pursuant to House Resolution 428, the gentleman from Virginia (Mr. BLILEY) and a Member opposed each will control 15 minutes.

The Chair recognizes the gentleman from Virginia (Mr. BLILEY).

Mr. BLILEY. Madam Chairman, I yield myself such time as I may consume.

Madam Chairman, I rise in strong support of the managers' amendment, which represents a bipartisan, bi-committee agreement that will significantly improve H.R. 10.

I thank my good friend and ranking Member, JOHN DINGELL, and Committee on Banking and Financial Services chairman, the gentleman from Iowa (Mr. LEACH), for their commitment to this legislation. They deserve a great deal of credit for being able to roll up their sleeves and make reasonable compromises. The result is one every Member can be proud to support, for it promotes good public policy for American consumers and American businesses.

The managers' amendment will strengthen investor and consumer protection, clarify regulations for the businesses that have to comply with them, and make regulatory standards more consistent for all parties in the insurance business, including banks. The agreement accomplishes all this without imposing any needless regulatory burdens.

The managers' amendment improves upon investor and consumer protection by providing for SEC regulatory authority over securities activities of wholesale financial institutions. It charges Federal regulators to review the adequacy of the disclosure of fees charged by financial institutions, but requires those regulators to consider the sufficiency of existing regulations when making that determination.

Consumers have a rate to understand the fees they are charged by their financial institutions. This amendment will help ensure they get or continue to get the disclosure they need.

The amendment preserves the authorities of State insurance and securities regulators. The amendment also makes the applicability of the Barnett ''significant interference'' test more uniform throughout the bill to prevent State insurance regulations from unfairly interfering with the insurance activities of banks.

The amendment ensures that banks can enter the brave new world of affiliations and continue to provide and be paid for trust and other securities-related services.

The managers' amendment also reserve the application of Hart-Scott-Rodino, the act that requires certain filings with the Justice Department when big companies merge. The act does not eliminate any exemption that currently applies under that act. Rather, it preserves current law as it would apply once H.R. 10 were signed into law.

The managers' amendment enjoys the strong support of Federal Reserve Board Chairman Greenspan, SEC Chairman Levitt, State securities and insurance regulators and a wide array of financial service providers.

This amendment will benefit every participant in our Nation's financial markets, from businesses to consumers. I urge every Member of this body to support this amendment.

Madam Chairman, I reserve the balance of my time.

Mr. LaFALCE. Madam Chairman, I claim the time in opposition to the amendment.

The CHAIRMAN. The gentleman from New York (Mr. LAFALCE) is recognized for 15 minutes.

Mr. LAFALCE. Madam Chairman, I yield myself 4 minutes.

Madam Chairman, the bill before us today is extremely complex and controversial. It would usher in a new era and a new structure for financial services, one in which banking, investment, insurance and other services would be merged, and enormous financial resources could be concentrated in huge financial conglomerates.

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I wish to commend the authors of the manager's amendment, therefore, for offering a number of important changes in H.R. 10 that I believe are essential if this legislation is to serve the needs and interests of consumers and investors.

The amendment would correct a provision relating to consumer protections in bank sales of insurance products that would otherwise have permitted any related State statute or regulation to preempt and nullify the consumer protections in Federal law and regulation.

The manager's amendment clarifies that the stronger Federal or State standard in terms of these specific protections provided to consumers will prevail. We had this in the Committee on Banking and Financial Services product; it is absolutely essential. I am delighted it is in the manager's amendment.

This change relates to specific consumer protection rules for insurance sales which, as I said, were in the original Committee on Banking and Financial Services product. A number of colleagues have related concerns which I share about how the broader preemption language in section 104 will affect and possibly preempt other State consumer statutes. Regrettably, the manager's amendment does not address this issue.

The amendment corrects a serious shortcoming of the bill relating to a provision originally sponsored by the gentlewoman from California (Ms. WATERS) that now requires financial services holding companies to offer and maintain low-cost, basic banking accounts for lower-income consumers, but provides for no enforcement authority. The amendment, the manager's amendment, provides this needed authority to assure ongoing compliance with this important requirement.

The manager's amendment also addresses the problem of potential new and undisclosed charges to consumers in the cross-marketing of financial products by banks. It gives the financial regulators authority to issue new or revised rules that will improve the disclosure of information about fees, commissions and other costs to consumers.

The manager's amendment also makes other important changes to enhance SEC authority, to protect individual investors, to preserve the FTC's

authority to review the antitrust implications of bank mergers and to require expanded studies of consumer privacy issues and CRA compliance by banks.

Madam Speaker, financial modernization presents enormous potential benefits to consumers in terms of new products, greater convenience and lower cost. But if we permit this process to undermine consumer rights and rob their pocketbooks, we have achieved neither reform nor modernization.

The manager's amendment makes a number of needed changes in H.R. 10 that can help assure that the consumer will benefit. It does not go far enough, but what it does do it does in the right direction, and therefore, I would urge adoption of the manager's amendment.

Madam Chairman, I reserve the balance of my time.

Mr. BLILEY. Madam Chairman, I yield 6 minutes to the gentleman from Michigan (Mr. DINGELL) and I ask unanimous consent that he may control that time.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

Mr. DINGELL. Madam Chairman, I want to thank my good friend, the gentleman from Virginia (Mr. BLILEY), the chairman of the Committee on Commerce. I yield myself 3 minutes.

Last month, Madam Chairman, USA Today carried an editorial with a title, ''Protecting Consumers Is a Big Part of Reforming Bank Laws.'' With this amendment, the House will say resoundingly, ''We agree.'' I would note to my colleagues that we have heard no condemnation nor criticism of the amendment.

Consumers Union today submitted a letter urging Members to vote for the manager's amendment, and I will insert that letter, and an explanation of the manager's amendment, following my remarks.

Breaking down the barriers between financial services industries raises serious risks to consumers. USA Today raised some of these.

Rip-off risks. The big promise to consumers from merging banking, securities and insurance firms is one-stop shopping. But that opens consumers up to enormous pressure to absorb all of the services that the banks can give. Clearly, a person badly in need of a loan is going to be extremely responsive to that, hardly a situation which we want. The manager's amendment protects against that.

Uninsured risks is another. Will bank customers be misled about which products are insured and which are not? Bank deposits are FDIC insured; if the bank goes under, taxpayers pony up to cover the deposits, as we had to do on savings and loans. Stock funds and other investment vehicles are not. Consumer groups complain that it will be too easy for banks to woo customers into higher-risk, higher-paying investments with consumers thinking that their assets are protected. Clear guidelines are a must, says USA Today. Our amendment provides them.

Taxpayers' risks. Taxpayers are also facing heightened risks. Banks might be tempted to use insured deposits as leverage to make riskier investments, knowing that if the investments turn sour, taxpayers will bail them out. That is what happened to the savings and loans in the bailouts of the late 1980s. It cost taxpayers hundreds of billions of dollars.

These are things against which the manager's amendment protects. The manager's amendment will also protect customers and consumers with strong protections against risks and abuses as banks move into other financial fields.

Madam Chairman, I would urge my colleagues to support this amendment, and at this time I will include for the RECORD the previously referred to materials.

PROTECTING CONSUMERS IS BIG PART OF REFORMING BANK LAWS

For many, many years, overhauling the banking industry has been one of Congress' favorite pastimes. Just promise to change the nation's Depression-era banking laws, and a host of competing industries starts flooding campaign coffers with cash in an effort to protest their interests. The trick for lawmakers was to not actually pass anything.

This week's announcement of an $83 billion merger of Citicorp and Travelers Group could bring that game to a halt. The marriage will likely prompt other banks to start courting insurance and securities firms. All of which will put intense pressure on lawmakers to get off the dime and kill the 1933 law that sought to minimize risks to depositors by preventing banks from underwriting securities or insurance products. But breaking down the financial service industry's firewalls also raises serious risks to consumers.

Rip-off risks. The big promise to consumers from merging banking, securities and insurance firms is one-stop shopping. But will those looking for a mortgage be pressured into buying other services from the lender? Or will banks offer package deals that seem appealing but are far more expensive than if each were bought separately? Some consumer-protection ground rules are needed here.

Uninsured risks. Will bank customers be misled about which products are insured and which aren't? Bank deposits are FDIC insured—if the bank goes under, taxpayers pony up to cover the deposits. Stock funds and other investment vehicles aren't. Consumer groups complain that it will be too easy for banks to woo customers to riskier, higher-paying investments, with customers thinking their assets are protected. Clear guidelines are a must.

Taxpayer risks. Taxpayers also face heightened risks. Banks might be tempted to use insured deposits as leverage to make riskier investments, knowing that if the investments turn sour, taxpayers will bail them out. That's what happened in the S&L bailout of the late '80s. It cost taxpayers hundreds of billions of dollars. Firms also might be tempted to loan that money to struggling subsidiaries—again boosting taxpayer risk. Strong safeguards against this ''moral hazard'' problem have to be in place.

It is nevertheless clear that banking laws designed for an economy 65 years ago don't work as well now. The goal of the 1933 Glass-Steagall Act was to keep banks separate from insurance and securities firms as a way to protect banks.

But the law has weakened banks. They've lost ground at home and abroad to more flexible foreign financial firms.

Responding to this concern, the Federal Reserve Board over the past decade used its authority as regulatory of bank holding companies to chip away slowly at the Glass-Steagall wall, giving banks more leeway to set up securities subsidiaries. The Fed has gone about as far as it can under the law. Congress has to tear down the rest of the wall.

As lawmakers remove obstacles to the brave new world of finance, they must take care not to leave the consumer behind.

CONSUMERS UNION,
Washington, DC, May 13, 1998.

VOTE FOR PRO-CONSUMER AMENDMENTS TO H.R. 10

DEAR REPRESENTATIVE: We are writing to urge you to vote for amendments to H.R. 10 that make substantial improvements for consumers. If these amendments are not adopted, we urge you to oppose the bill. The following amendments will help make the bill better for consumers.

Restoration of Consumer Protections, Basic Banking Enforcement and Fee Disclosure—Bliley-Dingell-Leach Amendment: H.R. 10 includes a package of consumer safeguards against deceptive and misleading bank insurance sales practices. Section 308(g)(2) would undo these safeguards by allowing states to preempt them with laws that are ''contrary or inconsistent'' to the protections provided. The amendment would fix the standard to conform with other consumer banking laws, ensuring state laws that provide greater protection than the federal regulations would not be preempted.

The amendment also mandates ongoing commonplace with H.R. 10's requirement that all depository institutions affiliated with financial services holding companies provide low-cost, basic banking accounts. In addition, the amendment requires improved fee and commission disclosures to enhance comparison shopping; deletes sections relating to antitrust authority that would limit the ability of regulators to assess certain competition problems associated with mergers; preserves the authority of antitrust regulators; and closes further certain loopholes in the securities laws as they apply to banks. We urge you to vote for the amendment.

We strongly urge you to oppose the Baker amendment that would rollback consumer safeguards for retail sales activities and eliminate Community Reinvestment Act (CRA) requirements for institutions with less than $100 million in assets.

Elimination of Banking and Consumer Provisions—Leach-Bereuter-Campbell Amendment: The longstanding barrier between banking and commerce is still needed to prevent our taxpayer-backed banking system from being exposed to the kinds of risks that have plagued Asian neighbors. H.R. 10 currently allows holding companies to derive 5% of their revenues from commercial activities, with some dollar limits. Some argue that this is small enough to avoid risks but many large firms may still come under that limit and the commercial firm can grow once in financial services holding company. The amendment would delete the 5% basket. On the other hand, we urge you to oppose the Roukema-Vento-Baker-McCollum-LaFalce amendment that would increase the basket to 10% or, in some cases, 15% and thereby create more risks to taxpayers.

Even with the adoption of these pro-consumer amendments that substantially improve the bill, we are extremely concerned about language that would place at risk state consumer laws that are critical in this increasingly complicated marketplace. Section 104(b)(1) would extend a sweeping preemption standard to any activity authorized not only under H.R. 10 but also under ''any other provision of Federal law.'' Although this section was designed to address regulatory turf disagreements between insurance, securities and banking interests, this language places at risk a host of state consumer laws that protect consumers from excessive fees and otherwise protect consumers and has a chilling effect on state legislators. The Kucinich amendment, that would have addressed this problem, was not ruled in order. Because consumers are still at risk under this bill, Consumers Union cannot support the bill.

Sincerely,

MARY GRIFFIN.

EXPLANATION OF MANAGER'S AMENDMENT

The Bliley-Dingell-Leach manager's amendment consists in the main of the investor and consumer protections originally contained in the Dingell amendment. It addresses concerns raised by the Federal and State regulators and consumer groups, and incorporates the historical positions of the Commerce Committee on matters within its securities and insurance jurisdiction under the rules of the House. This statement is offered as clarification of the meaning of those provisions and shall constitute the legislative history. I am pleased to have been able to contribute to this important effort.

1. Customer Fee Disclosure. Section 251 directs the Federal financial regulators to review the adequacy of existing disclosures of fees, commissions, markups, and other costs, and, using existing authorities, to consider improving their accuracy, simplicity, completeness, and consistency. It is the intent of this provision that the regulators, prior to adopting any new rules or rule amendments pursuant to section 251, would first consult with each other, and with the appropriate State financial regulators, in determining whether any new rules or rule amendments are appropriate, necessary, and in the public interest. It is the intent of Congress that the Securities and Exchange Commission (SEC) should take the lead in setting disclosure standards with respect to securities, and that the Federal bank regulators should apply the same standards as those adopted by the SEC with respect to securities sold by banks. It is the intent of Congress that disclosure for consumers and investors be improved so that they can make informed decisions. The Congress intends to give the financial regulators flexibility to achieve this goal through any effective means, including increasing the disclosure of prices for debt securities.

2. SEC Backup Authority. Section 231(a) adds a new subsection (j) to section 17 of the Securities Exchange Act to give the SEC explicit securities inspection backup authority over wholesale financial holding companies and other bank affiliates for the purpose of monitoring and enforcing compliance with the Federal securities laws. In the same manner as bank regulators are required to rely on the SEC's oversight before inspecting registered broker-dealer affiliates of banks, the SEC is required, to the fullest extent possible, to defer to the reports of examinations of banks made by bank regulators and of insurance companies made by insurance regulators and to provide notice to the appropriate regulatory agency. Reasonable limits are imposed on the scope of any inspection under this subsection. It is the intent of Congress that this Act maintain the SEC's ability to enforce the Federal securities laws vigorously for the protection of investors.

3. Saving Clause For CFTC: By letter dated March 19, 1998, the Commodity Futures Trading Commission (CFTC) complained that the bill designates many CFTC-regulated products as ''traditional banking products,'' thereby creating a misconception that banks dealing in certain defined derivatives might need only comply with Federal banking laws and not the Commodity Exchange Act (CEA). This is not the intent of the Congress. This bill and this amendment do not address the scope of the CFTC's jurisdiction under the CEA. Accordingly, section 210 explicitly preserves the current extent of the authority of the CFTC under the CEA.

4. Consumer Protection. Section 308 of the bill adds a new section 45 of the Federal Deposit Insurance Act directing the Federal banking agencies to prescribe consumer protection regulations for insurance sales by insured depository institutions and wholesale financial institutions. The regulations cover retail sales practices, disclosures and advertising (especially with respect to uninsured status, investment risk, and coercion), prohibition on misrepresentations and domestic violence discrimination, separation of some activities, and the establishment of a consumer grievance mechanism. The amendment responds to concerns of consumer groups and banks with the effect of this provision on other laws. It provides that the regulations prescribed under section 45 will preempt State law only if the Federal Reserve, Comptroller of the Currency, and FDIC jointly determine that the joint Federal regulations provide consumers with greater protection. It is not the intention of Congress that this preemption provision shall override or be read in a manner inconsistent with section 104 of this Act.

5. Lifeline Banking. Section 103 of the bill adds new section 6 to the Bank Holding Company Act. Section 6(b) establishes eligibility criteria for forming a financial holding company and engaging in its expanded activities. One of the requirements is that the subsidiary insured depository institutions of such company offer and maintain low-cost basic banking accounts. The amendment provides for ongoing compliance as is the case with the other requirements. The provision does not affect banks who choose not to form financial holding companies.

6. State Securities and Insurance. Section 104 of the bill would preempt all State laws, including State securities law and State insurance solvency laws, not specifically preserved with regard to affiliations and activities authorized by this Act or any other provision of Federal law. The amendment adds a new paragraph (4) to section 104(b) to preserve State regulation of securities. State regulation of insurance underwriting is preserved under a new paragraph (3) that sets forth five tests that must be met. The amendment makes clear that the U.S. Supreme Court Barnett Bank decision's ''prevent or significantly interfere'' standard will be applicable to both affiliations and activities with respect to allowable State regulation of bank insurance sales. Federal banking and State insurance regulators are directed to share information (consistent with applicable confidentiality and other privileges) regarding financial holding companies that own insurance companies, and Federal banking agencies shall consult with the appropriate State insurance regulator before making any determination regarding initial or continued affiliations with insurance companies. It is the intent of Congress that these regulators cooperate in order to enhance the safety and soundness of the financial system and the protection of consumers.

7. Brokerage Commission. Title II of the bill requires the functional regulation of bank securities activities. Subtitle A amends the Securities Exchange Act of 1934 to eliminate the outdated blanket exceptions for banks from the definitions of ''broker'' and ''dealer.'' The bill preserves specific exceptions for some existing bank securities activities based on the limited nature of those activities. In general, the fifteen exceptions reflect our intent to exclude certain existing banking activities while ensuring that activities that require securities regulation are subject to the securities laws. These exceptions are designed to assure that activities that most need to be subject to securities regulation in an era of financial modernization and increasing competition do not escape that regulation.

It is the intent of Congress that banks that act like brokerage firms must be regulated as brokerage firms unless these activities are limited in nature, narrowly constrained, and subject to limits to preclude the concerns that require broker-dealer oversight. To that end, the amendment makes clear that a bank will not be considered a ''broker'' only when it effects transactions in a trustee capacity, or in a fiduciary capacity in its trust department, subject to key limitations, or when, acting in its transfer agent capacity, it conducts brokerage transactions for: (1) employee benefit plans, (2) dividend reinvestment plans, and (3) open enrollment plans, as long as the bank does not solicit transactions, or provide investment advice concerning the purchase and sale of securities, or receive brokerage commissions exceeding the bank's execution costs. To take advantage of this exception, these excepted bank activities must be regularly examined by bank examiners for compliance with fiduciary principles and standards. It is the intent of Congress that such examinations be specifically focused on these activities and rigorous in nature. The amendment also spells out that banks that use these exceptions may be primarily compensated by an administration or annual fee, a percentage of assets under management, a flat or capped per order processing fee, or any combination of such fees. Such fees must not be structured in such a way that they give rise to the sales incentives inherent in brokerage commissions.

8. Antitrust. The bill substantially streamlines antitrust review of bank acquisitions and mergers under the Federal Reserve. The amendment strikes that language and replaces it with language preserving the authority of the appropriate antitrust regulators, the Attorney General and the Federal Trade Commission. It provides for interagency data sharing to facilitate antitrust reviews and requires a GAO report on market concentration in the financial services industry and its impact on consumers. It is the intent of Congress that the ongoing consolidation and merger activity in the financial services industry undergo complete and rigorous review in order to preserve competition and protect consumers.

9. Derivative Instruments. The bill preserves the ability of the SEC to determine what is a ''security,'' and when new bank products are ''securities,'' by providing a definition of ''traditional banking product'' as a stand-alone statute—not in the Federal securities laws or in the banking laws. The definition includes such things as deposit accounts, letters of credit, credit card debit accounts, certain loan participations, and certain derivative instruments that traditionally have not been regulated as securities. If banks sell products within the scope of this definition, they are not required to register as a broker or a dealer.

Derivatives involving or relating to foreign currencies, interest rates, commodities, other rates, indices or other assets, except instruments that are (1) based on a security including a group or index of securities, (2) that provide for the delivery of one or more securities, or (3) that trade on a national securities exchange, are defined as traditional banking products. If a derivative other than an interest rate swap or a foreign currency swap is a security, it would not qualify as a traditional banking product unless it was based on a government security, commercial paper, banker's acceptance or commercial bill or a group or index of one of more of these products. The amendment makes technical and clarifying changes to this provision to ensure that the SEC maintains jurisdiction over derivatives that are securities.

The bill includes a new provision that establishes a process by which the SEC shall decide whether banks that sell ''new banking products'' that are securities must register with the SEC as brokers, dealers, or both. Specifically, the SEC must engage in a rulemaking proceeding and must determine (1) that the new product is a security and (2) that imposing a registration requirement on a bank to sell the new product is necessary or appropriate in the public interest and for the protection of investors. Under this provision, during the rulemaking process, the SEC is also required to consult with and consider the views of the appropriate banking agencies concerning the proposed rules and the impact of those rules on the banking industry.

10. Qualified Investors. The amendment expands the bill's definition of ''qualified investor'' to include the governments of foreign countries.

11. Community Needs. The amendment responds to the concerns of consumer and community groups about the impact of this bill and the recent megamergers on the cost and availability of financial services to communities and persons of modest means. The amendment requires the Treasury Department, in consultation with the Federal banking regulators and the SEC, to study the impact of the changes affected by this Act on Community Reinvestment Act obligations and performance, and to submit a report to Congress with any appropriate recommendations based on the results of that study.

12. Privacy Study. The amendment requires the Federal Trade Commission to submit to Congress an interim report on its ongoing study of consumer privacy issues together with recommendations for legislative and administrative action. This responds to growing concerns about the use and sharing of confidential customer information for cross-marketing and other purposes.

Madam Chairman, I reserve the balance of my time.

Mr. LAFALCE. Madam Chairman, I yield 2 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Madam Chairman, on Court TV we always hear ''order in the court'' as one of the calling cries of that popular show. I think this manager's amendment brings order to the financial services structure that is so much needed by the consumers.

It particularly regulates and protects the consumers as they come into the banking institution needing a variety of services, maybe needing only one and winding up buying or going away with two or three, because it is attractive to come in and buy a variety of services. I think there is a great need for that. It certainly protects and regulates the whole question of dealing with what is insured and what is not insured, and provides that kind of security for the consumer that uses these services. It brings a sense of balance between our insurance entities and, as well, our banking entities; and I would say, Madam Chairman, that it helps us understand this merging market and brings protection there as well.

I simply say that we are going in the right direction, but I would also argue very vigorously against the Baker amendment that seeks to eliminate the Community Reinvestment Act. We can protect small banks, but we need to protect small business owners and minority communities who have yet to participate in the financial structure of this Nation.

The Community Reinvestment Act has for long years provided investment in the inner cities, rebuilding homes and businesses. How dare we go to move to eliminate an act that has just begun? We may need some tinkering, but we do not need any elimination.

I stand on behalf of the women business owners in inner-city communities, minorities, Hispanics, African Americans and Asians who are seeking to rebuild their communities, the innovative American community who is just beginning to use the Community Reinvestment Act and having banking institutions that are supportive.

The Baker amendment is wrong-directed in eliminating the Community Reinvestment Act. The manager's amendment does attack the problem from a consumer's perspective and brings the right kind of balancing to this industry. I thank the ranking member, and as well the chairman of this committee for this legislation.

Mr. BLILEY. Madam Chairman, I yield such time as he may consume to the gentleman from Iowa (Mr. LEACH), chairman of the Committee on Banking and Financial Services.

Mr. LEACH. Madam Chairman, I thank my distinguished friend for yielding to me.

I rise also in support of this manager's amendment. The amendment before us was negotiated on a bipartisan, multiple-committee basis. It contains changes requested by the Committee on Agriculture, the Committee on the Judiciary, and the Committee on Ways and Means. The most significant changes are the insurance provisions and the provisions relating to antitrust.

The revisions contained in the amendment relating to the insurance provisions are intended to help strike an appropriate balance between the need of the States to regulate insurance activities in banks and the ability of national banks to engage in insurance activities without being subject to State laws that prevent or significantly interfere with that activity.

This House has been a firm supporter of States' rights and, in particular, leaving the regulation of insurance to the States. However, this House also believes that States should not regulate the manner which has, either directly or indirectly, the effect of preventing or significantly interfering with the ability of a bank to engage in activities that it is properly authorized to do by Federal law. The manager's amendment addresses this issue by clarifying these relationships.

Second, the manager's amendment at my request strengthens the antitrust laws in a number of ways. It restores the Federal Reserve's ability to consider anticompetitive issues in reviewing the acquisition of banks; it bolsters the Federal Trade Commission's antitrust authority, and it assures that financial affiliations that will be permissible under this bill will receive appropriate antitrust review by the Department of Justice and the FTC.

Other provisions of the manager's amendment incorporate amendments that were filed by the gentleman from Michigan (Mr. DINGELL), the gentleman from Massachusetts (Mr. MARKEY), the gentleman from New York (Mr. LAFALCE), and the gentleman from Minnesota (Mr. VENTO) last month and during the most recent consideration of the bill.

Finally, the manager's amendment includes a number of subtleties as well as a number of studies and consumer provisions. I believe it is well-balanced and thoughtful, protects the consumer, as well as establishes a clear guideline for certain competition in financial services. I think it deserves the support of this body.

Mr. LAFALCE. Madam Chairman, I yield 1 minute to the gentleman from Minnesota (Mr. VENTO).

Mr. VENTO. Madam Chairman, I intend to enter into a colloquy with the gentleman from Iowa (Mr. LEACH), chairman of the Committee on Banking and Financial Services.

Madam Chairman, I would ask the gentleman to clarify that it is our mutual understanding that the soon-to-be created electronic accounts, ETA accounts, would be one way to satisfy the low-cost, basic banking provisions in the bill and the requirement that banks help meet the credit needs of local communities under the Community Reinvestment Act. The ETA accounts are those that are required to be established for Americans to receive Federal benefits or payments by the Debt Collection Improvement Act of 1996 (Chapter 10, Public Law 104–134).

Mr. LEACH. Madam Chairman will the gentleman yield?

Mr. VENTO. I yield to the gentleman from Iowa.

Mr. LEACH. Madam Chairman, that is precisely my understanding, and I would like to compliment the gentleman for his work in this field as well as for his articulation of a very common-sense approach.

Mr. VENTO. Madam Chairman, reclaiming my time, I want to thank the

chairman for his clarification, and I would urge Members to support this amendment, and I intend to speak on it further myself.

Mr. BLILEY. Madam Chairman, could I inquire as to how much time I have remaining?

The CHAIRMAN. The gentleman from Virginia (Mr. BLILEY), has 4 minutes, the gentleman from Michigan (Mr. DINGELL) has 3 minutes, and the gentleman from New York (Mr. LAFALCE) has 8½ minutes.

Mr. BLILEY. Madam Chairman, do I have the right to close?

The CHAIRMAN. The gentleman is correct.

Mr. BLILEY. Madam Chairman, I reserve the balance of my time.

Mr. LAFALCE. Madam Chairman, I yield 2 minutes to the gentleman from Texas (Mr. BENTSEN).

(Mr. BENTSEN asked and was given permission to revise and extend his remarks.)

Mr. BENTSEN. Madam Chairman, this is an amendment on which I am in profound agreement with my colleague from Michigan (Mr. DINGELL) and the two managers of the bill, the gentleman from Virginia (Mr. BLILEY), and the gentleman from Iowa (Mr. LEACH).

When H.R. 10 left the Committee on Banking and Financial Services last year, it included an amendment that I and our colleague, the gentleman from North Carolina (Mr. WATT), had drafted which would provide for securities sales in banks to be under the auspices of the National Association of Security Dealers. I think that the idea of increasing SEC regulatory oversight of Bank Securities sales that is in the manager's amendment is a step in the right direction. I commend the gentleman for offering it.

□ 1430

I think we should have functional regulation, and I think we have to have market modernization, but I think we also need to ensure that consumers are protected, and that the playing field is equal between both in-bank and out-of-bank securities sales. This amendment moves in that direction.

I would encourage my colleagues to vote for the manager's amendment. We obviously have profound disagreements on other issues, but this is, I think, a good amendment. As the gentleman mentioned the issue of proper regulation of bank mutual fund sales has come up, and we know that the Federal bank regulators have had difficulties in their ability to properly regulate the sales of these instruments and protect investors. This amendment should go a long way toward correcting this matter.

I appreciate the gentleman for offering it, and I intend to support it.

Mr. LAFALCE. Madam Chairman, I yield 3 minutes to the gentleman from Minnesota (Mr. VENTO).

Mr. VENTO. Madam Chairman, I thank the gentleman for yielding me the time.

Madam Chairman, I rise in support of this manager's amendment, which include the Vento amendment antitrust provisions with respect to the required ongoing GAO annual reports, the different cultures that exist within the financial entities, insurance, securities, and banking. I am very concerned what this may do in terms of venture capital and the other capacities.

The consumer protection provisions with regard to this, I think there are some concerns that banks have even with this manager's amendment concerning what happens with insurance sales. Obviously, the banks are not satisfied even with the LaFalce-Vento amendment, but I think we are willing to accept that and move forward; such provisions represent progress.

I appreciate the lifeline provisions and note the CRA study provisions and question the focus. What is conspicuously absent from this, of course, is the good work in terms of extending CRA that was actually initiated in a previous March 30 Dingell-LaFalce amendment.

I would also like to comment on SEC enforcement, and the National Association of Securities Dealers, enforcement they do very important regulatory work. My colleague from the Committee on Banking and Financial Services just pointed out the important work in terms of having functional regulation.

In 1996, as an example, the Securities and Exchange Commission, under its authority, actually imposed over $325 million worth of assessments reflected in terms of illegal profits, and $67 million worth of civil penalties. The S.E.C. in 1996 noted 180 civil actions, 239 administrative proceedings and 32 civil and criminal contempt proceedings.

It has been pointed out repeatedly here that Nations Securities, NationsBank's Nations Securities, has had a penalty most recently reported in the paper derived from a 1994 incident. Incidentally, it was not just Nations Securities, it was Dean Witter and Nation's Bank who jointly owned Nation's Securities. Dean Witter, of course, is a securities firm, but other firms have also had some problems. It was, of course, functional regulation that, in that instance, actually penalized Nations Securities. That is not changed in this measure or in the LaFalce-Vento amendment.

But other firms also have had some very significant fines in 1996, and I realize it is very important we see this type of discipline, this regulatory enforcement. A securities firm Lazard along with Merrill Lynch had a $10 million fine in 1996. PaineWebber was fined in a number of instances, as were many others. I could go through the entire list and point out the violations of securities firms—mistakes have been made and penalties exacted.

Suffice it to say that the Securities and Exchange Commission is doing its job. I commend them for that. I commend them for the work they did with Nations Bank and Dean Witter, the owners of Nations Securities. It is interesting to note that, but functional regulation would not change under this bill, under the operating subsidiary, any different from what actually happened in the recent penalty that is being highlighted by my colleagues. It is exactly this type of rigorous regulation and rigorous exercise by the regulators that will prevent the type of abuses that occurred with the S&L crisis. Without rigorous regulation no corporate structure will suffice. The law must provide for enforcement and a willing watch dog.

We worked mightily in 1989 and 1991 to pass new regulations on banks and S&Ls to prevent any repeat of that type of crisis. We hope that law works. We have not seen the ups and downs in the economy to demonstrate that it will work, I will admit freely, but I think we have some pretty sound law in place to deal with that, forged in the heat of a red hot furnace catastrophe, the S&L crisis.

I think what is proved or demonstrated by the reports that we have had here with regard to Nations Bank/Dean Witter role with NationsSecurities, is that the operating subsidiary, when functionally regulated, can be adequately controlled and penalized, just as we control securities firms when indeed they do run afoul of the law, as we did in 1996 with $325 million worth payback and $67 million in fines.

Mr. DINGELL. Madam Chairman, I yield 1 minute to the distinguished gentleman from New York (Mr. MANTON), the ranking member of the subcommittee.

Mr. MANTON. Madam Chairman, I rise in strong support of the manager's amendment. By voting for the manager's amendment, we ensure the most important goal of this legislation is realized.

This amendment will make certain that consumers and investors receive clear and meaningful fee disclosure when buying products from a financial institution. Simply stated, this means that when someone buys a product from a bank, they will be provided with information on all of the costs associated with that purchase.

This amendment also considers how the Community Reinvestment Act should be incorporated under this new holding company structure, where financial holding companies or their subsidiaries can potentially hold the assets of a bank.

This amendment requires that a study be conducted on whether adequate services are being provided to low- and moderate-income neighborhoods. Because the new holding company regime will allow for greater flexibility in how financial institutions are structured and financed, how CRA will be affected should certainly be examined by the regulators that oversee them.

These are just a few of the consumer and investors' protections built into the manager's amendment. I believe H.R. 10 is improved significantly by

this amendment, and I urge all of my colleagues to support it.

Mr. DINGELL. Madam Chairman, I yield 1 minute to the distinguished gentlewoman from Colorado (Ms. DEGETTE).

Ms. DEGETTE. Madam Chairman, I thank the gentleman for yielding me the time.

Madam Chairman, I am in strong support of the manager's amendment, primarily because of the numerous consumer protection provisions that it contains. I am particularly concerned about preservation of the community services that are intended by the Community Reinvestment Act.

The Community Reinvestment Act is vitally important to many, many areas in this country. In my district in Denver, for example, the Community Reinvestment Act has been used to revitalize our local urban economy.

I was concerned in the underlying bill that because of the structuring, that the Community Reinvestment Act would be undermined. I retain those concerns, but I feel that the 2-year review period contained in the manager's amendment will give us ample time to see the effect of H.R. 10 on the CRA.

I hope and I urge that Congress, at the end of this 2-year period, will take a strong look as if the CRA is being preserved and expanded, and take quick legislative action if it is not, so our urban communities, our small women- and minority-owned businesses, can be preserved, while at the same time we have financial expansion and modernization.

Mr. DINGELL. Madam Chairman, I yield 1 minute to my distinguished friend, the gentleman from Massachusetts (Mr. MARKEY).

Mr. MARKEY. Madam Chairman, I thank the gentleman for yielding me the time, and I want to congratulate him and the gentleman from Virginia (Mr. BLILEY) and the gentleman from New York (Mr. LAFALCE), and all those that worked to put together this bipartisan manager's amendment, because it really does help to close up a lot of the problem areas that had developed in the drafting of the legislation with regard to how investors and depositors were going to be protected in the legislation.

Specifically, I speak here as the ranking Democrat on the Subcommittee on Telecommunications, Trade, and Consumer Protection. We had real questions about whether or not the Federal Trade Commission was going to have the authority to be able to follow these antitrust questions, as banks affiliated with insurance or with financial institutions, securities institutions, or even with nonfinancial institutions.

In this amendment, we clarify that the Federal Trade Commission has the antitrust authority to be able to look at these transactions, and that the Hart-Scott-Rodino antitrust review is retained in a way that covers these bank mergers with financial and nonfinancial institutions. I thank the gentleman for making that possible.

The CHAIRMAN. All time of the gentleman from Michigan (Mr. DINGELL) has expired.

The gentleman from New York (Mr. LAFALCE) has 4 minutes remaining.

Mr. LAFALCE. Madam Chairman, I yield myself such time as I may consume.

Madam Chairman, I am delighted that everyone who has spoken has spoken in support of this manager's amendment, because the objectives that it would effectuate are certainly in the public interest.

There are still, however, even after we pass this manager's amendment, a number of deficiencies. One of them has not been mentioned very much, and I would like to address that now. That is the issue of the redomestication of mutual insurance companies. I am very concerned about that.

It is my understanding that there are approximately 70 million Americans who have ownership in mutual insurance companies. It is my understanding that this bill has a provision within it that would allow State law to preempt Federal law, not when the State law gives greater consumer protection, but when the State law gives lesser consumer protection. Further, I understand that this State law then could become the operative national law for these mutual insurance holding companies.

This is very worrisome to me, because there are a good many States that want to protect the rights of individuals who own a stake in mutual insurance companies. This Federal legislation will permit certain State legislatures to enact legislation which would then entice the transfer of the corporate headquarters to their State, and enable them to operate on a national basis on the basis of the lowest common denominator. The manager's amendment does not deal with this issue.

The other big provision, of course, is the Community Reinvestment Act. This is very fundamental. The manager's amendment does nothing about the mandate in the bill that if they want to engage in new, innovative products and services, they must, they must move their activities into an affiliate that is not subject to the Community Reinvestment Act; that is, if they want to remain a national bank.

So they have the option of either becoming a financial services holding company, which most small national banks would not want to do, or they have the option of converting from the national bank charter to a State bank charter, because most State banks would permit them to conduct these activities in operating subsidiaries, where the regulators have said that you have as much safety and soundness as you would in the affiliate. So it would permit the undermining of the Community Reinvestment Act, the undermining of the national bank system.

The manager's amendment does not deal with that. So vote yes on the manager's amendment, but that is not enough to turn a bad bill into a good bill.

Mr. BLILEY. Madam Chairman, I yield myself such time as I may consume.

Madam Chairman, this has been a good debate. It is now coming to a close, and we will shortly have a vote. This amendment is a good amendment. It represents the House at its best: two committees, two parties working side by side in the interests of the Nation. That is the way it should be more often. Sadly, unfortunately, it is not. But this is a good amendment. We are going to have a long day, so let us have the question.

Madam Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia (Mr. BLILEY).

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. BLILEY. Madam Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 407, noes 11, not voting 14, as follows:

[Roll No. 143]

AYES—407

Abercrombie	Campbell	Dunn
Ackerman	Canady	Edwards
Aderholt	Cannon	Ehlers
Allen	Capps	Ehrlich
Andrews	Cardin	Emerson
Archer	Carson	Engel
Armey	Castle	English
Baesler	Chabot	Ensign
Baker	Chambliss	Eshoo
Baldacci	Chenoweth	Etheridge
Ballenger	Clayton	Evans
Barcia	Clement	Everett
Barr	Clyburn	Ewing
Barrett (NE)	Coble	Farr
Barrett (WI)	Coburn	Fawell
Bartlett	Collins	Fazio
Barton	Combest	Filner
Bass	Condit	Foley
Becerra	Conyers	Forbes
Bentsen	Cook	Ford
Bereuter	Cooksey	Fossella
Berman	Costello	Fowler
Berry	Cox	Fox
Bilbray	Coyne	Frank (MA)
Bilirakis	Cramer	Franks (NJ)
Bishop	Crane	Frelinghuysen
Blagojevich	Crapo	Frost
Bliley	Cubin	Furse
Blumenauer	Cummings	Gallegly
Blunt	Cunningham	Ganske
Boehlert	Danner	Gejdenson
Boehner	Davis (FL)	Gekas
Bonilla	Davis (IL)	Gephardt
Bonior	Davis (VA)	Gillmor
Bono	Deal	Gilman
Borski	DeFazio	Goodlatte
Boswell	DeGette	Goodling
Boucher	Delahunt	Gordon
Boyd	DeLauro	Goss
Brady	DeLay	Graham
Brown (CA)	Deutsch	Granger
Brown (FL)	Diaz-Balart	Green
Brown (OH)	Dickey	Greenwood
Bryant	Dicks	Gutierrez
Bunning	Dingell	Gutknecht
Burr	Dixon	Hall (OH)
Burton	Doggett	Hall (TX)
Buyer	Dooley	Hamilton
Callahan	Doolittle	Hansen
Calvert	Doyle	Hastert
Camp	Duncan	Hastings (FL)

Hastings (WA)
Hayworth
Hefley
Herger
Hill
Hilleary
Hinchey
Hinojosa
Hobson
Hoekstra
Holden
Hooley
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hutchinson
Hyde
Inglis
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (WI)
Johnson, E.B.
Jones
Kanjorski
Kaptur
Kasich
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kim
Kind (WI)
King (NY)
Kingston
Kleczka
Klink
Klug
Knollenberg
Kolbe
Kucinich
LaFalce
Lampson
Lantos
Largent
Latham
LaTourette
Lazio
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
Livingston
LoBiondo
Lofgren
Lowey
Lucas
Luther
Maloney (CT)
Maloney (NY)
Manton
Manzullo
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McCrery
McDade
McDermott
McGovern
McHale
McHugh
McInnis
McIntosh
McIntyre
McKeon
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Metcalf
Mica
Millender-McDonald
Miller (CA)
Miller (FL)
Minge
Mink
Moakley
Mollohan
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Nadler
Neal
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Owens
Oxley
Packard
Pallone
Pappas
Parker
Pascrell
Pastor
Paul
Paxon
Payne
Pease
Pelosi
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pombo
Pomeroy
Porter
Portman
Poshard
Price (NC)
Pryce (OH)
Quinn
Rahall
Ramstad
Rangel
Redmond
Regula
Reyes
Riggs
Rivers
Rodriguez
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Rothman
Roukema
Roybal-Allard
Royce
Rush
Ryun
Sabo
Salmon
Sanchez
Sanders
Sandlin
Sanford
Sawyer
Saxton
Schaefer, Dan
Schumer
Scott
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Shimkus
Shuster
Sisisky
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Adam
Smith, Linda
Snowbarger
Snyder
Solomon
Souder
Spence
Spratt
Stabenow
Stark
Stearns
Stenholm
Stokes
Strickland
Stump
Stupak
Sununu
Talent
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thompson
Thornberry
Thurman
Tierney
Torres
Towns
Traficant
Turner
Upton
Velazquez
Vento
Visclosky
Walsh
Wamp
Waters
Watkins
Watt (NC)
Watts (OK)
Waxman
Weldon (FL)
Weldon (PA)
Weller
Wexler
Weygand
Whitfield
Wicker
Wise
Wolf
Woolsey
Wynn
Yates
Young (AK)
Young (FL)

NOES—11

Bachus
Dreier
Goode
Johnson, Sam
LaHood
McCollum
Riley
Scarborough
Schaffer, Bob
Thune
Tiahrt

NOT VOTING—14

Bateman
Christensen
Clay
Fattah
Gibbons
Gilchrest
Gonzalez
Harman
Hefner
Hilliard
Kilpatrick
Radanovich
Skaggs
White

□ 1503

Mr. BACHUS changed his vote from ''aye'' to ''no.''

Mr. HEFLEY and Mr. BOSWELL changed their vote from ''no'' to ''aye.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN pro tempore (Mr. DICKEY). It is now in order to consider amendment No. 2 printed in part 2 of House Report 105–531.

AMENDMENT NO. 2 OFFERED BY MR. LAFALCE

Mr. LAFALCE. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part 2, Amendment No. 2, printed in House Report 105–531 offered by Mr. LAFALCE:

[1. INSURANCE]

In section 104(b)(2) of the Amendment in the Nature of a Substitute, strike ''As stated by the United States Supreme Court'' and insert ''In accordance with the decision of the Supreme Court of the United States''.

In section 104(b)(2) of the Amendment in the Nature of a Substitute, strike ''to engage'' each place such term appears and insert '', or any subsidiary or other affiliate thereof, from engaging''.

In section 104(b)(2) of the Amendment in the Nature of a Substitute, strike subparagraph (B) and insert the following new subparagraph:

(B) subparagraph (A) shall not apply after the end of the 5-year period beginning on the date of the enactment of this Act.

In section 104(b)(3) of the Amendment in the Nature of a Substitute, insert ''not relating to crossmarketing activities subject to paragraph (2)'' after ''orders, and interpretations''.

In section 104(b)(3) of the Amendment in the Nature of a Substitute, insert ''to the extent that such statutes, regulations, orders, and interpretations do not have a disparate impact on insurance underwriters affiliated with an insured depository institution or wholesale financial institution'' before the period at the end.

[2. OP-SUBS]

Strike the heading for subtitle C of title I of the Amendment in the Nature of a Substitute and insert the following new heading:

Subtitle C—Subsidiaries of Insured Depository Institutions

Strike section 121 of the Amendment in the Nature of a Substitute and insert the following new sections (and redesignate subsequent sections and amend the table of contents accordingly):

SEC. 121. SUBSIDIARIES OF NATIONAL BANKS AUTHORIZED TO ENGAGE IN FINANCIAL ACTIVITIES.

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

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

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

''SEC. 5136A. FINANCIAL SUBSIDIARIES OF NATIONAL BANKS.

''(a) SUBSIDIARIES OF NATIONAL BANKS AUTHORIZED TO ENGAGE IN FINANCIAL ACTIVITIES.—

''(1) IN GENERAL.—A subsidiary of a national bank may engage in an activity that is not permissible for a national bank to engage in directly, but only if—

''(A) the activity is a financial activity (as defined in paragraph (4));

''(B) the national bank is well capitalized, well managed, and achieved a rating of 'satisfactory record of meeting community credit needs', or better, at the most recent examination of the bank;

''(C) all depository institution affiliates of such national bank are well capitalized, well managed, and have achieved a rating of 'satisfactory record of meeting community credit needs', or better, at the most recent examination of each such institution; and

''(D) the bank has received the approval of the Comptroller of the Currency.

''(2) NO EFFECT ON EDGE ACT OR AGREEMENT CORPORATIONS.—Paragraph (1) shall not apply with respect to any subsidiary which is a corporation organized under section 25A of the Federal Reserve Act or a corporation operating under section 25 of such Act.

''(3) OTHER SUBSIDIARIES PROHIBITED.—A national bank may not control any subsidiary other than a subsidiary—

''(A) which engages solely in activities that are permissible for a national bank to engage in directly or are authorized under paragraph (1); or

''(B) which a national bank may control pursuant to section 25 or 25A of the Federal Reserve Act, the Bank Service Company Act, or any other Act that expressly by its terms authorizes national banks to control subsidiaries.

''(4) FINANCIAL ACTIVITY DEFINED.—For purposes of this section and subject to paragraph (5), the term 'financial activity' means any 1 or more of the following:

''(A) Receiving money subject to a deposit or other repayment obligation.

''(B) Lending, exchanging, transferring, investing, or safeguarding money or other financial assets.

''(C) Providing any device or other instrumentality for transferring money or other financial assets.

''(D) Acting as agent or broker in the placement of annuities contracts or contracts insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death.

''(E) Providing financial, investment, or economic advisory or information services, including advising an investment company (as defined in section 3 of the Investment Company Act of 1940).

''(F) Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly.

''(G) Arranging, effecting, or facilitating financial transactions for the account of third parties.

''(H) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities that the financial subsidiary controls) or otherwise, shares, assets, or ownership interests (including without limitation debt or equity securities, partnership interests, trust certificates or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if—

''(i) the shares, assets, or ownership interests are not acquired or held by a depository institution;

''(ii) such shares, assets, or ownership interests are acquired and held by a securities affiliate or an affiliate thereof as part of a bona fide underwriting or merchant banking activity, including investment activities engaged in for the purpose of appreciation and ultimate resale or disposition of the investment;

''(iii) such shares, assets, or ownership interests, are held only for such a period of time as will permit the sale or disposition

thereof on a reasonable basis consistent with the nature of the activities described in clause (ii); and

''(iv) during the period such shares, assets, or ownership interests are held, the financial subsidiary does not actively participate in the day to day management or operation of such company or entity, except insofar as necessary to achieve the objectives of clause (ii).

''(I) Underwriting, dealing in, or making a market in securities.

''(J) Engaging in any activity that was, by regulation or order, permissible for a bank holding company pursuant to section 4(c)(8) of the Bank Holding Company Act of 1956 (as in effect on the day before the date of enactment of the Financial Services Act of 1998).

''(K) Engaging, in the United States, in any activity that—

''(i) a bank holding company may engage in outside the United States; and

''(ii) the Board of Governors of the Federal Reserve System determined, under regulations issued pursuant to section 4(c)(13) of the Bank Holding Company Act of 1956 (as in effect on the day before the date of enactment of the Financial Services Act of 1998) to be usual in connection with the transaction of banking or other financial operations abroad;

''(L) Owning shares of a company to the extent permissible under section 4(c)(7) of the Bank Holding Company Act of 1956 (as in effect on the day before the date of enactment of the Financial Services Act of 1998).

''(M) Engaging in any activity that the Comptroller of the Currency determines by regulation or order is the functional equivalent of any activity described in 1 or more of subparagraphs (A) through (K).

''(N) Engaging in any activity that the Comptroller of the Currency determines by regulation or order to be financial, or related to a financial activity, having taken into account—

''(i) the purposes of this title and the Financial Services Act of 1998;

''(ii) changes or reasonably expected changes in the market in which bank subsidiaries compete;

''(iii) changes or reasonable expected changes in the technology delivering financial services; and

''(iv) whether such activity is necessary or appropriate to allow a bank and the subsidiaries of a bank to—

''(I) compete effectively with any company seeking to provide financial services in the United States;

''(II) use any available or emerging technological means, including any application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions, in providing financial services; and

''(III) offer customers any available or emerging technological means for using financial services.

''(5) OTHER DEFINITIONS.—For purposes of this section, the following definitions shall apply:

''(A) FINANCIAL SUBSIDIARY.—The term 'financial subsidiary' means a company which—

''(i) is a subsidiary of a national bank (other than a corporation organized under section 25A of the Federal Reserve Act or a corporation operating under section 25 of such Act); and

''(ii) is engaged in a financial activity pursuant to paragraph (1) that is not a permissible activity for a national bank to engage in directly.

''(B) SUBSIDIARY.—The term 'subsidiary' has the meaning given to such term in section 2 of the Bank Holding Company Act of 1956.

''(C) WELL CAPITALIZED.—The term 'well capitalized' has the same meaning as in section 38 of the Federal Deposit Insurance Act and, for purposes of this section, the Comptroller shall have exclusive jurisdiction to determine whether a national bank is well capitalized.

''(D) WELL MANAGED.—The term 'well managed' means—

''(i) in the case of a bank that has been examined, unless otherwise determined in writing by the Comptroller, the achievement of—

''(I) a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under an equivalent rating system) in connection with the most recent examination or subsequent review of the bank; and

''(II) at least a rating of 2 for management, if that rating is given; or

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

''(6) INSURANCE UNDERWRITING AND DIRECT INVESTMENT.—Except as provided in title III of the Financial Services Act of 1998, no subsidiary of a national bank (other than a corporation organized under section 25A of the Federal Reserve Act or a corporation operating under section 25 of such Act) may underwrite noncredit-related insurance or engage in real estate investment or development activities (except to the extent a national bank is specifically authorized by statute to engage in any such activity directly).

''(7) LIMITED EXCLUSIONS FROM COMMUNITY NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DEPOSITORY INSTITUTIONS.—Any depository institution which becomes affiliated with a national bank during the 12-month period preceding the submission of an application to acquire a financial subsidiary and any depository institution which becomes so affiliated after the approval of such application may be excluded for purposes of paragraph (1)(C) during the 12-month period beginning on the date of such acquisition if—

''(A) the national bank has submitted an affirmative plan to the Comptroller of the Currency to take such action as may be necessary in order for such institution to achieve a 'satisfactory record of meeting community credit needs', or better, during the most next examination of the institution; and

''(B) the plan has been accepted by the Comptroller.

''(b) CAPITAL DEDUCTION REQUIRED.—

''(1) IN GENERAL.—In determining compliance with applicable capital standards—

''(A) the amount of a national bank's equity investment in a financial subsidiary shall be deducted from the national bank's assets and tangible equity; and

''(B) the financial subsidiary's assets and liabilities shall not be consolidated with those of the national bank.

''(2) REGULATIONS REQUIRED.—The Comptroller shall prescribe regulations implementing this subsection.

''(c) SAFEGUARDS FOR THE BANK.—A national bank that establishes or maintains a financial subsidiary shall assure that—

''(1) the bank's procedures for identifying and managing financial and operational risks within the bank and financial subsidiaries of the bank adequately protect the bank from such risks;

''(2) the bank has, for the protection of the bank, reasonable policies and procedures to preserve the separate corporate identity and limited liability of the bank and subsidiaries of the bank; and

''(3) the bank complies with this section.

''(d) NATIONAL BANKS WHICH DO NOT COMPLY WITH REQUIREMENTS OF THIS SECTION.—

''(1) IN GENERAL.—If the Comptroller determines that a national bank which controls a financial subsidiary, or a depository institution affiliate of such national bank, does not continue to meet the requirements of subsection (a), the Comptroller shall give notice to the bank to that effect, describing the conditions giving rise to the notice.

''(2) AGREEMENT TO CORRECT CONDITIONS REQUIRED.—

''(A) CONTENT OF AGREEMENT.—Within 45 days of the receipt by a depository institution of a notice given under paragraph (1) (or such additional period as the Comptroller may permit), the depository institution failing to meet the requirements of subsection (a) shall execute an agreement with the appropriate Federal banking agency for such institution to correct the conditions described in the notice.

''(B) COMPTROLLER MAY IMPOSE LIMITATIONS.—Until the conditions giving rise to the notice are corrected, the Comptroller may impose such limitations on the conduct of the business of the national bank or subsidiary of such bank as the Comptroller determines to be appropriate under the circumstances.

''(3) FAILURE TO CORRECT.—If the conditions described in the notice are not corrected within 180 days after the bank receives the notice, the Comptroller may require, under such terms and conditions as may be imposed by the Comptroller and subject to such extensions of time as may be granted in the discretion of the Comptroller—

(A) the national bank to divest control of each subsidiary engaged in an activity that is not permissible for the bank to engage in directly; or

''(B) each subsidiary of the national bank to cease any activity that is not permissible for the bank to engage in directly.''.

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

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

(2) by inserting after the item relating to section 5136 the following new item:

''5136A. Financial subsidiaries of national banks.''.

SEC. 122. ACTIVITIES OF SUBSIDIARIES OF INSURED STATE BANKS.

Section 24(d) of the Federal Deposit Insurance Act (12 U.S.C. 1831a(d)) is amended—

(1) by adding at the end the following new paragraphs:

''(3) CONDITIONS ON CERTAIN ACTIVITIES.—

''(A) IN GENERAL.—Subject to the approval of the appropriate Federal banking agency, a subsidiary of a State bank may engage in an activity in which a subsidiary of a national bank may engage as principal pursuant to subsection (a)(1) of section 5136A of the Revised Statutes of the United States but only if the State bank meets the same requirements which are applicable to national banks under subparagraphs (B) and (C) of such subsection and subsections (b) and (c) of such section.

''(B) APPLICATION OF SECTION 5136A OF REVISED STATUTES.—For purposes of applying section 5136A of the Revised Statutes of the United States with regard to the activities of a subsidiary of a State bank, all references in such section to the Comptroller of the Currency, or regulations and orders of the Comptroller, shall be deemed to be references to the appropriate Federal banking agency with respect to such State bank, and regulations and orders of such agency.

''(4) STATE BANKS WHICH FAIL TO COMPLY WITH PARAGRAPH (3) CONDITIONS.—

''(A) IN GENERAL.—If the appropriate Federal banking agency determines that a State

bank that controls a subsidiary which is engaged as principal in financial activities pursuant to paragraph (3) does not meet the requirements of subparagraph (A) of such paragraph, the appropriate Federal banking agency shall give notice to the bank to that effect, describing the conditions giving rise to the notice.

''(A) AGREEMENT TO CORRECT CONDITIONS REQUIRED.—

''(i) CONTENT OF AGREEMENT.—Within 45 days of the receipt by a bank of a notice given under paragraph (1) (or such additional period as the appropriate Federal banking agency for such bank may permit), the bank failing to meet the requirements of paragraph (3)(A) shall execute an agreement with the appropriate Federal banking agency for such bank to correct the conditions described in the notice.

''(B) AGENCY MAY IMPOSE LIMITATIONS.—Until the conditions giving rise to the notice are corrected, the appropriate Federal banking agency for the State bank may impose such limitations on the conduct of the business of the bank or a subsidiary of the bank as the agency determines to be appropriate under the circumstances.

''(C) FAILURE TO CORRECT.—If the conditions described in the notice are not corrected within 180 days after the bank receives the notice, the appropriate Federal banking agency for the State may require, under such terms and conditions as may be imposed by such agency and subject to such extensions of time as may be granted in the discretion of the agency—

''(i) the bank to divest control of each subsidiary engaged in an activity as principal that is not permissible for the bank to engage in directly; or

''(ii) each subsidiary of the bank to cease any activity as principal that is not permissible for the bank to engage in directly.''.

SEC. 123. RULES APPLICABLE TO FINANCIAL SUBSIDIARIES.

(a) TRANSACTIONS BETWEEN FINANCIAL SUBSIDIARIES AND OTHER AFFILIATES.—Section 23A of the Federal Reserve Act (12 U.S.C. 371c) is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d), the following new subsection:

''(e) RULES RELATING TO BANKS WITH FINANCIAL SUBSIDIARIES.—

''(1) FINANCIAL SUBSIDIARY DEFINED.—For purposes of this section and section 23B, the term 'financial subsidiary' means a company which—

''(A) is a subsidiary of a bank (other than a corporation organized under section 25A of the Federal Reserve Act or a corporation operating under section 25 of such Act); and

''(B) is engaged in a financial activity (as defined in section 5136A(a)(4)) that is not a permissible activity for a national bank to engage in directly.

''(2) APPLICATION TO TRANSACTIONS BETWEEN A FINANCIAL SUBSIDIARY OF A BANK AND THE BANK.—For purposes of applying this section and section 23B to a transaction between a financial subsidiary of a bank and the bank (or between such financial subsidiary and any other subsidiary of the bank which is not a financial subsidiary) and notwithstanding subsection (b)(2) and section 23B(d)(1), the financial subsidiary of the bank—

''(A) shall be an affiliate of the bank and any other subsidiary of the bank which is not a financial subsidiary; and

''(B) shall not be treated as a subsidiary of the bank.

''(3) APPLICATION TO TRANSACTIONS BETWEEN FINANCIAL SUBSIDIARY AND NONBANK AFFILIATES.—

''(A) IN GENERAL.—A transaction between a financial subsidiary and an affiliate of the financial subsidiary shall not be deemed to be a transaction between a subsidiary of a national bank and an affiliate of the bank for purposes of section 23A or section 23B of the Federal Reserve Act.

''(B) CERTAIN AFFILIATES EXCLUDED.—For purposes of subparagraph (A) and notwithstanding paragraph (4), the term 'affiliate' shall not include a bank, or a subsidiary of a bank, which is engaged exclusively in activities permissible for a national bank to engage in directly.

''(4) EQUITY INVESTMENTS EXCLUDED SUBJECT TO THE APPROVAL OF THE BANKING AGENCY.—Subsection (a)(1) shall not apply so as to limit the equity investment of a bank in a financial subsidiary of such bank, except that any investment that exceeds the amount of a dividend that the bank could pay at the time of the investment without obtaining prior approval of the appropriate Federal banking agency and is in excess of the limitation which would apply under subsection (a)(1), but for this paragraph, may be made only with the approval of the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act) with respect to such bank.''.

(b) TREATMENT OF FINANCIAL SUBSIDIARIES UNDER OTHER PROVISIONS OF LAW.—

(1) BANK HOLDING COMPANY ACT AMENDMENTS OF 1970.—Section 106(a) of the Bank Holding Company Act Amendments of 1970 is amended by adding at the end the following new sentence: ''For purposes of this section, a financial subsidiary (as defined in section 5136A(a)(5)(A) of the Revised Statutes of the United States or referenced in the 20th undesignated paragraph of section 9 of the Federal Reserve Act or section 24(d)(3)(A) of the Federal Deposit Insurance Act) shall be deemed to be a subsidiary of a bank holding company, and not a subsidiary of a bank.''; and

(2) FEDERAL RESERVE ACT.—The 20th undesignated paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 335) is amended by adding at the end of the following new sentence: ''To the extent permitted under State law, a State member bank may acquire or establish and retain a financial subsidiary (as defined in section 5136A(a)(3)(A) of the Revised Statutes of the United States, except that all references in that section to the Comptroller of the Currency, the Comptroller, or regulations or orders of the Comptroller shall be deemed to be references to the Board or regulations or orders of the Board.''.

[3. CONSUMER PROTECTION]

In paragraph (1) of section 45(a) of the Federal Deposit Insurance Act, as added by section 308(a) of the Amendment in the Nature of a Substitute, insert ''governing sales practices'' after ''regulations'' in the portion of such paragraph which precedes subparagraph (A).

In paragraph (1) of section 45(d) of the Federal Deposit Insurance Act, as added by section 308(a) of the Amendment in the Nature of a Substitute, strike ''and the making of loans''.

Strike paragraph (2) of section 45(g) of the Federal Deposit Insurance Act, as added by section 308(a) of the Amendment in the Nature of a Substitute, and insert the following new paragraph:

''(2) EFFECT ON OTHER LAWS.—Subject to section 104, regulations prescribed by a Federal banking agency under this section shall not be construed as superseding, altering, or affecting the statutes, regulations, orders, or interpretations in effect in any State, except to the extent that such statutes, regulations, orders, or interpretations are inconsistent with the regulations prescribed by a Federal banking agency under this section and then only to the extent of the inconsistency. For purposes of this paragraph, a State statute, regulation, order, or interpretation is not inconsistent with the regulations prescribed by a Federal banking agency under this section if the protection such statute, regulation, order, or interpretation affords any consumer is greater than the protection provided by the regulations under this section.

[4. LIFELINE BANKING]

In paragraph (1) of section 6(d) of the Bank Holding Company Act of 1956, as added by section 103(a) of the Amendment in the Nature of a Substitute, strike ''or (C)'' and insert ''(C), or (D)''.

In paragraph (4)(D) of section 6(d) of the Bank Holding Company Act of 1956, as added by section 103(a) of the Amendment in the Nature of a Substitute, strike ''or (C)'' and insert ''(C), or (D)''.

[5. DEFERENCE]

In section 307(e) of the Amendment in the Nature of a Substitute, strike '', without unequal deference''.

[6. GAO STUDY—ANTITRUST]

After section 145 of the Amendment in the Nature of a Substitute, insert the following new section (and redesignate the subsequent section and conform the table of contents accordingly):

SEC. 146. ANNUAL GAO REPORT.

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

(b) ANALYSIS.—Each report submitted under subsection (a) shall contain an analysis of—

(1) the positive and negative effects of affiliations between various types of financial companies, and of acquisitions pursuant to this Act and the amendments made by this Act to other provisions of law, including any positive or negative effects on consumers, area markets, and submarkets thereof or on registered securities brokers and dealers which have been purchased by depository institutions or depository institution holding companies;

(2) the changes in business practices and the effects of any such changes on the availability of venture capital, consumer credit, and other financial services or products and the availability of capital and credit for small businesses; and

(3) the acquisition patterns among depository institutions, depository institution holding companies, securities firms, and insurance companies including acquisitions among the largest 20 percent of firms and acquisitions within regions or other limited geographical areas.

[7. PRIVACY STUDY]

After section 108 of the Amendment in the Nature of a Substitute, insert the following new section (and amend the table of contents accordingly):

SEC. 110. REPORTS ON ONGOING FTC STUDY OF CONSUMER PRIVACY ISSUES.

With respect to the ongoing multistage study being conducted by the Federal Trade Commission on consumer privacy issues, the Commission shall submit an interim report on the findings and conclusions of the Commission, together with such recommendations for legislative and administrative action as the Commission determines to be appropriate, to the Committee on Commerce and the Committee on Banking and Financial Services of the House of Representatives

and the Committee on Banking, Housing, and Urban Affairs of the Senate at the conclusion of each stage of such study and a final report at the conclusion of the study.

The CHAIRMAN pro tempore. Pursuant to House Resolution 428, the gentleman from New York (Mr. LAFALCE) and a Member opposed each will control 20 minutes.

Is the gentleman from Virginia (Mr. BLILEY) opposed to the amendment?

Mr. BLILEY. I am, Mr. Chairman.

The CHAIRMAN pro tempore. The gentleman from Virginia (Mr. BLILEY) will be recognized for 20 minutes.

The Chair recognizes the gentleman from New York (Mr. LAFALCE).

Mr. LAFALCE. Mr. Chairman, I yield myself such time as I may consume.

(Mr. LAFALCE asked and was given permission to revise and extend his remarks.)

Mr. LAFALCE. Mr. Chairman, the bill in its current form is a frontal attack on the national bank system. That is why this administration, past administrations, any future administration would veto the bill before us.

The bill before us promotes the movement of assets out of those institutions covered by the Community Reinvestment Act. It undermines the national bank charter and the authority of the national bank regulator. It places small and mid-sized banks at an enormous competitive disadvantage vis-a-vis the giant conglomerates this bill helps facilitate. It permits discrimination against banks as providers of new financial services, and it would create a serious competitive imbalance between nationally and State chartered banks and between big banks which can and small banks which cannot use a holding company structure.

The amendment the gentleman from Minnesota (Mr. VENTO) and I offer, along with a good many others, would correct these problems. It would correct these problems by permitting national banks to offer a broad range of new financial services efficiently and safely through subsidiaries so that these assets remain covered by CRA. It would ensure that banks are not subject to discriminatory restrictions when providing new financial services, and it would maintain for the national bank regulator the same authority traditionally granted all, each and every, Federal regulator to interpret Federal law.

The treasury secretary has repeatedly pointed out there is no safety and soundness reason whatsoever, none, zero, and no competitive reason that would justify a radical shift from the operation of a bank subsidiary to a wholesale transfer of assets out of the national bank system, out of the jurisdiction of the Comptroller of the Currency, the Federal bank regulator, into the hands of the Federal Reserve Board.

The chairman of the FDIC, present and past, has concurred in that judgment. The State bank regulators have concurred in that judgment. Now, why should we care? Why should we care whether national banks are disadvantaged in this bill? Is this just an esoteric debate about corporate structure? It is not.

There are sound public policy reasons to value national banks and their ability to offer new financial services through their own subsidiaries. Fundamentally, adopting this amendment will ensure that a significant portion of America's financial assets continue to flow through banks. That is good for consumers. That is good for communities.

If we want a law, rather than a one-House bill, we will adopt this amendment and we then will ultimately bring with us the support of the administration and produce something that can be enacted into law. If this amendment goes down, we may or may not get a one-House bill but we will not get a law.

Mr. Chairman, I reserve the balance of my time.

Mr. BLILEY. Mr. Chairman, I yield myself 3 minutes.

(Mr. BLILEY asked and was given permission to revise and extend his remarks.)

Mr. BLILEY. Mr. Chairman, I rise in opposition to the amendment offered by my friends, the gentleman from New York (Mr. LAFALCE) and the gentleman from Minnesota (Mr. VENTO). I have three concerns with this amendment.

One, it puts taxpayer money at risk. It does this by expanding the subsidy provided by Federal deposit insurance and the Federal safety net; two, these operating subsidies are not truly separate from banks and will confuse customers; and three, it undoes the careful compromise on insurance we have reached so that disputes over insurance will be treated equally without unfair deference to one side or the other.

This amendment represents a radically different course in this legislation. It grants new powers for banks in operating subsidiaries. These new powers include full securities underwriting and merchant banking.

I remember when Congress made the disastrous mistake of expanding the powers and the insurance coverage of savings and loan institutions. The result of that legislation was that the taxpayers had to spend billions to bail out the S&Ls that had invested in casinos, strip malls, and other developments. I resolved that never would we do something like that again.

I believe that expansion of operating subsidiaries powers poses the same dangers as did the expansion of the powers of savings and loans. Alan Greenspan, the distinguished chairman of the Federal Reserve, has testified both before the Committee on Banking and Financial Services and the Committee on Commerce that granting banks additional authority in operating subsidiaries expands the reach of the taxpayer subsidy. This expansion of Federal subsidy is both anti-competitive and dangerous to taxpayers.

Operating subsidiaries are anti-competitive because securities or merchant banking done in operating subsidiaries will be able to take advantage of the Federal subsidy to finance their business more cheaply than their competitors. Congress is abolishing subsidies. We ended farm subsidies in the last Congress. Wall Street firms made over $14 billion last year. They need open competition, not subsidies.

Operating subsidiaries are dangerous to taxpayers. If a child takes the family car and goes on a joy ride smashing into a building, who is on the hook? The parents. Similarly, if operating subsidiaries get into trouble, who will hold the bag? The Federal taxpayers. That is why Americans For Tax Reform is opposed to this amendment.

I believe that operating subsidiaries pose dangers to consumers. Last week the SEC brought an enforcement action against a major bank operating subsidiary for selling billions of dollars in unsuitable investments to elderly people. These people had maturing CDs at the bank. Officers of the operating subsidiary called them up and sold them dangerous strip derivatives claiming they were treasury securities. The OCC could have done something about this but the OCC did not. They waited for the SEC to have to bring an action to stop this fraud. I believe we should not expand powers of operating subsidiaries in the face of abuses like this.

□ 1515

Mr. LAFALCE. Mr. Chairman, I yield 3 minutes to the gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK of Massachusetts. Mr. Chairman, I rise in support of the amendment.

Our good friend from Virginia made me want to call the history police. The misuse of history is one of the downsides of our debate. No, this has nothing to do with why the savings and loans got in trouble. We had tax changes. We had a real estate bubble. We had a lot of other reasons.

This is a very important amendment. I must say that if this amendment were to be adopted, I could vote for a bill which I will otherwise feel constrained to oppose. The smaller banks that I deal with in the State of Massachusetts are banks which have been responsible, which have tried to meet the needs of local communities, so oppose the bill without this amendment. That is a major cause of opposition because what it says to the smaller banks is, none of these new powers are in fact available to them, and indeed much of what they may have been doing they will have to stop doing.

This greatly disadvantages the smaller banks, who are then forced either to forgo getting into these new activities or to get out of the ones they are in, because they will not be able to set up the holding companies. The notion that if we have a holding company with siblings, they do not implicate each other,

but if we have an operating subsidy, they do, does not seem to me to hold water.

The analogies of the gentleman, I must say, do not seem to me any more persuasive than his history. I was sorry to hear about the kid who stole his parents' car and had an accident. What it has to do with banking it will probably take me till Sunday to figure out, but it certainly does not have anything to do with this particular issue.

Yes, we are talking about the same overall entity being in both insured and noninsured activities. Whether or not they do it through a holding company or operating subsidiaries does not affect the quality of regulation, nor will it affect the drain on the insured deposit.

What it will do is weaken the ability of small banks and, further, and maybe this is partly what some had in mind, obviously not all, it weakens the reach of the Community Reinvestment Act because the activities conducted in the operating subsidiaries will be covered by the Community Reinvestment Act. If, in fact, it becomes the holding company, they will not be. So the effect of the bill without this amendment will be to diminish some of the reach of the Community Reinvestment Act.

Now, I realize that is not enough for some people who would like to totally cut off the arms of the Community Reinvestment Act in a later amendment. But I must also say that one surefire way to guarantee that no legislation goes forward is to cut back on the Community Reinvestment Act, which many of us believe to have been a significant improvement in our communities which most need it.

So I hope in the interest of getting reasonable legislation through, that the amendment is adopted.

Mr. BLILEY. Mr. Chairman, I yield 3 minutes to the gentleman from Michigan (Mr. DINGELL), ranking minority member of the Committee on Commerce.

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

Mr. DINGELL. Mr. Chairman, bankers said it this morning, and I want my colleagues to hear what the ABA had to say. They said, ''No amendment or combination of amendments will be offered that will make the bill acceptable.''

Do not think, Mr. Speaker, that voting for this amendment is going to buy us any peace or approval from the bankers. I want my colleagues to understand that.

Now, I want to say a word of respect and affection for my good friend, the gentleman from New York (Mr. LAFALCE), the author of the amendment. I think that the bill is a good bill. It helps the banks. It allows them to underwrite municipal revenue bonds. It allows them to engage in all kinds of financial activity as the agent of the bank in an operating subsidiary. It knocks down current Glass-Steagall and Bank Holding Company Act barriers against affiliations between banks, securities firms, insurance companies, and other firms.

The bankers trade association, the ABA, does not want a bill. It never did. So voting for this amendment is not going to buy us peace with the banks.

But voting for this bill and voting against the LaFalce amendment is going to buy us a bill which is good and in the public interest, which helps banks, and which does something else, which protects people against the abuses that the banks committed which brought about the crash of 1929.

The Fed is right. Listen to Mr. Greenspan. Listen to Chairman Levitt. Listen to other former chairmen of the SEC, pointing out the need to have real separation between banks and between nonbank subsidiaries.

Operating subs are permitted to do all kinds of interesting things: accounting games, shifting of assets back and forth between the sub and the parent company, and opportunities for committing all kinds of, quite honestly, improper and doubtful practices which are nonetheless fully legal.

The simple fact of the matter is that just recently we saw an in-house subsidiary of a bank engaging in grotesquely improper practices, selling to old folks securities which they cast as being government guaranteed. They were not. And they wound up having to pay a $7 million fine. That tells us that bankers are willing to do whatever is necessary to make money and to compete in a hard world.

The only way that we can protect investors against this is to see to it that the banks are situated in a situation where they can be fully observed, where their accounting can be properly watched, and where they cannot shift assets back and forth, and where the bank has no incentive to engage in either bad accounting practices, or to achieve the permission of the regulators to engage in special accounting practices, which will protect them against the failure or the loss of a subsidiary to the dissatisfaction of the public at large.

Remember the abuses that brought about the savings and loan crash? They were caused by in-house actions by the savings and loans. Do not repeat it with the banks.

Mr. LAFALCE. Mr. Chairman, I yield 3 minutes to the gentleman from Minnesota (Mr. VENTO), coauthor of the amendment.

(Mr. VENTO asked and was given permission to revise and extend his remarks.)

Mr. VENTO. Mr. Chairman, I rise in strong support of the LaFalce-Vento amendment, and I urge my colleagues to support it.

Now, it may be true that in fact the banks are not going to support this bill with the LaFalce-Vento amendment, but there are a lot of good reasons to support it in spite of that. The fact is that I think it will be a better bill with this and it is the right policy path that we should pursue.

We should not be superimposing a type of corporate structure on these entities unless there is good reason to do so. The fact is that this amendment is good for small- and medium-size banks that they can participate and exercise some of the new powers that are anticipated by virtue of this modernization policy to exercise powers that they do today in the structure that serves them. And, this amendment will help our communities through the application of the Community Reinvestment Act.

This is an important amendment. In fact, this amendment goes a long way towards resolving and reconciling the issue with regard to insurance. We adopt in this amendment the same language with regard to the Illinois case that is part of this basic text. We reached out to try to find compromise that is workable. And, of course, trying to preserve the National Bank Charter is immensely important, an entity that has been in existence for 135 years and has served our Nation very, very well in terms of building the economic foundation of banking in this country, which is, of course, the envy of the world.

There is no greater security under a holding company, affiliate-type structure than there is under a subsidiary corporate structure. That is why the current and past chairpersons of the Federal Deposit Insurance Corporation, which has the principal responsibility to safeguard the public funds the deposit insurance program, I think, that there is absolutely no safety or soundness reason to oppose having in a subsidiary version an affiliate or holding company corporate form.

The fact is that the same procedures, the same laws, the same regulations apply, 23(a) and (b) under the Holding Company Act; 23(a) and (b) a similar type of regulations exercised by the Comptroller of the Currency. And the FDIC can step in and avert types of action which are improper in any instance.

As a matter of fact, as far as the bank is concerned and the insurance funds, the money flows in a one-way direction out of a subsidiary to, in fact, support the source of strength with regards to a bank and thereby protect the taxpayer to a greater extent. This is a good amendment for small- and medium-size banks. While we cannot win the support of all the bankers, the fact is it is good for our economy and it is good in terms of permitting bank to serve communities.

Now, with regard to allegations here regarding functional regulation and penalties, as I was pointing out in my statement previously, there have been nearly $325 million in 1996 of misbegotten funds that have been assessed and recovered from securities firms, and there were $67 million worth of fines in 1996 from these securities firms.

So there has been and this is functional regulation at its best. And this

entity, NationsSecurities, was owned by NationsBank and the securities company Dean Witter when the events and violations occurred. This is not a sound basis upon which to oppose one corporate form over another.

The LaFalce-Vento amendment will provide a better balance, a more appropriate direction for a competitive future financial services industry.

As I stated earlier in the general debate, the underlying bill is fundamentally flawed for national banks, the national bank regulator, and ultimately, consumers and communities.

This amendment makes some technical changes in Section 104. Left to my druthers, I would have preferred the Banking Committee's version of Section 104, or at the very least, a grandfathering of the Illinois State law test. These cut and bite amendments, however, are reasonable, and I think are reflected in some if not all of the changes made by the Manager's amendment.

The changes to section 308 would ensure that with regard to consumer protections, the stronger law, whether State or Federal law, would apply. That is a bare minimum for consumers across this Nation who will be impacted by this legislation.

Our amendment carries three other provisions that were included in the Manager's amendment: the enforcement provisions for lifeline banking, the annual antitrust report, and the privacy study.

Importantly, the LaFalce-Vento amendment would address the deference issue. As written, H.R. 10 will undermine our Federal banking regulator in the courts by altering the deference standard. If H.R. 10 were to pass as written now, the precedent could be detrimental to other areas of law as well.

Last but by no means least, the LaFalce-Vento amendment would make a critical correction in the bill by allowing for the creation of financially viable and safe operating subsidiary for national banks. The amendment would permit all financial activities within the operating subsidiary with the exception of insurance underwriting, and real estate investment and development.

As written today, H.R. 10 would force banks to move financial innovation out of the bank, a loss of diversity that is disadvantageous for many reasons.

Structurally, banks would fundamentally be forced to choose a holding company structure in order to participate in a meaningful way in the 21st Century financial services landscape. This is essentially a business decision that should be made on a business basis, not because options have been closed down by this ''modernization'' bill.

Small- and medium-sized banks may not wish to form such a corporate holding company structure, a much more complex and difficult process than creating a subsidiary. For example, a bank would need to form the company through a filing or reorganization, chartering an interim bank, merger the ''two'' banks, obtain approval by shareholders with public review, DOJ review and OCC approval, obtain approval to engage in non-banking activity with public notice requirements. As a subsidiary, the bank only works to obtain OCC approval with public notice and hearing if applicable (4 steps vs. 1 step). This loss of flexibility through limiting the powers of the operating subsidiary will not further competition in the marketplace nor improve consumer service in many communities across this Nation.

Contrary to some of the rhetoric we will hear today, this lack of diversity within a bank's portfolio does not benefit the deposit insurance funds. The FDIC has opined more than once that operating subsidiaries are not more risky to a bank than affiliates in a holding company. The LaFalce-Vento amendment provides that only well-capitalized and well-managed banks could have operating subsidiaries that are engaged in these expanded financial activities. Because the bank's equity investment in the subsidiary would be deducted from the bank's assets and equity capital while the bank remains well-capitalized, this structure should pose no additional risk to the deposit insurance funds. In fact, these operating subsidiaries should instead provide additional, positive revenues for banks. The same restrictions on transactions applied to holding company affiliates by the FRB, 23(A) and (B), would apply between banks and financial subsidiaries.

Without our amendment, there is yet another disadvantage for the communities in which banks are located. Without the viable operating subsidiary provided in the LaFalce-Vento amendment, bank assets will be shifted away from coverage under the Community Reinvestment Act (CRA) into a bank holding company or financial holding company affiliate, which are not as yet covered by community investment requirements. The OCC is the only bank regulator to count the assets of subsidiaries in terms of analyzing CRA capacity of a bank.

Some may assert that operating subsidiaries will be renegades that will subvert laws, such as securities laws. On the contrary, op subs will be doubly regulated in the instance of securities activities—both by the financial securities regulators—the SEC and the NASD—and the OCC. While bank subs have had their problems, as highlighted by the recent Nations Securities fine, they do not have a corner of the market for less than scrupulous practices. With regard to Nations Securities, the SEC and the NASD were the primary regulators, not the OCC. Unfortunately, that cannot prevent a breaching of suitability and product selection processes.

As to safety and soundness, let me reiterate that the FDIC, the entity responsible for deposit insurance, has not found op subs to be more risky than affiliates. As to arguments that this will bring on the next S&L crisis, I would remind my colleagues that diversity is a good thing. The thrifts got in trouble for a number of reasons, including a mightmare-ish interest rate situation, bad loans and bad investment. Among those that survived without cost to the taxpayers, were the thrifts associated in the more diverse unitary thrift holding companies. Further, following the S&L crisis, Congress enacted two strong laws, FIRREA and FDICIA, that greatly empowered the regulator, specifically the FDIC. If the FDIC finds any activity by any banks is too risky, they can stop that activity from happening under section 24 of the FDI Act.

As to true competitive parity, without the LaFalce-Vento amendment, national banks will not have a subsidiary option that state banks have and that banks, regulated by the Federal Reserve Board, have when operating abroad.

If the LaFalce-Vento amendment were to pass, the Administration has indicated they will take another look at this bill. If it doesn't pass, the veto recommendation will stand. There is no strong public policy reason that this amendment should not pass. I urge my colleagues to vote for this amendment.

Mr. BLILEY. Mr. Chairman, I yield 2½ minutes to the gentleman from Ohio (Mr. OXLEY), chairman of the subcommittee.

(Mr. OXLEY asked and was given permission to revise and extend his remarks.)

Mr. OXLEY. Mr. Chairman, the LaFalce amendment would strike down any ability of a State to regulate bank affiliated insurance agents. I want to make that very clear. The gentleman from Minnesota stated quite the opposite, that this amendment would provide functional regulation. I would challenge him on that.

For example, if a bank-affiliated insurance agent commits fraud by representing health care coverage, for example, the result of this amendment offered by the gentleman from Minnesota and the gentleman from New York would mean that we would have virtually no regulatory authority whatsoever at the State level.

Now, if we believe in functional regulation and we believe strongly that State insurance regulators have the ability to regulate insurance, then we have to oppose this amendment. The State insurance regulators have indicated very strongly that they believe this amendment would be catastrophic. It would go beyond the fact that we would have no discrimination, but it would result in no regulation at all.

Now, those of us who believe in State regulation and functional regulation also believe, I think, that the States are the laboratories for democracy. Let us take a real-life look at what happened in banking sales of insurance in the real world.

Our committee held hearings on this bill, and we had the president of the State Bankers Association from Illinois and the president of the State Insurance Agents from Illinois testify about the fact that they had gotten together, worked out a compromise on State bank sales of insurance, had gone to the State legislature in Illinois, not an insignificant State, probably represents a great microcosm of this country, and passed that legislation unanimously and signed by the governor.

We decided in our committee, after a lot of hard work and a lot of head-knocking between the parties, to basically provide that the Illinois statute become a safe harbor for legislation, so if the States had regulation, they would be able to put it up against what Illinois had done. This was the real world. This was a compromise that was worked out very effectively.

Before my time runs out, let me tell my colleagues the States that would be deleted from protecting different State laws. Let me just list the States if I could, Mr. Chairman. These regulatory functions would be struck down in these States if the LaFalce amendment becomes law.

States of Texas, Virginia, Tennessee, Pennsylvania, Michigan, Maine, Louisiana, Indiana, Connecticut, Colorado, Arkansas, Massachusetts, New Hampshire, New Mexico, Rhode Island, West Virginia, Florida, Georgia, and Vermont. All of those State regulatory laws would be out the window if the LaFalce amendment passes.

All of my colleagues who represent those States, and everybody else, let us defeat the LaFalce amendment and preserve the integrity of this regulatory process.

Mr. LAFALCE. Mr. Chairman, I yield myself 15 seconds simply to say that the gentleman from Ohio is in error in his interpretation of our amendment. We leave the Illinois law and less restrictive State statutes as a safe harbor. We keep the language of the bill on that.

Mr. Chairman, I yield 2 minutes to the gentleman from Massachusetts (Mr. KENNEDY).

Mr. KENNEDY of Massachusetts. Mr. Chairman, this rhetoric that we are hearing on the House floor today really, I think, centers around one issue and one issue only, and that is cutting the cake. It is a determination as to whether or not the Committee on Banking and Financial Services is going to gain greater jurisdiction by having more and more of these larger institutions under a regulator that the Committee on Banking and Financial Services oversees, or whether or not the securities industry is going to be the winner and, therefore, the Committee on Commerce is going to oversee the jurisdiction.

□ 1530

That is what this is all about. It is not about whether or not we are going to look after the interests of the taxpayer. It is not about whether we are going to look out after the interests of working families. It is not about whether we are going to make sure that the insurance companies are going to provide insurance policies to all parts of our country, to people of every race, creed, and color. It is not about whether or not we are going to make certain the banks lend into the communities from which they take their deposits. It is about one thing. It is about power.

All I say is it is fine with me for these institutions to gobble one another up, to get stronger, to be able to compete internationally, to be able to compete here in the United States. But if we are going to do that, then we darn well ought to make sure that working families and the poor have every bit of right of access to these institutions, to the creation of wealth as anybody else.

That is what is wrong with this bill, because this bill does not provide the assurance that makes sure that these banks and insurance companies and securities firms cannot discriminate. It does not make certain that they are going to lend money back into the communities from which they suck out their deposits.

That is why I believe we should support the LaFalce amendment, because at a very minimum, at a very minimum, it suggests that these institutions, these powerful companies are not going to be able to serve out to their affiliates their requirements under the Community Reinvestment Act to lend back to the communities from which they take their deposit. It is a minimal standard. It is a very small crumb to provide to the working families of America.

Support the LaFalce amendment. Stand up for the working people of our country.

Mr. BLILEY. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from California (Mr. FAZIO), the chairman of the Democratic Caucus.

Mr. FAZIO of California. Mr. Chairman, I rise to commend the efforts of my colleagues, the gentleman from New York (Mr. LAFALCE) and the gentleman from Minnesota (Mr. VENTO), but to oppose their amendment.

Their hard work and dedication is going to be required if we are going to pass this bill, and sometime down the road, see it enacted into law. We hope that, in the months ahead, we can find the key to bringing this bill into law.

But if we agree to the amendment of the gentleman from New York (Mr. LAFALCE) today, it promises to undermine not only the very intent of H.R. 10, but also the manager's amendment we just overwhelmingly adopted.

It gets us no support from the banks, and it earns us the undying opposition of the entire insurance industry. It, therefore, is the killer amendment that will determine whether or not we pass a bill today and move it along in the process so that we can confront our differences and do something about modernizing this industry that so clearly needs it, before it becomes a wholly-owned subsidiary of foreign investors.

Instead of igniting reform and competition, the amendment of the gentleman from New York (Mr. LAFALCE) gives banking institutions extended privileges I fear they lack the mechanisms to properly administer; and the insured deposits of those entities, means this is a problem for the rest of us, for the taxpayers.

The gentleman from Massachusetts (Mr. FRANK) has told us it is not an appropriate analogy to talk about the S&L crisis, but the same underlying problem exists. History reminds us of that bailout. The crisis, that drained the savings of millions of Americans, cost taxpayers billions and embarrassed this country and the financial institutions within it on a global basis.

This amendment leads American financial institutions to a potentially similar economic disaster and places the financial burden of risky banking activity on the shoulders of the average taxpayer. We cannot allow that to occur.

I think we need to support this bill, hopefully in numbers that will give the Senate a message that they need to deal with it, and then sit down with the administration and find a common solution so that we can do what we all say we want to do, and that is, modernize the laws and rules and regulations of our financial institutions.

If we vote for this amendment, we might as well fold our tent, pull the bill, and close it down for another year, another failure. How many times in these past 2 decades are we going to go down that road? I urge a no vote on this amendment.

Mr. LAFALCE. Mr. Chairman, I yield 2 minutes to the gentleman from North Carolina (Mr. WATT).

Mr. WATT of North Carolina. Mr. Chairman, I thank the gentleman for yielding, and I rise in support of the LaFalce-Vento amendment.

I am a little surprised that people who typically talk about giving businesses more flexibility are now on the other side of this issue, saying we want to remove flexibility from businesses. Typically, the byword is, let us give businesses the opportunity to organize and operate in a fashion that they believe is most advantageous to them. Yet, here we are, apparently, in this bill, willing to take away that kind of flexibility from banks.

It has a particularly bad impact on small- and medium-sized banks, because they are not going to run out and spend the time and money to create these holding companies. It is just not going to happen. Consequently, this bill is, and the additional powers that we are giving to them are going to be of less value to them than to the larger banks. So for that reason, the increased flexibility reason, I support this amendment.

Another reason that I support the amendment is because I think, to the maximum extent we can, we need to bring assets into the bank and under the bank in such a way that those assets are subjected to the Community Reinvestment Act.

Our communities need a strong commitment from financial institutions, and banks in my congressional district have made that kind of strong commitment. I do not think we ought to be giving them any incentives to take assets away from that commitment.

Mr. BLILEY. Parliamentary inquiry, Mr. Chairman. How much time remains on this side?

The CHAIRMAN pro tempore (Mr. DICKEY). The gentleman from Virginia (Mr. BLILEY) has 9½ minutes remaining. The gentleman from New York (Mr. LAFALCE) has 6 minutes remaining.

Mr. BLILEY. Further parliamentary inquiry, Mr. Chairman. Who has the right to close?

The CHAIRMAN pro tempore. The gentleman from Virginia (Mr. BLILEY) has the right to close.

Mr. BLILEY. Mr. Chairman, I yield 1 minute to the distinguished gentleman from Georgia (Mr. KINGSTON).

Mr. KINGSTON. Mr. Chairman, I thank the gentleman for yielding to me.

Mr. Chairman, let me just say there are three reasons to oppose this well-intended amendment. Number one, it does get around the McCarran-Ferguson Act, which says States regulate insurance. It would supersede laws in Texas, Georgia, Virginia, Pennsylvania, and Michigan, just to name a few. This is a time when we are trying to decentralize power out of Washington. We do not want to usurp it from the States.

Number two, this law will have the unintended consequences of rapid bank investment and expansion into nonbanking activities. Look at the Asian model. Here we are with the Asian markets right now in absolute disaster, which the American taxpayers have been asked to contribute $18 billion to help correct and help bail them out. We do not need another S&L-type crisis in America.

Number three and finally, this is corporate welfare. Why should hard-working, middle-class taxpayers who are busting their tail to get to work in the morning and making ends meet at the end of the month, why should they give a subsidy to an industry that made $14 billion in profit last year? American taxpayers do not need more corporate welfare for folks who are already making money.

Those are three good reasons to vote against this amendment. Let us vote it down. Pass the bill as is.

Mr. LAFALCE. Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. BENTSEN).

(Mr. BENTSEN asked and was given permission to revise and extend his remarks.)

Mr. BENTSEN. Mr. Chairman, the colleague that just spoke before me was wrong on at least two of his counts and possibly on three.

But let me start out, I want to quote Alan Greenspan, because we have heard him talked a lot about. This quote is from the hearing on May 21, 22, 1997 in the House Committee on Banking and Financial Services, and this is in response to a question which I asked about safety and soundness with respect to operating subsidiaries.

He says, ''My concerns are not safety and soundness.'' So once and for all, this is Alan Greenspan and what he said. With respect to the subsidy, if we read the rest of the testimony, he says, The issue here is that the amount of the subsidization that is employed by the holding company in financing a section 20 securities affiliate is significantly less than it would be were it being financed as a subsidiary of a bank.

Mr. Greenspan says that while there is no safety and soundness issue with respect to operating subsidiaries, there is a subsidy that occurs in both the holding company model as well as in the operating subsidiary model. Of course, he did not provide any evidence of that, and no one else has.

Let me ask a question, a question of the subsidy: How does the marketplace see it? If the marketplace sees a tombstone for bond issue offering that are being underwritten by NationsBank Montgomery Securities, do they see that as a subsidy, an implicit guarantee that is going from the bank or from the Federal Government? Even though that is a holding company and an affiliate model, the marketplace is sophisticated enough to understand it.

Let me say also what this bill does. This creates an inequity between the national bank charter and the holding company charter. It shifts regulation of the Nation's banking system away from the elected government, through the Comptroller of the Currency, to the Federal Reserve, an appointed entity.

If we were talking about doing that with the Securities and Exchange Commission, a number of us, including both the gentlemen from the Committee on Commerce, would be down here raising a lot of Cain, as would I.

The fact is, this is not a safety and soundness issue. This is a parity issue. It does affect CRA. And, to assert that somehow this is tied to the savings and loan crisis is just factually incorrect.

I urge my colleagues to support the amendment offered by the gentleman from New York (Mr. LAFALCE) and the gentleman from Minnesota (Mr. VENTO).

Mr. Chairman, I insert the following:

Mr. Chairman, I rise in support of the LaFalce-Vento amendment and ask unanimous consent to revise and extend my remarks.

As currently drafted H.R. 10 allows banks to engage in securities underwriting through a holding company structure regulated by the Federal Reserve System, but not through a national bank regulated by the Comptroller of the Currency.

As a result, this legislation will restrict some national banks from offering comprehensive financial services for consumers while allowing it for others. The LaFalce-Vento amendment would also ensure that there is a level playing field for all types of financial institutions by allowing banks to make decisions based upon good business strategy rather than the one-size-fits-all bank holding company structure.

I am also convinced that there is no safety and soundness risk associated with operating subsidiaries vs. affiliates. When I questioned Federal Reserve Chairman Alan Greenspan about this issue in the House Banking Committee, he agreed there was no safety and soundness problem associated with an operating subsidiary structure. Rather, he argued that a subsidiary structure extends an implicit taxpayer subsidy to that subsidiary. There is no evidence to back up this claim and in fact Mr. Greenspan goes on to admit that affiliates under a holding company structure also benefits from a subsidy. Further, some argue that the market will interpret a subsidy in an op-sub but not an affiliate. Again, there is no evidence to back up this claim. First, when one sees Nationsbank Montgomery Securities, do they see an implicit subsidy and bank guarantee? But that is an affiliate, not an op-sub.

I also believe that permitting operating subsidiaries is good banking practice. If the operating subsidiary is making profits, its profits will flow up to the parent bank. However, the LaFalce-Bentsen amendment includes proper safeguards that will prevent the operating subsidiary from impacting their parent bank just as the holding company structure attempts to prevent the affiliate from dragging down the holding company and thus the bank. The LaFalce/Vento amendment would only permit national banks that are well-capitalized and well-managed to establish operating subsidiaries. The LaFalce/Vento amendment also requires operating subsidiaries to separately capitalize their operations and keep their operations completely separate from the parent bank. And it subjects the operating subsidiary to full functional regulation. I believe both of these safeguards should ensure that taxpayers are not at risk with operating subsidiaries any more than they would be with a holding company/affiliate structure.

The LaFalce/Vento amendment would also ensure that all of the assets of the bank are subject to the Community Reinvestment Act (CRA). This is critical when many banks are restructuring and being merged with other financial companies. If banks are required to establish affiliates, all of their capital and operations that are directly associated with their affiliate are not subject to CRA. This would have the effect of reducing the amount of assets that are subject to CRA and would reduce the investment that banks are currently making into their communities. I am a strong supporter of CRA and believe that we must ensure that banks continue to invest in their communities.

The LaFalce/Vento amendment corrects the inequity in the underlying bill by providing parity between national banks and bank holding companies. To do otherwise would eviscerate the national bank charter and result in a dramatic shift in regulatory authority over the banking system from the elected to the appointed branch of government. If we proposed that with the Securities and Exchange Commission, I think many would object.

Finally, with respect to section 104 and bank insurance sales, this would correct the provision in the bill that would effectively reverse the Chevron precedent set by the Supreme Court. I must admit that I am ambivalent on this issue.

I strongly support a level playing field with respect to regulation of bank insurance sales. Since McCarran-Ferguson provides for insurance to be regulated at the state level, banks should be subject to state regulation so long as such regulation does not have the effect of discriminating and prohibiting bank insurance sales contrary to the Barnett decision.

In all honesty, I was prepared to accept section 104 as written so long as the operating subsidiary language was also accepted and in fact Mr. VENTO and I had proposed such an amendment, but that was not allowed under the rule. I believe the only true fix to the bank insurance sale power question will come as a result of practice because compromise among the parties has been impossible.

In the end it is necessary that the House adopt the LaFalce/Vento amendment to H.R. 10 to make this bill live up to its name of financial modernization.

Mr. BLILEY. Mr. Chairman, it gives me great, great pleasure to yield 2 minutes to the gentleman from Massachusetts (Mr. MARKEY).

Mr. MARKEY. Mr. Chairman, again, let us go back. What are we talking about? Separate subsidiary means we are putting it over here in a separate

operation that makes it possible for the SEC, for insurance regulators, to know what we are doing. An Op-sub is an operating subsidiary. That is what they want to call it. That means it will be right inside the bank, hard for the SEC, hard for the insurance regulators to get inside to know what is going on. Op-sub really stands for ''ordinary people subsidizing'' risky business by banks.

Alan Greenspan, here is what he said in a letter to the gentleman from Michigan (Mr. DINGELL) on May 4, last week, ''Operating subsidiaries also pose serious risks to banks and their deposit insurance funds, and potentially the taxpayer, and will cause serious conflicts in the ability of functional regulators to carry out their supervisory responsibilities.''

Chairman Breeden, George Bush's chair of the Securities and Exchange Commission, he says that it will cause a ''dulling narcotic effect of those subsidies and the related bureaucratic nannyism will work a prompt and significant alteration on the culture of Wall Street.''

We can create a level playing field allowing each of these industries to compete and to consolidate without having the inherent bias that is built in, the conflicts that are built in by having the expansion of the Federal safety net blur over into these operating subsidiaries and causing real dangers to depositors and taxpayers alike.

Vote no on the LaFalce amendment if we do not want to see a repetition of some of the financial shenanigans which we have all come to see during our lifetime.

Mr. LAFALCE. Mr. Chairman, how much time do we have remaining on this side?

The CHAIRMAN pro tempore. The gentleman from New York (Mr. LAFALCE) has 4 minutes remaining.

Mr. LAFALCE. Mr. Chairman, is there a speaker other than the closing speaker?

Mr. BLILEY. Mr. Chairman, we have another speaker.

Mr. LAFALCE. Mr. Chairman, I yield 1 minute to the gentleman from Ohio (Mr. KUCINICH).

Mr. KUCINICH. Mr. Chairman, I rise for the purpose of entering into a colloquy with the gentleman from Iowa (Mr. LEACH).

Mr. Chairman, there is some uncertainty about what, and I quote, ''any other provision of Federal law'' means in section 104(b)(1) of the bill. Some consumer groups expressed concern that this language might be unnecessarily broad and might unintentionally preempt a broad range of consumer laws.

Will the gentleman from Iowa work with me on this matter as this bill moves forward to conference, through the Senate to conference, that this language will be reviewed so as not to be interpreted in an overly broad manner?

Mr. Chairman, I yield to the gentleman from Iowa (Mr. LEACH).

Mr. LEACH. Mr. Chairman, the gentleman has raised probably the most controversial section of the bill in terms of subtleties of language. I share some of his concerns, and I will assure the gentleman, as we move forward there, this language will be carefully reviewed. I cannot guarantee an outcome because there are people on all sides of this issue, but I do believe that a careful review is warranted, and I assure the gentleman that we will continue to look at that precise language.

□ 1545

Mr. BLILEY. Mr. Chairman, I yield one minute to the distinguished gentleman from Nebraska (Mr. BEREUTER).

(Mr. BEREUTER asked and was given permission to revise and extend his remarks.)

Mr. BEREUTER. Mr. Chairman, I rise in opposition to the amendment as a member of the Committee on Banking and Financial Services. I understand the greater flexibility for small and middle size banks, and that is important. But there is something more important, and I want to remind my colleagues that this Congress listens, the Americans listen, and the world listens to Alan Greenspan when he speaks.

Alan Greenspan has been quoted here several times. Here is what he had to say before the House Committee on Banking and Financial Services on May 22, and he made a similar statement on July 17 to the Committee on Commerce:

> The Federal Reserve Board is of the view that the risks from securities and insurance underwriting are manageable using the holding company framework as compared to the operating subsidiaries. But there is another risk, the risk of transference to nonbank affiliates of the subsidy implicit in the Federal safety net. Deposit insurance, the discount window and access to the payment window with attendant moral hazard. As the committee knows, the Board believes that the subsidiary is more readily transferable to a subsidiary of the insured deposit institution than to its affiliates, and the holding company structure creates the best framework for limiting this leakage.

The Federal Reserve Board will oppose this bill if we approve the LaFalce amendment.

Mr. LAFALCE. Mr. Chairman, I yield one minute to the gentleman from Texas (Mr. BENTSEN).

Mr. BENTSEN. Mr. Chairman, I want to respond to my colleague from Nebraska. At that same hearing, Mr. Greenspan again said, ''My concerns are not safety and soundness,'' and, again if you read the testimony, he does make the argument that there is an implicit subsidy that goes through an operating subsidiary.

He says the same subsidy exists through a bank holding company with an affiliate structure. But then he went on to make an unsubstantiated argument that somehow the subsidy is less through a holding company structure than it is through an operating subsidiary.

But Ricki Helfer, the then-Chairman of the FDIC, as the gentleman will recall, went on to say that in the FDIC's study of the issue, not only did they find there was no safety and soundness concern with respect to an operating subsidiary compared to an affiliate through a holding company structure, but, furthermore, that they saw no difference in the subsidy whatsoever, if in fact there is such a subsidy. So the gentleman will recall from the hearing, it was a year ago, but it was very clear where Mr. Greenspan stood on the issue at the time. The chairman of the Federal Reserve says a lot of things. Sometimes he is consistent, and, quite frankly, sometimes he is not. On this issue, he has apparently not been very consistent.

Mr. BLILEY. Mr. Chairman, I yield two minutes to the gentlewoman from New Jersey (Mrs. ROUKEMA).

Mrs. ROUKEMA. Mr. Chairman, I must say that this is a safety and soundness issue, and I am rising in opposition to this amendment.

I must say also that one of the things that Mr. Greenspan has been quite careful to enunciate is that there are heightened concerns in these days of mega-mergers. We should be giving much more attention to the implication of the subsidy.

It is a safety and soundness issue, and this dictates that new activities must be an affiliate under a holding company. The new activities will not pose a threat to the bank or the deposit insurance fund if they are conducted through an affiliate, not a subsidiary. We should not permit operating subsidiaries to pose this kind of danger.

I want to say, my friend, the gentleman from Massachusetts (Mr. FRANK) is not here right now, but I do want to say this does bring to mind ''deja vu all over again'' to the ghost of the savings & loan debacle.

Make no mistake about that, my colleagues. This subsidiary proposal severely violates the functional regulatory structure that we have at the heart of this legislation.

I want to repeat again, I believe that the gentleman from Nebraska (Mr. BEREUTER) correctly quoted Mr. Greenspan in context, stating his opposition to the operating subsidiary, both in terms of the subsidy, as well as in terms of the safety and soundness.

In addition to Mr. Greenspan being opposed to this, Mr. Levitt, the chairman of the Securities and Exchange Commission, is also opposed to it, and I might say that there is significant opposition from my colleagues, and bipartisan opposition, on the Committee on Commerce.

I stand here ready to alert my colleagues that this would be really undermining the whole purpose of this bill if this amendment were passed, so I would urge a no vote.

Mr. Chairman, I rise today, in opposition to this amendment. I support many of the provisions in this package of amendments. In fact,

I asked the Rules Committee to let me offer 3 insurance amendments which are similar to some of the insurance provisions in this package. In addition, I support a small bank CRA exemption. However, I continue to have grave reservations about the operating subsidiary and will vote against the package based on this.

The operating subsidiary is a bad idea, and the House should vote it down.

Proponents argue that an operating subsidiary is necessary to keep the national bank charter vital and flexible. Some even say that it will promote CRA.

The operating subsidiary is not necessary for any of these reasons. On flexibility and vitality—national banks will be permitted to engage in many new opportunities under the bill. They just have to do it over in the holding company.

The debate here is over where the activities must be housed. Should the new activities be as affiliates under the holding company or should they be subsidiaries under the national bank.

This is a safety and soundness issue. And heightened concern in these days of mega mergers. Safety and soundness dictates that the new activities take place in an affiliate under the holding company. These new activities will not pose a threat to the bank or the Federal deposit insurance funds if they are conducted through an affiliate. We should not permit operating subsidiaries to pose a risk to safety and soundness. This does bring deja vous all over again to the savings and loan debacle. This subsidiary proposal severely violates the functional regulatory structure we have as the heart of the legislation.

I am not alone in opposing the operating subsidiary. The operating subsidiary is opposed by Mr. Greenspan, the Chairman of the Federal Reserve Board. It is also opposed by Mr. Levitt, the Chairman of the Securities and Exchange Commission. There is bipartisan opposition to the operating subsidiary. I am joined by Mr. BLILEY and Mr. DINGELL as well as many other members of the Banking Committee. Much has been made about Secretary Rubin supporting the operating subsidiary. Many seem to forget that Treasury Secretary Regan during the Reagan Administration opposed the operating subsidiary.

Don't make a safety and soundness mistake. Vote no on the operating subsidiary.

Mr. LAFALCE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, first of all, the primary issue is the Community Reinvestment Act. If we pass this amendment, we will permit a structure where you can retain assets under the jurisdiction of the CRA. If we reject this amendment, we mandate that a good many present activities, and most all future activities, would go outside of the jurisdiction of the Community Reinvestment Act. That is fundamental.

Secondly, with respect to safety and soundness, Chairman Greenspan testified before the Committee on Banking and Financial Services on two separate occasions, this is not a safety and soundness issue. So sayeth Alan Greenspan before the Committee on Banking and Financial Services when he was not negotiating with legislators for a particular bill.

Secondly, this was the testimony of the State banking regulators.

Third, this was the testimony of the present chairman and the past chairman of the Federal Deposit Insurance Commission. This is the not a safety and soundness issue. The safety and soundness can be conducted just as well or better under the operating subsidiary concept as under the separate affiliate concept.

Secondly, with respect to functional regulation, there is no difference. We would have the same functional regulation under an operating subsidiary by the SEC, by the State insurance commissioners, et cetera, that we would have under the separate financial holding company affiliate. That is a nonissue.

Big banks, they really do not care. They are going to the financial services holding company routes. The security firms, they do not really care. They want a bill to accomplish repeal of Glass-Stegall and changes the bank holding company law.

The ones that care are the consumers who will not be subject to the Community Reinvestment Act, whose communities will not be subject to it, and the smaller banks, because these smaller banks will be forced to either be taken over or to convert to State chartered institutions.

That is this amendment, and we have the chance of passing a law, rather than a one House bill.

Mr. BLILEY. Mr. Chairman, it is a great pleasure for me to yield the balance of my time to the gentleman from Iowa (Mr. LEACH), the distinguished chairman of the Committee on Banking and Financial Services, who has been so helpful and so cooperative in working together on this bill.

The CHAIRMAN pro tempore (Mr. DICKEY). The distinguished chairman of the Committee on Banking and Financial Services is recognized for 3½ minutes.

(Mr. LEACH asked and was given permission to revise and extend his remarks.)

Mr. LEACH. Mr. Chairman, with reluctance, I stand in opposition to this amendment.

Let me say what is in the bill is a compromise between the Committee on Banking and Financial Services and the Committee on Commerce. If this amendment had gone back to the Committee on Banking and Financial Services' position, I probably would have been obligated to support it. But I will tell you, it goes further. What it does, it adds under the power of a bank, merchant banking authority. This is authority that is very, very significant.

Merchant banking constitutes direct ownership and control of commercial investments. I used to argue in the 1980's that the two dirtiest words in the American language were ''direct investment,'' rights which were authorized S&L's in half a dozen states to use Federally insured deposits to make investments in entities that they would then control. Instead of making loans to people, they would simply own things. Here let me just comment on common sense. If you are an outsider listening to this debate, the esoterics of an operating subsidiary versus affiliate must seem very large. But does any common-sense American think that a bank ought to be able to come in and under its own volition start to own commercial businesses, rather than simply make loans, in ways that involve potentially the deposit insurance system and what could be a subsidy involved thereof?

I know the subsidy issue is controversial. The Fed says one thing, the Treasury something else. In my time in public life, I always found the argument that a subsidy exists to be valid.

Secondly, let me say there is a question of history that has been articulated. That is, the Department of Treasury has said no Treasury could support any position the one being taken. The gentleman from New York has suggested that his is a historical position of all Treasuries.

Well, that, frankly, is not precisely the case. I would like to direct both the Treasury and my good friends to this statement of the Honorable Donald T. Regan, the Department of the Treasury Secretary under the Reagan Administration.

Secretary Regan said, ''The administration,'' meaning the Reagan Administration:

> Does not believe that non-depository institution activities should be conducted through a subsidiary or service corporation in which a bank or a thrift has a direct equity investment. The investment would be at risk if the subsidiary's activities were to falter and the funds for the investment would be raised with Federal assistance not available to non-depository institution competitors and a cost advantage to the bank or the thrift.

I raise this simply to note, as this testimony reflects, that the Reagan Administration was in opposition to this administration's position on this subject, and in consonance with this bill and with the position of Mr. Greenspan.

Finally, let me just stress that there are articulated differences that relate to CRA. The Federal Reserve has a very profound letter out on this subject, and I commend it to my colleagues, which shows that the CRA argument has been widely exaggerated, and that the differences in CRA treatment of a national bank and a bank under the supervision of the Federal Reserve is very, very similar.

This bill expands CRA, it does not contract it, in significant ways. What are the unarticulated differences, or some of the differences, between the Treasury and the Fed in which there is a major battle underway?

Mr. Chairman, I would simply inform the membership that the rest of the words would have been extraordinarily compelling.

Mr. Chairman, truth be told, the CRA argument on this bill is proffered to mask the extraordinary differences between the Treasury

and the Federal Reserve Board on which institutions should be the primary federal regulator of the banking system. Just as the Fed perhaps exaggerates a bit the importance of the subsidy that exists with the offering of insured deposits, the Treasury magnifies the CRA argument. The reason these arguments are so critical to these two institutions is that the Treasury believes Congress will tilt to it if a case can be made that Fed supervised institutions have lower CRA obligations, and the Fed believes Congress may tilt to it if it can be shown that competitive advantages accrue to institutions with subsidized federally insured deposits.

Actually, Congress has historically considered the Federal Reserve to be the appropriate principal regulator for new power approaches for a different set of reasons: (1) It is the Fed which has the predominance of experience with holding company regulations. (2) It is the Fed, and only the Fed, which has the resources to act on a moment's notice in a time of emergency. While the Treasury has no treasury, the Fed has the capacity to liquify virtually any problem of any size. (3) With its functional and precise regulatory approach, the bill is designed to resolve issues of regulatory turf in such a way that financial companies can't engage in regulatory arbitrage thus precipitating weaker regulation. (4) While sometimes controversial in its monetary policy deliberations, the Fed has a sterling record for being above politics on the regulatory front.

From the very beginning of development of this bill I have been impressed with how much support exists for the general framework of change but how extraordinary the divisions on the subtleties are.

In the private sector there are natural maximization of profit motivations; on the public side, there are maximization of power concerns. Ironically, as we come to the conclusion of the House consideration process, the rivalry between the Fed and the Treasury has come more to the fore than rivalries between and within industrial groupings.

One of the most profound observations of the month was that of a prominent New York banker who told me: ''All I want is to get out of the Fed-Treasury crossfire.'' The bill provides certitude as well as fairness.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. LAFALCE).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. LAFALCE. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 115, noes 306, not voting 11, as follows:

[Roll No. 144]

AYES—115

Allen
Baesler
Barrett (WI)
Becerra
Bentsen
Berman
Bishop
Blumenauer
Boehlert
Bonior
Borski
Boswell
Brown (CA)
Capps
Cardin
Carson
Castle
Clayton
Clyburn
Conyers
Davis (IL)
Davis (VA)
DeFazio
Dixon
Dreier
Eshoo
Evans
Farr
Fattah
Filner
Frank (MA)
Gibbons
Goode
Goodlatte
Green
Gutierrez
Hall (OH)
Hastings (FL)
Hinchey
Hooley
Hostettler
Hoyer
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (WI)
Johnson, E. B.
Kanjorski
Kaptur
Kelly
Kennedy (MA)
Kennedy (RI)
Kind (WI)
Kleczka
Kucinich
LaFalce
Lampson
Lantos
LaTourette
Lee
Lewis (GA)
Luther
Maloney (CT)
Maloney (NY)
Martinez
McDermott
McHale
McInnis
McIntosh
McKinney
Meehan
Meek (FL)
Meeks (NY)
Millender-McDonald
Miller (CA)
Moakley
Mollohan
Moran (VA)
Myrick
Oberstar
Obey
Olver
Ortiz
Owens
Pastor
Payne
Pelosi
Petri
Price (NC)
Ramstad
Roybal-Allard
Rush
Sabo
Sanders
Sandlin
Schumer
Serrano
Sherman
Slaughter
Smith, Adam
Snyder
Souder
Stark
Stokes
Thompson
Thurman
Tierney
Torres
Velazquez
Vento
Visclosky
Waters
Watt (NC)
Weygand
Woolsey

NOES—306

Abercrombie
Ackerman
Aderholt
Andrews
Archer
Armey
Bachus
Baker
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bereuter
Berry
Bilbray
Bilirakis
Blagojevich
Bliley
Blunt
Boehner
Bonilla
Bono
Boucher
Boyd
Brady
Brown (FL)
Brown (OH)
Bryant
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Chabot
Chambliss
Chenoweth
Clement
Coble
Coburn
Collins
Combest
Condit
Cook
Cooksey
Costello
Cox
Coyne
Cramer
Crane
Crapo
Cubin
Cummings
Cunningham
Danner
Davis (FL)
Deal
DeGette
Delahunt
DeLauro
DeLay
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Doggett
Dooley
Doolittle
Doyle
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Ensign
Etheridge
Everett
Ewing
Fawell
Fazio
Foley
Forbes
Ford
Fossella
Fowler
Fox
Franks (NJ)
Frelinghuysen
Frost
Furse
Gallegly
Ganske
Gejdenson
Gekas
Gephardt
Gillmor
Gilman
Goodling
Gordon
Goss
Graham
Granger
Greenwood
Gutknecht
Hall (TX)
Hamilton
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Herger
Hill
Hilleary
Hinojosa
Hobson
Hoekstra
Holden
Horn
Houghton
Hulshof
Hunter
Hutchinson
Hyde
Inglis
Istook
Jenkins
John
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kennelly
Kildee
Kim
King (NY)
Kingston
Klink
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
Lazio
Leach
Levin
Lewis (CA)
Lewis (KY)
Linder
Lipinski
Livingston
LoBiondo
Lofgren
Lowey
Lucas
Manton
Manzullo
Markey
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McDade
McGovern
McHugh
McIntyre
McKeon
McNulty
Menendez
Metcalf
Mica
Miller (FL)
Minge
Mink
Moran (KS)
Morella
Murtha
Nadler
Neal
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Oxley
Packard
Pallone
Pappas
Parker
Pascrell
Paul
Paxon
Pease
Peterson (MN)
Peterson (PA)
Pickering
Pickett
Pitts
Pombo
Pomeroy
Porter
Portman
Poshard
Pryce (OH)
Quinn
Rahall
Rangel
Redmond
Regula
Reyes
Riggs
Riley
Rivers
Rodriguez
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Rothman
Roukema
Royce
Ryun
Salmon
Sanchez
Sanford
Sawyer
Saxton
Scarborough
Schaefer, Dan
Schaffer, Bob
Scott
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Shimkus
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Linda
Snowbarger
Solomon
Spence
Spratt
Stabenow
Stearns
Stenholm
Strickland
Stump
Stupak
Sununu
Talent
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Thune
Tiahrt
Towns
Traficant
Turner
Upton
Walsh
Wamp
Watkins
Watts (OK)
Waxman
Weldon (FL)
Weldon (PA)
Weller
Wexler
White
Whitfield
Wicker
Wise
Wolf
Wynn
Yates
Young (AK)
Young (FL)

NOT VOTING—11

Bateman
Christensen
Clay
Gilchrest
Gonzalez
Harman
Hefner
Hilliard
Kilpatrick
Radanovich
Skaggs

□ 1619

Messrs. COBURN, INGLIS of South Carolina, PICKETT, STENHOLM, Mrs. LOWEY, and Messrs. LEVIN, MASCARA, and FORBES changed their vote from ''aye'' to ''no.''

Messrs. BISHOP, FARR of California, MOAKLEY, GOODLATTE, GIBBONS, Ms. ESHOO, and Messrs. OLVER, McINTOSH, DAVIS of Virginia, and MORAN of Virginia changed their vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Ms. KILPATRICK. Madam Chairman, because I was unavoidably detained in the 15th Congressional District, I missed several roll call votes. Had I been present, I would have voted Nay on roll call number 142, Aye on roll call vote number 143, and Aye on roll call number 144.

The CHAIRMAN. It is now in order to consider amendment No. 3 printed in part 2 of House Report 105–531.

AMENDMENT NO. 3 OFFERED BY MR. BAKER

Mr. BAKER. Madam Chairman, I offer an amendment under the rule.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part 2, amendment No. 3, printed in House Report 105–531, offered by Mr. BAKER:

After section 181, insert the following new sections (and conform the table of contents accordingly):

SEC. 182. CRA AMENDMENT.

Section 803(2) of the Community Reinvestment Act of 1977 (12 U.S.C. 2902(2)) is amended by inserting ''which has total assets of more than $100,000,000'' before the semicolon at the end.

In section 305 of the Amendment in the Nature of a Substitute, strike ''If a national bank'' and insert ''(a) IN GENERAL.—If a national bank''.

In section 305 of the Amendment in the Nature of a Substitute, insert the following new subsections after subsection (a) (as so redesignated):

(b) STATE WAIVER.—If, in any community served by a national bank or a subsidiary of a national bank, there is no company licensed by the appropriate State regulator to provide insurance as agent which is available for acquisition, the State insurance regulator may, upon application by the national bank or subsidiary, waive the limitation of subsection (a) with respect to the provision of insurance as agent by such bank or subsidiary within such community.

(c) SUNSET.—This section shall cease to be effective at the end of the 3-year period beginning on the date of the enactment of this Act.

In paragraph (1) of section 45(d) of the Federal Deposit Insurance Act, as added by section 308(a) of the Amendment in the Nature of a Substitute, strike ''and the making of loans''.

In paragraph (2) of section 45(g) of the Federal Deposit Insurance Act, as added by section 308(a) of the Amendment in the Nature of a Substitute, strike ''Regulations prescribed'' and insert ''Subject to section 104, regulations prescribed''.

After section 309 of the Amendment in the Nature of a Substitute, add the following new section (and conform the table of contents accordingly):

SEC. 310. STUDY OF EFFECTIVENESS OF SAFE HARBOR.

(a) STUDY REQUIRED.—3 years after the date of the enactment of this Act, the Comptroller of the Currency shall study, in conjunction with the National Association of Insurance Commissioners should such Association choose to participate, the effectiveness of the provisions of section 104(b)(2)(A) in establishing a safe harbor for the regulation by States of insurance sales and solicitation activity.

(b) REPORT.—The Comptroller of the Currency, together with the National Association of Insurance Commissioners should such Association choose to participate, shall submit a report to the Congress before the end of the 6-month period beginning 3 years after the date of the enactment of this Act on findings made and conclusions reached with regard to the study required under subsection (a), together with such recommendations for legislative or administrative action as the Comptroller and the Association determine to be appropriate.

Paragraph (9) of section 10(c) of the Home Owners' Loan Act, as added by section 401 of the Amendment in the Nature of a Substitute, is amended by adding at the end the following new subparagraph:

''(C) NO ACQUISITION OF GRANDFATHERED UNITARIES BY UNREGULATED NONFINANCIAL COMPANIES.—Notwithstanding subparagraph (B), paragraph (3) shall not apply to any company described in subparagraph (B)(i)(II) which is not, at the time of the acquisition referred to in such subparagraph, subject to licensing, regulation, or examination by a Federal banking agency, the Securities and Exchange Commission, the Commodities Futures Trading Commission, or a State insurance regulator.''.

Strike the heading of subtitle C of title I of the Amendment in the Nature of a Substitute and insert the following new heading (and amend the table of contents accordingly):

SUBTITLE C—SUBSIDIARIES OF INSURED DEPOSITORY INSTITUTIONS

Strike section 121 of the Amendment in the Nature of a Substitute and insert the following new sections (and redesignate subsequent sections and amend the table of contents accordingly):

SEC. 121. SUBSIDIARIES OF NATIONAL BANKS AUTHORIZED TO ENGAGE IN FINANCIAL ACTIVITIES.

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

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

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

''SEC. 5136A. FINANCIAL SUBSIDIARIES OF NATIONAL BANKS.

''(a) SUBSIDIARIES OF NATIONAL BANKS AUTHORIZED TO ENGAGE IN FINANCIAL ACTIVITIES.—

''(1) IN GENERAL.—A subsidiary of a national bank may engage in an activity that is not permissible for a national bank to engage in directly, but only if—

''(A) the activity is a financial activity (as defined in paragraph (4));

''(B) the national bank is well capitalized, well managed, and achieved a rating of 'satisfactory record of meeting community credit needs', or better, at the most recent examination of the bank;

''(C) all depository institution affiliates of such national bank are well capitalized, well managed, and have achieved a rating of 'satisfactory record of meeting community credit needs', or better, at the most recent examination of each such institution; and

''(D) the bank has received the approval of the Comptroller of the Currency.

''(2) NO EFFECT ON EDGE ACT OR AGREEMENT CORPORATIONS.—Paragraph (1) shall not apply with respect to any subsidiary which is a corporation organized under section 25A of the Federal Reserve Act or a corporation operating under section 25 of such Act.

''(3) OTHER SUBSIDIARIES PROHIBITED.—A national bank may not control any subsidiary other than a subsidiary—

''(A) which engages solely in activities that are permissible for a national bank to engage in directly or are authorized under paragraph (1); or

''(B) which a national bank may control pursuant to section 25 or 25A of the Federal Reserve Act, the Bank Service Company Act, or any other Act that expressly by its terms authorizes national banks to control subsidiaries.

''(4) FINANCIAL ACTIVITY DEFINED.—For purposes of this section and subject to paragraphs (5) and (6), the term 'financial activity' means any activity determined under section 6(c) of the Bank Holding Company Act of 1956 to be financial in nature or incidental to financial activities.

''(5) OTHER DEFINITIONS.—For purposes of this section, the following definitions shall apply:

''(A) FINANCIAL SUBSIDIARY.—The term 'financial subsidiary' means a company which—

''(i) is a subsidiary of a national bank (other than a corporation organized under section 25A of the Federal Reserve Act or a corporation operating under section 25 of such Act); and

''(ii) is engaged in a financial activity pursuant to paragraph (1) that is not a permissible activity for a national bank to engage in directly.

''(B) SUBSIDIARY.—The term 'subsidiary' has the meaning given to such term in section 2 of the Bank Holding Company Act of 1956.

''(C) WELL CAPITALIZED.—The term 'well capitalized' has the same meaning as in section 38 of the Federal Deposit Insurance Act and, for purposes of this section, the Comptroller shall have exclusive jurisdiction to determine whether a national bank is well capitalized.

''(D) WELL MANAGED.—The term 'well managed' means—

''(i) in the case of a bank that has been examined, unless otherwise determined in writing by the Comptroller, the achievement of—

''(I) a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under an equivalent rating system) in connection with the most recent examination or subsequent review of the bank; and

''(II) at least a rating of 2 for management, if that rating is given; or

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

''(6) INSURANCE UNDERWRITING, MERCHANT BANKING, AND DIRECT INVESTMENT.—Except as provided in title III of the Financial Services Act of 1998, no subsidiary of a national bank (other than a corporation organized under section 25A of the Federal Reserve Act or a corporation operating under section 25 of such Act) may underwrite noncredit-related insurance, engage in real estate investment or development activities (except to the extent a national bank is specifically authorized by statute to engage in any such activity directly), or engage in merchant banking (as described in section 6(c)(3)(H) of the Bank Holding Company Act of 1956).

''(7) LIMITED EXCLUSIONS FROM COMMUNITY NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DEPOSITORY INSTITUTIONS.—Any depository institution which becomes affiliated with a national bank during the 12-month period preceding the submission of an application to acquire a financial subsidiary and any depository institution which becomes so affiliated after the approval of such application may be excluded for purposes of paragraph (1)(C) during the 12-month period beginning on the date of such acquisition if—

''(A) the national bank has submitted an affirmative plan to the Comptroller of the Currency to take such action as may be necessary in order for such institution to achieve a 'satisfactory record of meeting community credit needs', or better, during the most next examination of the institution; and

''(B) the plan has been accepted by the Comptroller.

''(b) CAPITAL DEDUCTION REQUIRED.—

''(1) IN GENERAL.—In determining compliance with applicable capital standards—

''(A) the amount of a national bank's equity investment in a financial subsidiary shall be deducted from the national bank's assets and tangible equity; and

''(B) the financial subsidiary's assets and liabilities shall not be consolidated with those of the national bank.

''(2) REGULATIONS REQUIRED.—The Comptroller shall prescribe regulations implementing this subsection.

''(c) SAFEGUARDS FOR THE BANK.—A national bank that establishes or maintains a financial subsidiary shall assure that—

''(1) the bank's procedures for identifying and managing financial and operational risks within the bank and financial subsidiaries of the bank adequately protect the bank from such risks;

''(2) the bank has, for the protection of the bank, reasonable policies and procedures to preserve the separate corporate identity and limited liability of the bank and subsidiaries of the bank; and

''(3) the bank complies with this section.

''(d) NATIONAL BANKS WHICH DO NOT COMPLY WITH REQUIREMENTS OF THIS SECTION.—

''(1) IN GENERAL.—If the Comptroller determines that a national bank which controls a financial subsidiary, or a depository institution affiliate of such national bank, does not

continue to meet the requirements of subsection (a), the Comptroller shall give notice to the bank to that effect, describing the conditions giving rise to the notice.

''(2) AGREEMENT TO CORRECT CONDITIONS REQUIRED.—

''(A) CONTENT OF AGREEMENT.—Within 45 days of the receipt by a depository institution of a notice given under paragraph (1) (or such additional period as the Comptroller may permit), the depository institution failing to meet the requirements of subsection (a) shall execute an agreement with the appropriate Federal banking agency for such institution to correct the conditions described in the notice.

''(B) COMPTROLLER MAY IMPOSE LIMITATIONS.—Until the conditions giving rise to the notice are corrected, the Comptroller may impose such limitations on the conduct of the business of the national bank or subsidiary of such bank as the Comptroller determines to be appropriate under the circumstances.

''(3) FAILURE TO CORRECT.—If the conditions described in the notice are not corrected within 180 days after the bank receives the notice, the Comptroller may require, under such terms and conditions as may be imposed by the Comptroller and subject to such extensions of time as may be granted in the discretion of the Comptroller—

(A) the national bank to divest control of each subsidiary engaged in an activity that is not permissible for the bank to engage in directly; or

''(B) each subsidiary of the national bank to cease any activity that is not permissible for the bank to engage in directly.

''(e) FUNCTIONAL REGULATION.—

''(1) IN GENERAL.—A financial subsidiary of a national bank shall not be treated as a bank for purposes of any definition of bank in the Federal securities laws.

''(2) DEFERENCE TO SEC.—The Comptroller shall defer to the Securities and Exchange Commission with regard to all interpretations of, and the enforcement of, applicable Federal securities laws relating to the activities, conduct, and operations of registered brokers, dealers, investment advisers, and investment companies.

''(3) DEFERENCE TO EXAMINATIONS.—In the case of a financial subsidiary of a national bank which is a registered broker or dealer or a registered investment adviser, the Comptroller shall, to the fullest extent possible, address the circumstances which might otherwise permit or require an examination by the Comptroller by forgoing an examination and instead reviewing the reports of examination made of such subsidiary by or on behalf of the Securities and Exchange Commission.''.

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

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

(2) by inserting after the item relating to section 5136 the following new item:

''5136A. Financial subsidiaries of national banks.''.

SEC. 122. ACTIVITIES OF SUBSIDIARIES OF INSURED STATE BANKS.

Section 24(d) of the Federal Deposit Insurance Act (12 U.S.C. 1831a(d)) is amended—

(1) by adding at the end the following new paragraphs:

''(3) CONDITIONS ON CERTAIN ACTIVITIES.—

''(A) IN GENERAL.—A subsidiary of a State bank may engage in an activity in which a subsidiary of a national bank may engage as principal pursuant to subsection (a)(1) of section 5136A of the Revised Statutes of the United States but only if the State bank meets the same requirements which are applicable to national banks under subparagraphs (B) and (C) of such subsection and subsections (b) and (c) of such section.

''(B) APPLICATION OF SECTION 5136A OF REVISED STATUTES.—For purposes of applying section 5136A of the Revised Statutes of the United States with regard to the activities of a subsidiary of a State bank, all references in such section to the Comptroller of the Currency, or regulations and orders of the Comptroller, shall be deemed to be references to the appropriate Federal banking agency with respect to such State bank, and regulations and orders of such agency.

''(4) STATE BANKS WHICH FAIL TO COMPLY WITH PARAGRAPH (3) CONDITIONS.—

''(A) IN GENERAL.—If the appropriate Federal banking agency determines that a State bank that controls a subsidiary which is engaged as principal in financial activities pursuant to paragraph (3) does not meet the requirements of subparagraph (A) of such paragraph, the appropriate Federal banking agency shall give notice to the bank to that effect, describing the conditions giving rise to the notice.

''(A) AGREEMENT TO CORRECT CONDITIONS REQUIRED.—

''(i) CONTENT OF AGREEMENT.—Within 45 days of the receipt by a bank of a notice given under paragraph (1) (or such additional period as the appropriate Federal banking agency for such bank may permit), the bank failing to meet the requirements of paragraph (3)(A) shall execute an agreement with the appropriate Federal banking agency for such bank to correct the conditions described in the notice.

''(B) AGENCY MAY IMPOSE LIMITATIONS.—Until the conditions giving rise to the notice are corrected, the appropriate Federal banking agency for the State bank may impose such limitations on the conduct of the business of the bank or a subsidiary of the bank as the agency determines to be appropriate under the circumstances.

''(C) FAILURE TO CORRECT.—If the conditions described in the notice are not corrected within 180 days after the bank receives the notice, the appropriate Federal banking agency for the State may require, under such terms and conditions as may be imposed by such agency and subject to such extensions of time as may be granted in the discretion of the agency—

''(i) the bank to divest control of each subsidiary engaged in an activity as principal that is not permissible for the bank to engage in directly; or

''(ii) each subsidiary of the bank to cease any activity as principal that is not permissible for the bank to engage in directly.''.

SEC. 123. RULES APPLICABLE TO FINANCIAL SUBSIDIARIES.

(a) TRANSACTIONS BETWEEN FINANCIAL SUBSIDIARIES AND OTHER AFFILIATES.—Section 23A of the Federal Reserve Act (12 U.S.C. 371c) is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d), the following new subsection:

''(e) RULES RELATING TO BANKS WITH FINANCIAL SUBSIDIARIES.—

''(1) FINANCIAL SUBSIDIARY DEFINED.—For purposes of this section and section 23B, the term 'financial subsidiary' means a company which—

''(A) is a subsidiary of a bank (other than a corporation organized under section 25A of the Federal Reserve Act or a corporation operating under section 25 of such Act); and

''(B) is engaged in a financial activity (as defined in section 5136A(a)(4)) that is not a permissible activity for a national bank to engage in directly.

''(2) APPLICATION TO TRANSACTIONS BETWEEN A FINANCIAL SUBSIDIARY OF A BANK AND THE BANK.—For purposes of applying this section and section 23B to a transaction between a financial subsidiary of a bank and the bank (or between such financial subsidiary and any other subsidiary of the bank which is not a financial subsidiary) and notwithstanding subsection (b)(2) and section 23B(d)(1), the financial subsidiary of the bank—

''(A) shall be an affiliate of the bank and any other subsidiary of the bank which is not a financial subsidiary; and

''(B) shall not be treated as a subsidiary of the bank.

''(3) APPLICATION TO TRANSACTIONS BETWEEN FINANCIAL SUBSIDIARY AND NONBANK AFFILIATES.—

''(A) IN GENERAL.—A transaction between a financial subsidiary and an affiliate of the financial subsidiary shall not be deemed to be a transaction between a subsidiary of a national bank and an affiliate of the bank for purposes of section 23A or section 23B of the Federal Reserve Act.

''(B) CERTAIN AFFILIATES EXCLUDED.—For purposes of subparagraph (A) and notwithstanding paragraph (4), the term 'affiliate' shall not include a bank, or a subsidiary of a bank, which is engaged exclusively in activities permissible for a national bank to engage in directly.

''(4) EQUITY INVESTMENTS EXCLUDED SUBJECT TO THE APPROVAL OF THE BANKING AGENCY.—Subsection (a)(1) shall not apply so as to limit the equity investment of a bank in a financial subsidiary of such bank, except that any investment that exceeds the amount of a dividend that the bank could pay at the time of the investment without obtaining prior approval of the appropriate Federal banking agency and is in excess of the limitation which would apply under subsection (a)(1), but for this paragraph, may be made only with the approval of the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act) with respect to such bank.''.

(b) TREATMENT OF FINANCIAL SUBSIDIARIES UNDER OTHER PROVISIONS OF LAW.—

(1) BANK HOLDING COMPANY ACT AMENDMENTS OF 1970.—Section 106(a) of the Bank Holding Company Act Amendments of 1970 is amended by adding at the end the following new sentence: ''For purposes of this section, a financial subsidiary (as defined in section 5136A(a)(5)(A) of the Revised Statutes of the United States or referenced in the 20th undesignated paragraph of section 9 of the Federal Reserve Act or section 24(d)(3)(A) of the Federal Deposit Insurance Act) shall be deemed to be a subsidiary of a bank holding company, and not a subsidiary of a bank.''; and

(2) FEDERAL RESERVE ACT.—The 20th undesignated paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 335) is amended by adding at the end of the following new sentence: ''To the extent permitted under State law, a State member bank may acquire or establish and retain a financial subsidiary (as defined in section 5136A(a)(3)(A) of the Revised Statutes of the United States, except that all references in that section to the Comptroller of the Currency, the Comptroller, or regulations or orders of the Comptroller shall be deemed to be references to the Board or regulations or orders of the Board.''.

The CHAIRMAN. Pursuant to House Resolution 428, the gentleman from Louisiana (Mr. BAKER) and a Member opposed each will control 20 minutes.

The Chair recognizes the gentleman from Louisiana (Mr. BAKER).

REQUEST FOR MODIFICATION TO AMENDMENT NO. 3 OFFERED BY MR. BAKER

Mr. BAKER. Madam Chairman, I ask unanimous consent to modify the amendment.

The CHAIRMAN. The Clerk will report the modification.

The Clerk read as follows:

Amendment, as modified, offered by Mr. BAKER:

After section 181, insert the following new sections (and conform the table of contents accordingly):

SEC. 182. CRA AMENDMENT.

Section 803(2) of the Community Reinvestment Act of 1977 (12 U.S.C. 2902(2)) is amended by inserting ''which has total assets of more than $100,000,000'' before the semicolon at the end.

In section 305 of the Amendment in the Nature of a Substitute, strike ''If a national bank'' and insert ''(a) IN GENERAL.—If a national bank''.

In section 305 of the Amendment in the Nature of a Substitute, insert the following new subsections after subsection (a) (as so redesignated):

(b) STATE WAIVER.—If, in any community served by a national bank or a subsidiary of a national bank, there is no company licensed by the appropriate State regulator to provide insurance as agent which is available for acquisition, the State insurance regulator may, upon application by the national bank or subsidiary, waive the limitation of subsection (a) with respect to the provision of insurance as agent by such bank or subsidiary within such community.

(c) SUNSET.—This section shall cease to be effective at the end of the 3-year period beginning on the date of the enactment of this Act.

In paragraph (1) of section 45(d) of the Federal Deposit Insurance Act, as added by section 308(a) of the Amendment in the Nature of a Substitute, strike ''and the making of loans''.

After section 309 of the Amendment in the Nature of a Substitute, add the following new section (and conform the table of contents accordingly):

SEC. 310. STUDY OF EFFECTIVENESS OF SAFE HARBOR.

(a) STUDY REQUIRED.—3 years after the date of the enactment of this Act, the Comptroller of the Currency shall study, in conjunction with the National Association of Insurance Commissioners should such Association choose to participate, the effectiveness of the provisions of section 104(b)(2)(A) in establishing a safe harbor for the regulation by States of insurance sales and solicitation activity.

(b) REPORT.—The Comptroller of the Currency, together with the National Association of Insurance Commissioners should such Association choose to participate, shall submit a report to the Congress before the end of the 6-month period beginning 3 years after the date of the enactment of this Act on findings made and conclusions reached with regard to the study required under subsection (a), together with such recommendations for legislative or administrative action as the Comptroller and the Association determine to be appropriate.

Paragraph (9) of section 10(c) of the Home Owners' Loan Act, as added by section 401 of the Amendment in the Nature of a Substitute, is amended by adding at the end the following new subparagraph:

''(C) NO ACQUISITION OF GRANDFATHERED UNITARIES BY UNREGULATED NONFINANCIAL COMPANIES.—

''(i) IN GENERAL.—Notwithstanding subparagraph (B), paragraph (3) shall not apply to any company described in subparagraph (B)(i)(II) which is not, at the time of the acquisition referred to in such subparagraph, subject to licensing, regulation, or examination by a Federal banking agency, the Securities and Exchange Commission, the Commodities Futures Trading Commission, or a State insurance regulator.''.

''(ii) SUNSET PROVISION.—This subparagraph shall cease to be effective at the end of the 5-year period beginning on the date of the enactment of the Financial Services Act of 1998.''.

Strike the heading of subtitle C of title I of the Amendment in the Nature of a Substitute and insert the following new heading (and amend the table of contents accordingly):

SUBTITLE C—SUBSIDIARIES OF INSURED DEPOSITORY INSTITUTIONS

Strike section 121 of the Amendment in the Nature of a Substitute and insert the following new sections (and redesignate subsequent sections and amend the table of contents accordingly):

SEC. 121. SUBSIDIARIES OF NATIONAL BANKS AUTHORIZED TO ENGAGE IN FINANCIAL ACTIVITIES.

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

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

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

''SEC. 5136A. FINANCIAL SUBSIDIARIES OF NATIONAL BANKS.

''(a) SUBSIDIARIES OF NATIONAL BANKS AUTHORIZED TO ENGAGE IN FINANCIAL ACTIVITIES.—

''(1) IN GENERAL.—A subsidiary of a national bank may engage in an activity that is not permissible for a national bank to engage in directly, but only if—

''(A) the activity is a financial activity (as defined in paragraph (4));

''(B) the national bank is well capitalized, well managed, and achieved a rating of 'satisfactory record of meeting community credit needs', or better, at the most recent examination of the bank;

''(C) all depository institution affiliates of such national bank are well capitalized, well managed, and have achieved a rating of 'satisfactory record of meeting community credit needs', or better, at the most recent examination of each such institution; and

''(D) the bank has received the approval of the Comptroller of the Currency.

''(2) NO EFFECT ON EDGE ACT OR AGREEMENT CORPORATIONS.—Paragraph (1) shall not apply with respect to any subsidiary which is a corporation organized under section 25A of the Federal Reserve Act or a corporation operating under section 25 of such Act.

''(3) OTHER SUBSIDIARIES PROHIBITED.—A national bank may not control any subsidiary other than a subsidiary—

''(A) which engages solely in activities that are permissible for a national bank to engage in directly or are authorized under paragraph (1); or

''(B) which a national bank may control pursuant to section 25 or 25A of the Federal Reserve Act, the Bank Service Company Act, or any other Act that expressly by its terms authorizes national banks to control subsidiaries.

''(4) FINANCIAL ACTIVITY DEFINED.—For purposes of this section and subject to paragraphs (5) and (6), the term 'financial activity' means any activity determined under section 6(c) of the Bank Holding Company Act of 1956 to be financial in nature or incidental to financial activities.

''(5) OTHER DEFINITIONS.—For purposes of this section, the following definitions shall apply:

''(A) FINANCIAL SUBSIDIARY.—The term 'financial subsidiary' means a company which—

''(i) is a subsidiary of a national bank (other than a corporation organized under section 25A of the Federal Reserve Act or a corporation operating under section 25 of such Act); and

''(ii) is engaged in a financial activity pursuant to paragraph (1) that is not a permissible activity for a national bank to engage in directly.

''(B) SUBSIDIARY.—The term 'subsidiary' has the meaning given to such term in section 2 of the Bank Holding Company Act of 1956.

''(C) WELL CAPITALIZED.—The term 'well capitalized' has the same meaning as in section 38 of the Federal Deposit Insurance Act and, for purposes of this section, the Comptroller shall have exclusive jurisdiction to determine whether a national bank is well capitalized.

''(D) WELL MANAGED.—The term 'well managed' means—

''(i) in the case of a bank that has been examined, unless otherwise determined in writing by the Comptroller, the achievement of—

''(I) a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under an equivalent rating system) in connection with the most recent examination or subsequent review of the bank; and

''(II) at least a rating of 2 for management, if that rating is given; or

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

''(6) INSURANCE UNDERWRITING, MERCHANT BANKING, AND DIRECT INVESTMENT.—Except as provided in title III of the Financial Services Act of 1998, no subsidiary of a national bank (other than a corporation organized under section 25A of the Federal Reserve Act or a corporation operating under section 25 of such Act) may underwrite noncredit-related insurance, engage in real estate investment or development activities (except to the extent a national bank is specifically authorized by statute to engage in any such activity directly), or engage in merchant banking (as described in section 6(c)(3)(H) of the Bank Holding Company Act of 1956).

''(7) LIMITED EXCLUSIONS FROM COMMUNITY NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DEPOSITORY INSTITUTIONS.—Any depository institution which becomes affiliated with a national bank during the 12-month period preceding the submission of an application to acquire a financial subsidiary and any depository institution which becomes so affiliated after the approval of such application may be excluded for purposes of paragraph (1)(C) during the 12-month period beginning on the date of such acquisition if—

''(A) the national bank has submitted an affirmative plan to the Comptroller of the Currency to take such action as may be necessary in order for such institution to achieve a 'satisfactory record of meeting community credit needs', or better, during the most next examination of the institution; and

''(B) the plan has been accepted by the Comptroller.

''(b) CAPITAL DEDUCTION REQUIRED.—

''(1) IN GENERAL.—In determining compliance with applicable capital standards—

''(A) the sum of—

''(i) the amount of a national bank's equity investment in a financial subsidiary; and

''(ii) the amount equal to the sum of the retained earnings of each financial subsidiary,

shall be deducted from the national bank's assets and tangible equity; and

''(B) the financial subsidiary's assets and liabilities shall not be consolidated with those of the national bank.

''(2) REGULATIONS REQUIRED.—The Comptroller shall prescribe regulations implementing this subsection.

''(c) SAFEGUARDS FOR THE BANK.—

''(1) IN GENERAL.—A national bank that establishes or maintains a financial subsidiary shall assure that—

''(A) the bank's procedures for identifying and managing financial and operational risks within the bank and financial subsidiaries of the bank adequately protect the bank from such risks;

''(B) the bank has, for the protection of the bank, reasonable policies and procedures to preserve the separate corporate identity and limited liability of the bank and subsidiaries of the bank; and

''(C) the bank complies with this section.

''(2) PROHIBITION ON PIERCING THE CORPORATE VEIL.—Notwithstanding any other law (including any law relating to insurance), no obligation of a financial subsidiary of a national bank arising more than 270 days after the date of enactment of the Financial Services Act of 1998 may be charged against such bank by reason of any ruling, determination, or judgment disregarding the separate corporate identity or limited liability of the bank or the financial subsidiary.

''(3) MAINTENANCE OF SEPARATE CORPORATE IDENTITY AND SEPARATE LEGAL STATUS—

''(A) IN GENERAL.—The Comptroller shall take steps, including conducting the review required by subparagraph (B), to assure that each national bank observes the separate corporate identity and separate legal status of each of the bank's financial subsidiaries.

''(B) EXAMINATIONS.—The Comptroller, when examining a national bank, shall review whether the bank is observing the separate corporate identity and separate legal status of the bank's financial subsidiaries.

''(d) NATIONAL BANKS WHICH DO NOT COMPLY WITH REQUIREMENTS OF THIS SECTION.—

''(1) IN GENERAL.—If the Comptroller determines that a national bank which controls a financial subsidiary, or a depository institution affiliate of such national bank, does not continue to meet the requirements of subsection (a), the Comptroller shall give notice to the bank to that effect, describing the conditions giving rise to the notice.

''(2) AGREEMENT TO CORRECT CONDITIONS REQUIRED.—

''(A) CONTENT OF AGREEMENT.—Within 45 days of the receipt by a depository institution of a notice given under paragraph (1) (or such additional period as the Comptroller may permit), the depository institution failing to meet the requirements of subsection (a) shall execute an agreement with the appropriate Federal banking agency for such institution to correct the conditions described in the notice.

''(B) COMPTROLLER MAY IMPOSE LIMITATIONS.—Until the conditions giving rise to the notice are corrected, the Comptroller may impose such limitations on the conduct of the business of the national bank or subsidiary of such bank as the Comptroller determines to be appropriate under the circumstances.

''(3) FAILURE TO CORRECT.—If the conditions described in the notice are not corrected within 180 days after the bank receives the notice, the Comptroller may require, under such terms and conditions as may be imposed by the Comptroller and subject to such extensions of time as may be granted in the discretion of the Comptroller—

''(A) the national bank to divest control of each subsidiary engaged in an activity that is not permissible for the bank to engage in directly; or

''(B) each subsidiary of the national bank to cease any activity that is not permissible for the bank to engage in directly.

''(e) FUNCTIONAL REGULATION.—

''(1) IN GENERAL.—A financial subsidiary of a national bank shall not be treated as a bank for purposes of any definition of bank in the Federal securities laws.

''(2) DEFERENCE TO SEC.—The Comptroller shall defer to the Securities and Exchange Commission with regard to all interpretations of, and the enforcement of, applicable Federal securities laws relating to the activities, conduct, and operations of registered brokers, dealers, investment advisers, and investment companies.

''(3) DEFERENCE TO EXAMINATIONS.—In the case of a financial subsidiary of a national bank which is a registered broker or dealer or a registered investment adviser, the Comptroller shall, to the fullest extent possible, address the circumstances which might otherwise permit or require an examination by the Comptroller by forgoing an examination and instead reviewing the reports of examination made of such subsidiary by or on behalf of the Securities and Exchange Commission.''.

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

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

(2) by inserting after the item relating to section 5136 the following new item:

''5136A. Financial subsidiaries of national banks.''.

SEC. 122. ACTIVITIES OF SUBSIDIARIES OF INSURED STATE BANKS.

Section 24(d) of the Federal Deposit Insurance Act (12 U.S.C. 1831a(d)) is amended—

(1) by adding at the end the following new paragraphs:

''(3) CONDITIONS ON CERTAIN ACTIVITIES.—

''(A) IN GENERAL.—A subsidiary of a State bank may engage in an activity in which a subsidiary of a national bank may engage as principal pursuant to subsection (a)(1) of section 5136A of the Revised Statutes of the United States but only if the State bank meets the same requirements which are applicable to national banks under subparagraphs (B) and (C) of such subsection and subsections (b) and (c) of such section.

''(B) APPLICATION OF SECTION 5136A OF REVISED STATUTES.—For purposes of applying section 5136A of the Revised Statutes of the United States with regard to the activities of a subsidiary of a State bank, all references in such section to the Comptroller of the Currency, or regulations and orders of the Comptroller, shall be deemed to be references to the appropriate Federal banking agency with respect to such State bank, and regulations and orders of such agency.

''(4) STATE BANKS WHICH FAIL TO COMPLY WITH PARAGRAPH (3) CONDITIONS.—

''(A) IN GENERAL.—If the appropriate Federal banking agency determines that a State bank that controls a subsidiary which is engaged as principal in financial activities pursuant to paragraph (3) does not meet the requirements of subparagraph (A) of such paragraph, the appropriate Federal banking agency shall give notice to the bank to that effect, describing the conditions giving rise to the notice.

''(A) AGREEMENT TO CORRECT CONDITIONS REQUIRED.—

''(i) CONTENT OF AGREEMENT.—Within 45 days of the receipt by a bank of a notice given under paragraph (1) (or such additional period as the appropriate Federal banking agency for such bank may permit), the bank failing to meet the requirements of paragraph (3)(A) shall execute an agreement with the appropriate Federal banking agency for such bank to correct the conditions described in the notice.

''(B) AGENCY MAY IMPOSE LIMITATIONS.—Until the conditions giving rise to the notice are corrected, the appropriate Federal banking agency for the State bank may impose such limitations on the conduct of the business of the bank or a subsidiary of the bank as the agency determines to be appropriate under the circumstances.

''(C) FAILURE TO CORRECT.—If the conditions described in the notice are not corrected within 180 days after the bank receives the notice, the appropriate Federal banking agency for the State may require, under such terms and conditions as may be imposed by such agency and subject to such extensions of time as may be granted in the discretion of the agency—

''(i) the bank to divest control of each subsidiary engaged in an activity as principal that is not permissible for the bank to engage in directly; or

''(ii) each subsidiary of the bank to cease any activity as principal that is not permissible for the bank to engage in directly.''.

SEC. 123. RULES APPLICABLE TO FINANCIAL SUBSIDIARIES.

(a) TRANSACTIONS BETWEEN FINANCIAL SUBSIDIARIES AND OTHER AFFILIATES.—Section 23A of the Federal Reserve Act (12 U.S.C. 371c) is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d), the following new subsection:

''(e) RULES RELATING TO BANKS WITH FINANCIAL SUBSIDIARIES.—

''(1) FINANCIAL SUBSIDIARY DEFINED.—For purposes of this section and section 23B, the term 'financial subsidiary' means a company which—

''(A) is a subsidiary of a bank (other than a corporation organized under section 25A of the Federal Reserve Act or a corporation operating under section 25 of such Act); and

''(B) is engaged in a financial activity (as defined in section 5136A(a)(4)) that is not a permissible activity for a national bank to engage in directly.

''(2) APPLICATION TO TRANSACTIONS BETWEEN A FINANCIAL SUBSIDIARY OF A BANK AND THE BANK.—For purposes of applying this section and section 23B to a transaction between a financial subsidiary of a bank and the bank (or between such financial subsidiary and any other subsidiary of the bank which is not a financial subsidiary) and notwithstanding subsection (b)(2) and section 23B(d)(1), the financial subsidiary of the bank—

''(A) shall be an affiliate of the bank and any other subsidiary of the bank which is not a financial subsidiary; and

''(B) shall not be treated as a subsidiary of the bank.

''(3) APPLICATION TO TRANSACTIONS BETWEEN FINANCIAL SUBSIDIARY AND NONBANK AFFILIATES.—

''(A) IN GENERAL.—A transaction between a financial subsidiary and an affiliate of the financial subsidiary shall not be deemed to be a transaction between a subsidiary of a national bank and an affiliate of the bank for purposes of section 23A or section 23B of the Federal Reserve Act.

''(B) CERTAIN AFFILIATES EXCLUDED.—For purposes of subparagraph (A) and notwithstanding paragraph (4), the term 'affiliate' shall not include a bank, or a subsidiary of a

bank, which is engaged exclusively in activities permissible for a national bank to engage in directly.

''(4) EQUITY INVESTMENTS EXCLUDED SUBJECT TO THE APPROVAL OF THE BANKING AGENCY.—Subsection (a)(1) shall not apply so as to limit the equity investment of a bank in a financial subsidiary of such bank, except that any investment that exceeds the amount of a dividend that the bank could pay at the time of the investment without obtaining prior approval of the appropriate Federal banking agency and is in excess of the limitation which would apply under subsection (a)(1), but for this paragraph, may be made only with the approval of the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act) with respect to such bank.''.

(b) TREATMENT OF FINANCIAL SUBSIDIARIES UNDER OTHER PROVISIONS OF LAW.—

(1) BANK HOLDING COMPANY ACT AMENDMENTS OF 1970.—Section 106(a) of the Bank Holding Company Act Amendments of 1970 is amended by adding at the end the following new sentence: ''For purposes of this section, a financial subsidiary (as defined in section 5136A(a)(5)(A) of the Revised Statutes of the United States or referenced in the 20th undesignated paragraph of section 9 of the Federal Reserve Act or section 24(d)(3)(A) of the Federal Deposit Insurance Act) shall be deemed to be a subsidiary of a bank holding company, and not a subsidiary of a bank.''; and

(2) FEDERAL RESERVE ACT.—The 20th undesignated paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 335) is amended by adding at the end of the following new sentence: ''To the extent permitted under State law, a State member bank may acquire or establish and retain a financial subsidiary (as defined in section 5136A(a)(3)(A) of the Revised Statutes of the United States, except that all references in that section to the Comptroller of the Currency, the Comptroller, or regulations or orders of the Comptroller shall be deemed to be references to the Board or regulations or orders of the Board.''.

Mr. BAKER (during the reading). Madam Chairman, I ask unanimous consent that the amendment, as modified, be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Louisiana?

PARLIAMENTARY INQUIRY

Mr. DINGELL. Point of parliamentary inquiry, Madam Chairman.

Are we reading the amendment, or discussing the amendment which is authorized by the rule, or something different?

The CHAIRMAN. The reading of the modification was just dispensed with.

Is there objection to modifying the amendment offered by Mr. BAKER?

Mr. DINGELL. Reserving the right to object, Madam Chairman, we have not had a chance to review this or what it means. The Committee on Rules has spoken rather clearly on it, and with great respect and affection for the distinguished gentleman from Louisiana (Mr. BAKER), I have to object. I do object.

The CHAIRMAN. Objection is heard.

The Chair recognizes the gentleman from Louisiana (Mr. BAKER).

Mr. BAKER. Madam Chairman, I yield myself such time as I may consume.

Madam Chairman, I would like to respond just briefly to the intent to modify, so that the distinguished individual can understand our intent.

Madam Chairman, under the provisions of the consolidated amendment, there is one small element of the insurance provisions——

PARLIAMENTARY INQUIRY

Mr. SOLOMON. Parliamentary inquiry, Madam Chairman. Are we under regular order? Is time being consumed on the 40 minutes now? Because that is regular order.

The CHAIRMAN. That is correct.

Mr. BAKER. Madam Chairman, I would like to respond to the gentleman's inquiry. Under the provisions of the insurance portions of the amendment, there was a technical reference to section 104 being cross-referenced with section 308; stated in other words, consumer protection standards for the sales of insurance by banks.

Given the fact that some in the insurance community had expressed concerns about the consequences of those provisions, I simply chose to remove that section from the consideration from the House, thinking that that would be moving in the gentleman's direction in the consideration of this amendment. I regret that he was unable to allow that modification to be considered.

Madam Chairman, the amendment before us is substantive and quite broad-based. Simply stated, it is an amendment which addresses many of the community banks' concerns who, in the process of financial modernization, have felt, frankly, not only left out, but all too often stepped on.

Just last month this House passed H.R. 1151, which gave credit unions the unfettered right to continue to provide services to their consumers. Unfortunately for most small banks in this country, they are feeling increased competitive pressures from the mergers and consolidations, increased regulatory oversight, and little ability to offer new products to their shrinking consumer base.

Madam Chairman, reemphasizing the point, there is little in this bill, as it now stands, that is attractive to the community banker who is struggling to survive with high end regulatory costs.

This amendment makes four simple changes. It exempts community banks under $100 million in asset size from compliance with CRA; it amends the insurance provisions to allow enhanced flexibility for the marketing of insurance products; it provides an operating subsidiary structure reported out by the Committee on Banking and Financial Services months ago, which does not allow for merchant banking, underwriting of insurance, or direct investment in real estate; it provides for a prohibition on the sale of unitary thrifts to commercial enterprises.

Many of my colleagues on the other side of this issue are very much concerned about the merger of commerce and finance, and the giant corporations gobbling up small town banks. We now have in law what is known as a unitary thrift, a unique financial creature which combines the resources of commercial enterprises with financial resources.

This amendment would prohibit the future sale of those enterprises to the Microsofts, the General Electrics, the General Motors. It is, in fact, a protection against the further breach of banking and commerce.

This is an extraordinarily important amendment, and I would suggest that unless the amendment is adopted, it is highly unlikely that many of the hometown bankers now calling Members' offices and complaining about the consideration of this bill will find an ability to tolerate the provisions of H.R. 10, without the inclusion of this amendment.

Madam Chairman, I reserve the balance of my time.

Mr. BLILEY. Madam Chairman, I claim the time in opposition.

The CHAIRMAN. The gentleman from Virginia (Mr. BLILEY) is recognized for 20 minutes.

PARLIAMENTARY INQUIRY

Mr. LAFALCE. Parliamentary inquiry, Madam Chairman.

The CHAIRMAN. The gentleman will state it.

Mr. LAFALCE. Madam Chairman, should the time in opposition be given to a member of the same party in opposition, or to a member of the opposition party in opposition?

The CHAIRMAN. The time in opposition has been given to the manager of the bill.

Mr. BLILEY. Madam Chairman, I yield myself 1½ minutes.

Madam Chairman, I will see that the gentleman from New York (Mr. LAFALCE) gets time.

Madam Chairman, this amendment is similar to the amendment offered by the gentleman from New York (Mr. LAFALCE) and the gentleman from Minnesota (Mr. VENTO) in that it expands the powers of operating subsidiaries. It undoes the insurance compromise we have crafted to end deference to the OCC. It also restricts other provisions.

Like Alan Greenspan, like Americans for Tax Reform, like Ronald Reagan's Treasury, I am opposed to expanding the powers in operating subsidiaries.

□ 1630

The reason I am opposed is that these are not free; they increase risk to taxpayers. Americans for Tax Reform say that operating subsidiaries pose just that danger. I do not think it is worth the risk.

H.R. 10 gives bank affiliates full securities, insurance and merchant banking powers. It does it in an affiliate structure that protects taxpayers. No one, other than the bureaucrats at the OCC, care about operating subsidiaries. Protecting taxpayers is more important than protecting them. I urge Members to oppose this amendment.

Please note that even if this Baker amendment passes, the community banks will not support this bill.

Madam Chairman, I reserve the balance of my time.

Mr. BAKER. Madam Chairman, I yield 4 minutes to the gentleman from New York (Mr. LAZIO).

Mr. LAZIO of New York. Madam Chairman, I thank the gentleman for his hard work and for his effort to try and improve this bill, at least as it affects banks.

Let me explain the operating subsidiary provisions in the amendment before the House. First, these provisions are similar to the operating subsidiary provisions adopted by the Committee on Banking and Financial Services.

Second, the powers of a bank op-sub are limited to those powers granted to a bank holding company under the bill. Third, op-subs are not authorized to engage in insurance underwriting, merchant banking and real estate. In that sense, fourth, they push out the most risky business.

Fifth, the safeguards of section 23A and 23B of the Federal Reserve Act apply. Section 23A limits how many transactions a bank can have within its op-sub. Section 23B says every one of those transactions must be conducted at arm's length. The Federal Reserve writes the rules for op-subs.

Sixth, the bank must be well managed, well capitalized and meet community credit needs before it can have an operating subsidiary.

Seventh and most importantly, any bank investment in the op-sub must be deducted from the bank's regulatory capital, so a bank can lose its entire stake in the subsidiary and it will be protected and remain well capitalized.

These provisions further reinforce that securities activities will be regulated by the SEC, and it empowers State securities officials to regulate these activities.

There are even more safety provisions. If the bank is not well capitalized or well managed, regulators have authority to impose additional terms and conditions. Failure to comply with these conditions may result in divestiture.

Then FDIC Chairwoman Ricki Helfer submitted testimony to the House Committee on Banking and Financial Services on March 5, 1997. She said, ''With appropriate safeguards, having earnings from new activities in bank subsidiaries lowers the probability of failure and thus provides greater protection for the insurance fund than having the earnings from new activities in bank holding company affiliates.'' This from one of our top regulators.

Two experts, Gerard Lynch and Peter Strauss, state further in the October 1997 issue of the Columbia Law Review that banks should not be denied the use of operating subsidiaries. For years U.S. banks operating overseas have had separate op-subs with these powers. Banks in most G–10 countries have long, and successfully, engaged in these financial services in a subsidiary, including underwriting and brokering securities, which is what we are pushing now.

A survey of bank failures in the United States over the last 20 years demonstrates that the cause of failures is typically due to deterioration in the quality of the traditional assets that they hold, not to involvement in nonbanking activities.

These op-sub provisions were contained in the amendment that I filed with the Committee on Rules along with the gentleman from Louisiana (Mr. BAKER), the gentleman from Delaware (Mr. CASTLE) and the gentleman from Iowa (Mr. LEACH). They represent a reasonable, rational, safe and sound approach to expanding an op-sub's ability to engage in new powers and are reflective of our need and desire to modernize our financial services in this country.

Mr. BLILEY. Madam Chairman, I ask unanimous consent to yield 10 minutes to the gentleman from New York (Mr. LAFALCE) and that he may be permitted to control the time, and that the balance of my time be under the control of the gentleman from Ohio (Mr. GILLMOR).

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. LAFALCE. Madam Chairman, I yield myself 1 minute. I thank the distinguished chairman of the Committee on Commerce for his generosity.

I have tremendous respect for the gentleman from Louisiana (Mr. BAKER). We attempted to work out an amendment together. I wish that we could have done it, because right now I think the Committee on Rules has divided us and maybe, by dividing us, hoped to conquer. If the gentleman could have joined with me, I think we would have done much better.

The difficulty I have in joining with him is his provision that repeals the requirements of CRA for banks $100 million or less. That is a poison pill for Democrats. We simply cannot support it.

So prescinding from the relative merits or demerits of the rest of his amendment, so long as it contains this provision, a repeal of CRA for banks with $100 million or less, we are constrained to oppose it.

Madam Chairman, I reserve the balance of my time.

Mr. BAKER. Madam Chairman, I yield 2 minutes to the gentleman from Alabama (Mr. BACHUS), another distinguished member of Committee on Banking and Financial Services.

Mr. BACHUS. Madam Chairman, I would like to say that the gentleman from New York said something that I agree with. That is, that we are mixing a lot of things in this amendment. And I wish that the Committee on Rules had given us an opportunity to address CRA reform in a separate amendment. I had offered an amendment to exempt the community banks of CRA up to $250 million, but this House is not going to get to address that.

However, in this amendment, there is a provision which will exempt the small banks up to $100 million in assets from CRA. Let me tell my colleagues, this is not a revolutionary idea. In fact, the gentleman from Pennsylvania (Mr. KANJORSKI), Democratic Member of this body, offered and the Subcommittee on Financial Institutions and Consumer Credit of the Committee on Banking and Financial Services passed a provision which exempted banks up to $150 million and rural banks up to $250 million in 1991. We continue to back-pedal on this issue.

In the Senate, 12 Democratic Senators have endorsed the idea of a two-tier approach to CRA. Forty-one Democrats have joined in the House, saying that we need to have a two-tier approach. But first of all, we are not going to get to vote on that in a clear shot. I wish we all did.

I wish that the Committee on Rules had seen in their wisdom to let us take a stand on this issue. All we will get to do today is vote on this provision, and one of the things it has in it that I strongly support is an exemption for banks up to $100 million in assets. And who are these banks? Seventy-five percent of them are in communities of 10,000 people and less; 45 percent of them, the majority of their loans are agricultural loans to small farmers. These banks are simply being driven out of the market by the cost of compliance. It is open season on the small banks.

H.R. 10 is going to continue to put them at a disadvantage and put them out of business, but at least this amendment gives them a little bit of relief, not as much as the Democratic House of Representatives in 1991 gave them, because we obviously love regulation today more than we did then, not as much as this entire House did when it passed the provisions a few years ago.

We are back-pedalling, making the exemption smaller, giving less relief, but good gosh, can we not at least do this?

Mr. GILLMOR. Madam Chairman, I yield 2 minutes to the distinguished gentlewoman from New Jersey (Mrs. ROUKEMA).

Mrs. ROUKEMA. Madam Chairman, I thank the gentleman for yielding time to me.

I rise today in opposition to this amendment. I do so reluctantly because there are parts of this package that I really supported. For example, the insurance amendments, where I wanted amendments of my own on the insurance question. But they were not permitted in the rule. And also I think the small bank CRA exemption has merit.

However, I want my colleagues to understand this, and it is interesting that it follows on the Vento-LaFalce operating subsidiary question that we just

voted on. Make no mistake about it, the core of this package, the essence of this amendment is the operating subsidiary provision. This is the core issue, none other.

So I must repeat again what I said in the prior debate, that particularly in this time of megamergers, we have to be very concerned about how the operating subsidiary relates to the safety and soundness issue. As far as I am concerned, this actually just goes to the heart and violates the very heart of the bill we have before us.

The reason I am for this mixture of modernization of financial institutions is because I am sure that we have a sound regulatory structure, but this amendment, if adopted with the operating subsidiary, will really violate the essence of the functional regulation and the bank holding company structure that we have in this bill. So I must again oppose the amendment, and again, I guess I have got to repeat, because there are an awful lot of us around who either were here or taxpayers at home, when we remember the savings and loan debacle and how that came about at the end of the 1980s, it built up through the 1980s, came there at the end of the 1980s, and we are still living with the cost to the taxpayer of that issue.

I do not want to make, even have a potential opening for that kind of mistake again. I must reluctantly oppose this package because of the operating sub provision.

Mr. BAKER. Madam Chairman, I yield 2 minutes to the gentleman from Utah (Mr. COOK).

Mr. COOK. Madam Chairman, I rise today in support of the amendment offered by my good friend, the gentleman from Louisiana (Mr. BAKER).

Although the Baker amendment has several components, I would like to focus on one section that is particularly important to the health of small banks across our Nation. The Baker amendment would remove Community Reinvestment Act obligations from banks with less than $100 million in assets.

I respect very much the views of my friends on the other side of the aisle who believe the CRA is important for helping underserved communities, rural and urban alike, but CRA, as it was intended, does not work efficiently in practice, particularly with small banks. Let me take a moment to share a bit of anecdotal evidence.

An acquaintance of mine recently received a CRA loan for a home purchase. The loan was well below the going interest rate with no points or origination fees. This person makes a good income, has no family to support and could easily handle an identical mortgage at standard rates, but this person makes just under the median income of 57,000 in the area where he is from. The loan recipient told me that his experience is an example of how CRA has good intentions, but does not really work in practice.

This person himself does not believe that he is the intended recipient of CRA assistance. The problem is not with the financial institution who granted this discounted loan; the problem is with the Federal law that forces banks to make such loans just in order to receive high CRA ratings.

This is especially true with small, community-based financial institutions that probably have a personal relationship with their loan applicants. In reality, small institutions are deeply engaged with the communities they serve. If they were not, they would simply be out of business. CRA obligations are onerous burdens that tie the hands of small institutions, cause an increase in bank fees, and make car, home and business loans out of reach for many Americans.

For these reasons, I urge my colleagues to support the Baker amendment.

Mr. LAFALCE. Mr. Chairman, I yield 2 minutes to the gentleman from Massachusetts (Mr. NEAL).

Mr. NEAL of Massachusetts. Madam Chairman, sometimes in this Chamber we act as though we have a collective sense of amnesia.

I want to stand in opposition to the Baker amendment today, an issue that the gentleman from Louisiana (Mr. BAKER) and I engaged in some years ago, as well, and with great regard for the gentleman's abilities. But I would like to point out that oftentimes we forget what has occurred here.

In 1991, I offered this amendment on the House floor that would call for the opportunity for lending institutions to do a better job of keeping track of the loans that they made to small business and to small farms. At that time, I had the support of Andy Ireland, who was the ranking member on the Committee on Small Business, but in the end we were able to come to an agreement that allowed the call report to be amended so that we could do a better job of tracking this information as it applied again to small business and to small farms.

□ 1645

Now, the FIDICIA act of 1991, in the midst of the magic words that some of us also might remember here, the credit crunch, where we had regulators arguing that there was no credit crunch, what the real argument was about was they were unable to secure the necessary data that accompanied that information so that we could have done a better job beyond anecdotal evidence, as highlighted by the previous speaker. We need to be in a position where we can secure this information so that we can act accordingly.

Now, let me talk, if I can about that FIDICIA markup. At that time my amendment was included in the final package, and to this day we are able to go and retrieve that information in a timely manner. I offered that amendment at the time to collect evidence that small banks were not lending to small businesses. I was pleased at the time that the data was included, and I believe it encouraged banks to make loans to small businesses, which we oftentimes celebrate here as the engine of economic growth.

Now, I know the economy today is not in the same state that it was in in 1991. The banks are reporting record profits. And I do not think anybody here would argue that there still exists a credit crunch. But who in this chamber knows how long that is going to last?

We should reject the Baker amendment, stick with the CRA requirements, and retrieve this information in a timely manner so that we can make better decisions.

Mr. BAKER. Madam Chairman, I yield 3 minutes to the gentleman from California (Mr. DREIER), a distinguished member of the Committee on Rules and former member of the Committee on Banking and Financial Services.

Mr. DREIER. Madam Chairman, I thank my friend from Baton Rouge for yielding me this time, and I would like to begin by congratulating him for his excellent work as chairman of the Subcommittee on Capital Markets, Securities and Government Sponsored Enterprises of the Committee on Banking and Financial Services, where he has been the driving force for this whole issue of the three-way street affiliations, which are very important, so that we can continue our quest to meet the consumer demand.

I rise in very strong support of his amendment for a number of reasons. I think one of the most important is, in fact, to counter the argument that was just provided by my friend, the gentleman from Springfield, Massachusetts (Mr. NEAL). I believe the provisions that were initially put forward by our friend, the gentleman from Alabama (Mr. BACHUS), are very important to deal with that tremendous regulatory burden which has been placed onto the shoulders of those small banks that are trying to deliver financial services to people in small communities.

I think that we have a tremendous chance with this amendment to greatly improve what I think is a flawed measure. And so I think that as we look at the work that has been done by the gentleman from Louisiana (Mr. BAKER) and others in this effort, that this amendment deserves our very, very serious consideration and support. And I urge my colleagues to join in doing just that.

Mr. GILLMOR. Madam Chairman, I yield 2 minutes to the gentleman from New York (Mr. SOLOMON), chairman of the Committee on Rules.

Mr. SOLOMON. Madam Chairman, I spoke from this side of the well earlier, almost on the same subject. I am going to switch and talk to my Republican colleagues in particular over here.

What I asked earlier of my good friends on the Democratic side of the

aisle was did they remember what happened in the early 1980s. Do we remember? The gentleman from New York (Mr. LAFALCE) and others were here back in 1980 when this Congress brought an innocuous bill to the floor which caused the S&L crisis.

What we did at that time was that we raised the guaranty on simple deposits by our constituents from $25,000 up to $100,000. Then we said they could place $100,000 in 50 banks across the country, if they wanted to, and the Federal Government is going to guaranty every nickel of it.

So what happened is, people like me, who had sold their businesses, had a little bit of money, we said, sure, we can invest in these new banks that are starting up, and let them go into the high risk knowing that we are going to get our money back if it fails. And lo and behold they did fail. They failed by the dozens all over this country. Not in my neck of the woods, up in the Adirondacks, in the Hudson Valley. They are prudent, cautious, conservative bankers, and none of them failed, but they failed in other places. And yet we, our investors, our depositors and our taxpayers, had to bail out these others.

My colleagues, we have not seen anything yet. We let this legislation go down the drain, and if this amendment passes, regardless of its merits, and I have great respect for the sponsor, he is one of the most respected Members and the most knowledgeable Member in this House on these issues, but if we let this legislation fail, we are going to see 4 or 5 years from now that we are going to be bailing out much larger, mega, mega bailouts than we have in the past, and it will be all our taxpayers that are doing it.

That is why we need this legislation today. Defeat this amendment. Let us go to the Senate and then let us work as a team with the administration together to try to fashion a bill that will protect the consumers, protect the investors, the depositors and, above all else, protect the taxpayers. Please defeat the amendment.

Mr. BAKER. May I inquire of the Chair how much time is remaining?

The CHAIRMAN. The gentleman from Louisiana (Mr. BAKER) has 7½ minutes remaining, the gentleman from Ohio (Mr. GILLMOR) has 4½ minutes remaining, and the gentleman from New York (Mr. LAFALCE) has 7 minutes remaining.

Mr. LAFALCE. Madam Chairman, I yield 2 minutes to the gentleman from Minnesota (Mr. VENTO).

Mr. VENTO. Madam Chair, I rise in opposition to the amendment. Fundamentally, I am concerned. This amendment, I think, is a grudging recognition of the importance of the operating subsidiary which has been turned down in the previous amendment.

I will not reiterate the arguments for an operating subsidiary. This is a more limited operating subsidiary. It is set forth, in fact, with the permission of the Federal Reserve Board. So I guess the Fed already provides operating subsidiaries in U.S. banks that operate abroad, and this tries to give them some of the same powers. But the fact is that in giving powers to an operating subsidiary, we give it to them so that they can serve the communities. So this amendment gives with one hand but then it takes back with the other.

If I remember correctly, about 80 percent of the banks would not be subject to CRA. And what is CRA, after all? It is a successful law that assures that financial institutions are actually participating in providing creditworthy activity within the communities that they serve. Where they are taking deposits, they make loans. Where they are taking deposits, they finance businesses and farms and make home loans.

That is what Community Reinvestment Act has provided. It is workable. The new program that has been put together with the lead of the Comptroller of the Currency, incidentally, working with the Fed and working with the Federal Deposit Insurance Corporation, has, in fact, put a CRA program in place that emphasizes performance, not paperwork. It is working.

There are many examples. I said jokingly before that not many will get up and say I love my bank, as my colleague did with regard to other financial institutions. But the fact is that many small and medium-sized banks within my community in Minnesota are, in fact, performing tremendous service in the community, both as volunteers but, most importantly, fulfilling that important work.

In fact, what we are finding with CRA is that a lot of loans are being made that before were not recognized as being creditworthy. CRA works and we ought to keep it in place.

Mr. GILLMOR. Madam Chairman, I yield 2 minutes to the gentleman from Michigan (Mr. DINGELL), the ranking member of the Committee on Commerce.

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

Mr. DINGELL. Madam Chairman, I would like to commend and compliment my colleagues. This has been one of the most constructive and, I believe, gentlemanly debates I have seen in my career in this Congress.

And I particularly want to pay tribute to my friend from New York (Mr. LAFALCE), and my colleagues on the other side, the gentleman from Virginia (Mr. BLILEY) and the gentleman from Louisiana (Mr. BAKER), and the other Members of the Congress who have participated.

I would like to speak about the amendment, and I would like to point out several things. First of all, if my colleagues voted against the LaFalce amendment earlier, because it allowed for operating subsidiaries inside the banks to engage in nonbank activities, they should oppose this because this amendment does exactly the same thing.

Now, a large number of my other colleagues voted for the LaFalce amendment because they said it kept intact the community reinvestment requirements that are in the CRA. That was a valid reason for my colleagues to vote that way, although I do not think that was controlling in that particular matter. I would observe, however, if that was the reason for my colleagues voting that way on that amendment, they should vote ''no'' on this amendment because this amendment removes the requirements of the CRA from community banks, small banks, it is said. But the number of the banks that are absolved of those responsibilities are 6,500. Sixty-five hundred banks no longer have to meet that requirement if this amendment is adopted.

Now, this also violates the compromise which was achieved with the insurance agents and brokers. I would assume that if Members voted against the provisions of the LaFalce amendment, or if Members voted for it because they were concerned about CRA, they would vote against this amendment in the firm knowledge that they have every reason to so do.

Now, there is one other point to be made. A lot of my colleagues are still troubled about the concerns of the banks, and very truthfully I am, too, because banks are important to this country and to the economy. But I would observe for my colleagues, clearly, that the banks have made it plain that the adoption of this or any other amendment is not going to make this bill acceptable to them.

Mr. LAFALCE. Madam Chairman, how much time do I have remaining?

The CHAIRMAN. The gentleman from New York (Mr. LAFALCE) has 5 minutes remaining.

Mr. LAFALCE. Madam Chairman, I yield 2 minutes to the gentleman from Massachusetts (Mr. KENNEDY).

Mr. KENNEDY of Massachusetts. Madam Chairman, I think that it is interesting that the way this bill is now being debated is whether or not we can use the excuse to merge and acquire more and more banks, more insurance companies, more securities firms to actually undercut and drop back the bar on our investments to the poorest communities in this country. That is what we have come to in the Congress of the United States.

It seems if we are really serious about looking at the effects of CRA, let us take a look at the fact that since 1977 the regulators have indicated that over $400 billion have been invested in the poorer communities of this country. Not communities where banks lose money, but rather communities where banks have invested, the communities have grown and prospered, and we see home ownership rates rising among blacks and Hispanics and Asians, as well as poor whites.

We see communities that have been neglected for years and years, despite the fact that they put deposits in banks. Banks sucked up those deposits

and then turned around and lent the money someplace else. All CRA says is put the money back into the communities from which the deposits are taken.

Why would anybody try to undercut that basic fundamental premise? Why would we say that they should not do that? Why should we say that small banks have less of an obligation to do that than big banks, when if we look at the data, the fact of the matter is that small banks have worse records in terms of lending to minorities, lending to people of color, lending into the poorer communities than the bigger banks.

Sixty-five percent of all the banks in the United States would be exempted by virtue of the amendment that we are currently debating. Sixty-five percent. We are going to turn around and say to 65 percent of the banks in the United States that they can go ahead and buy each other up, they can merge and acquire one another, they can go into the insurance industry, go into the securities industry, but, boy, they really do not have to go back to Main Street; they do not have to go back and lend money into the communities from which they take their deposits.

It is a crime for us to be suggesting that we want to allow that kind of pullback on our commitment to the poorest people in this country as a provision in order to allow the bigger banks to get even bigger.

Mr. LAFALCE. Madam Chairman, I yield 1½ minutes to the gentlewoman from California (Ms. WATERS).

Ms. WATERS. Madam Chairman, I rise to voice my strong opposition to the Baker amendment. If passed, the Baker amendment would exempt more than 60 percent of all banks from the requirements of the Community Reinvestment Act. This amendment is a frontal attack on the Community Reinvestment Act and has absolutely no place in this bill.

The fact of the matter is the Baker amendment tries to solve a problem that does not exist. The new CRA regulations have already streamlined the exam process for small banks. Under the new rule, banks with assets of less than $250 million are no longer required to collect, report or disclose any data. Instead, examiners look at a small bank's loan-to-deposit ratio and distribution of loans across geography and income levels.

□ 1700

Even though the new rule went into effect in January of 1996, the effect is already being felt. According to the Office of the Comptroller of the Currency, over 80 percent of all banks covered by CRA qualify for the streamlined performance standards for small banks and thrifts. They also report that the actual time spent in community banks on CRA examinations have been reduced by 30 percent. To argue that small banks are still suffering under unfair burdens is absolutely preposterous.

CRA works. The Community Reinvestment Act has been an extremely hard-fought reform of our banking sector that has brought over $400 billion in resources to poor and minority communities. This has meant the availability of critically needed lending for community, small business, and housing developments.

That is why the friend of my colleague got some money. He lives in a community that had not been getting the money, and now he has got it. It has nothing to do with affirmative action. So we have a successful law. It should not be dismantled. Vote against this amendment.

The CHAIRMAN. The Committee will rise informally.

The SPEAKER pro tempore (Mr. NETHERCUTT) assumed the Chair.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Sherman Williams, one of his secretaries.

The SPEAKER pro tempore. The Committee will resume its sitting.

FINANCIAL SERVICES COMPETITION ACT OF 1997

The CHAIRMAN. The Committee will resume its sitting.

Mr. LAFALCE. Madam Chairman, I yield 1½ minutes to the gentleman from North Carolina (Mr. WATT).

Mr. WATT of North Carolina. Madam Chairman, it surprises a number of my colleagues on the Committee on Banking and Financial Services that the gentleman from Louisiana (Mr. BAKER) and I are quite often on the same side of financial services issues. But I have got to jump ship on him today when he starts trying to do away with CRA for small banks. Sixty-four percent of the banks in this country, in fact, would be exempted under this amendment. I cannot go there with him.

The CRA requirements for small banks, those under $250 million in assets, were already streamlined in 1995. I am not sure what it is we are responding to with this proposed amendment, because in February of 1996, the American Banker headlines said, ''Small banks give thumbs up to streamlined CRA exams.''

They are not complaining. Who is it that we are trying to protect? This is an amendment in search of a problem to solve. And I am not sure why we are trying to solve a problem in the midst of this bill that has a bunch of problems in it for people who do not even perceive that they have a problem.

CRA has served a very important purpose in our communities. The gentleman from Utah (Mr. COOK) is absolutely wrong in his assessment that the purpose of CRA is for community people. It is not an affirmative action program. It is for small businesses, small farmers, people who live in the communities. It has got nothing to do with affirmative action. We ought to all be supporting CRA rather than trying to abolish it.

I think we ought to oppose this amendment even though there are some other aspects to it that might be valuable.

Mr. BAKER. Madam Chairman, I yield myself such time as I may consume.

Madam Chairman, in 1950, the average American family had 50 percent of their assets in a bank. Today, that percentage is 17 percent. And in the corporate arena, it is even worse.

For many years, the banks were the only place in town where moderate- to large-size businesses could get credit to grow or expand. And from perhaps 80 percent of corporate lending, we now find that banks provide less than 20. And it is not only just that markets are changing. New products are being created.

In 1980, there were 266 mutual funds in this country. Today there are over 2,600. As the stock market continues to surge ahead to unparalleled record highs, investors are not worried about deposit insurance; they are worried if they are going to miss out on the next 25 percent rate of return.

The creation of money market funds, a nonbank product, allowing people to put their money in a perceived safe location and earn interest on their checking accounts, again, more disintermediation, more money flowing out of the banks into nontraditional sources.

So many banks in the marketplace are surging ahead with these new mergers because this gives them a way to keep the profitability up as they spread fixed operating cost over larger and larger and larger customer bases. It makes good sense for the large institutions. It is reported that the NationsBank merger, for that institution alone, will result in annual savings in excess of $2 billion. Phenomenal savings are occurring through these efficiencies in the marketplace.

Now, the question becomes, how does the typical $47 million bank in America, the 6600 subject of the CRA amendment, see any benefit from any of this? Is there any provision that we can point to in this bill that we can go back to hometown XYZ in our State and say, this is going to help make us more profitable, it is going to relieve us of regulatory burden, it is going to give us an opportunity to grow and prosper?

Sure, if they are a billion-dollar institution with branches in multiple States, maybe who has even acquired a recent insurance company in spite of Federal prohibitions to the contrary, they might see tremendous potential in diversification and opportunities, particularly if H.R. 10, as currently constituted, is passed.

But for the average consumer who goes home today and uses their ATM machine, if they have them in their community, who is complaining about