Calendar No. 204

106TH CONGRESS
1ST SESSION

H. R. 10

AN ACT

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

JULY 12, 1999

Received; read twice and placed on the calendar

AUTHENTICATED
U.S. GOVERNMENT
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IN THE SENATE OF THE UNITED STATES

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

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

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

(a) SHORT TITLE.—This Act may be cited as the ''Financial Services Act of 1999''.

(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 avoid duplicative, potentially conflicting, and overly burdensome regulatory requirements through the creation of a regulatory framework for financial holding companies that respects the divergent requirements of each of the component businesses of the holding company, and that is based upon principles of strong functional regulation and enhanced regulatory coordination.

(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 serv-

ice 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. Operation of State law.
Sec. 105. Mutual bank holding companies authorized.
Sec. 105A. Public meetings for large bank acquisitions and mergers.
Sec. 106. Prohibition on deposit production offices.
Sec. 107. Clarification of branch closure requirements.
Sec. 108. Amendments relating to limited purpose banks.
Sec. 109. GAO study of economic impact on community banks, other small financial institutions, insurance agents, and consumers.
Sec. 110. Responsiveness to community needs for financial services.
Sec. 110A. Study of financial modernization's affect on the accessibility of small business and farm loans.

Subtitle B—Streamlining Supervision of Financial Holding Companies

Sec. 111. Streamlining financial holding company supervision.
Sec. 112. Elimination of application requirement for financial holding companies.
Sec. 113. Authority of State insurance regulator and Securities and Exchange Commission.
Sec. 114. Prudential safeguards.
Sec. 115. Examination of investment companies.
Sec. 116. Limitation on rulemaking, prudential, supervisory, and enforcement authority of the Board.
Sec. 117. Equivalent regulation and supervision.
Sec. 118. Prohibition on FDIC assistance to affiliates and subsidiaries.
Sec. 119. Repeal of savings bank provisions in the Bank Holding Company Act of 1956.
Sec. 120. Technical amendment.

Subtitle C—Subsidiaries of National Banks

Sec. 121. Permissible activities for subsidiaries of national banks.
Sec. 122. Safety and soundness firewalls between banks and their financial subsidiaries.
Sec. 123. Misrepresentations regarding depository institution liability for obligations of affiliates.
Sec. 124. Repeal of stock loan limit in Federal Reserve Act.

Subtitle D—Wholesale Financial Holding Companies; Wholesale Financial Institutions

Chapter 1—Wholesale Financial Holding Companies

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

Chapter 2—Wholesale Financial Institutions

Sec. 136. Wholesale financial institutions.

Subtitle E—Preservation of FTC Authority

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

Subtitle F—National Treatment

Sec. 151. Foreign banks that are financial holding companies.
Sec. 152. Foreign banks and foreign financial institutions that are wholesale financial institutions.
Sec. 153. Representative offices.
Sec. 154. Reciprocity.

Subtitle G—Federal Home Loan Bank System Modernization

Sec. 161. Short title.
Sec. 162. Definitions.
Sec. 163. Savings association membership.
Sec. 164. Advances to members; collateral.
Sec. 165. Eligibility criteria.
Sec. 166. Management of banks.
Sec. 167. Resolution Funding Corporation.
Sec. 168. Capital structure of Federal home loan banks.

Subtitle H—ATM Fee Reform

Sec. 171. Short title.
Sec. 172. Electronic fund transfer fee disclosures at any host ATM.
Sec. 173. Disclosure of possible fees to consumers when ATM card is issued.
Sec. 174. Feasibility study.
Sec. 175. No liability if posted notices are damaged.

Subtitle I—Direct Activities of Banks

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

Subtitle J—Deposit Insurance Funds

Sec. 186. Study of safety and soundness of funds.
Sec. 187. Elimination of SAIF and DIF special reserves.

Subtitle K—Miscellaneous Provisions

Sec. 191. Termination of ''know your customer'' regulations.
Sec. 192. Study and report on Federal electronic fund transfers.
Sec. 193. General Accounting Office study of conflicts of interest.
Sec. 194. Study of cost of all Federal banking regulations.
Sec. 195. Study and report on adapting existing legislative requirements to on-line banking and lending.
Sec. 196. Regulation of uninsured State member banks.
Sec. 197. Clarification of source of strength doctrine.
Sec. 198. Interest rates and other charges at interstate branches.
Sec. 198A. Interstate branches and agencies of foreign banks.
Sec. 198B. Fair treatment of women by financial advisers.

Subtitle L—Effective Date of Title

Sec. 199. 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. Information sharing.
Sec. 205. Treatment of new hybrid products.
Sec. 206. Definition of excepted banking product.
Sec. 207. Additional definitions.
Sec. 208. Government securities defined.
Sec. 209. Effective date.
Sec. 210. Rule of construction.

Subtitle B—Bank Investment Company Activities

Sec. 211. Custody of investment company assets by affiliated bank.
Sec. 212. Lending to an affiliated investment company.
Sec. 213. Independent directors.
Sec. 214. Additional SEC disclosure authority.
Sec. 215. Definition of broker under the Investment Company Act of 1940.
Sec. 216. Definition of dealer under the Investment Company Act of 1940.
Sec. 217. Removal of the exclusion from the definition of investment adviser for banks that advise investment companies.
Sec. 218. Definition of broker under the Investment Advisers Act of 1940.
Sec. 219. Definition of dealer under the Investment Advisers Act of 1940.
Sec. 220. Interagency consultation.
Sec. 221. Treatment of bank common trust funds.
Sec. 222. Investment advisers prohibited from having controlling interest in registered investment company.
Sec. 223. Statutory disqualification for bank wrongdoing.
Sec. 224. Conforming change in definition.
Sec. 225. Conforming amendment.
Sec. 226. Church plan exclusion.
Sec. 227. 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—Disclosure of Customer Costs of Acquiring Financial Products

Sec. 241. Improved and consistent disclosure.

Subtitle E—Banks and Bank Holding Companies

Sec. 251. Consultation.

TITLE III—INSURANCE

Subtitle A—State Regulation of Insurance

Sec. 301. State regulation of the business of insurance.
Sec. 302. Mandatory insurance licensing requirements.
Sec. 303. Functional regulation of insurance.
Sec. 304. Insurance underwriting in national banks.
Sec. 305. Title insurance activities of national banks and their affiliates.
Sec. 306. Expedited and equalized dispute resolution for Federal regulators.
Sec. 307. Consumer protection regulations.
Sec. 308. Certain State affiliation laws preempted for insurance companies and affiliates.
Sec. 309. Interagency consultation.
Sec. 310. Definition of State.

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.

Subtitle D—Rental Car Agency Insurance Activities

Sec. 341. Standard of regulation for motor vehicle rentals.

Subtitle E—Confidentiality

Sec. 351. Confidentiality of health and medical information.

TITLE IV—UNITARY SAVINGS AND LOAN HOLDING COMPANIES

Sec. 401. Prohibition on new unitary savings and loan holding companies.
Sec. 402. Retention of ''Federal'' in name of converted Federal savings association.

TITLE V—PRIVACY

Subtitle A—Disclosure of Nonpublic Personal Information

Sec. 501. Protection of nonpublic personal information.
Sec. 502. Obligations with respect to disclosures of personal information.
Sec. 503. Disclosure of institution privacy policy.
Sec. 504. Rulemaking.
Sec. 505. Enforcement.
Sec. 506. Fair Credit Reporting Act amendment.
Sec. 507. Relation to other provisions.
Sec. 508. Study of information sharing among financial affiliates.
Sec. 509. Definitions.
Sec. 510. Effective date.

Subtitle B—Fraudulent Access to Financial Information

Sec. 521. Privacy protection for customer information of financial institutions.
Sec. 522. Administrative enforcement.
Sec. 523. Criminal penalty.
Sec. 524. Relation to State laws.

Sec. 525. Agency guidance.
Sec. 526. Reports.
Sec. 527. Definitions.

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 of the Banking Act of 1933 (12 U.S.C. 377) (commonly referred to as the ''Glass-Steagall Act'') is repealed.

(b) SECTION 32 REPEALED.—Section 32 of the Banking Act of 1933 (12 U.S.C. 78) 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 or order under this paragraph as of the day before the date of the enactment of the Financial Services Act of 1999, to be so closely related to banking as to be a proper incident thereto (subject to such

terms and conditions contained in such regulation or order, 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 the enactment of the Financial Services Act of 1999.''.

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.

"(D) 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), (B), and (C).

"(2) FOREIGN BANKS AND COMPANIES.—For purposes of paragraph (1), the Board shall establish and apply comparable capital and other operating 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.—Any depository institution acquired by a bank holding company during the 12-month period preceding the submission of a notice under paragraph (1)(D) and any depository institution acquired after the submission of such notice may be excluded for purposes of paragraph (1)(C) during the 12-month period beginning on the date of such acquisition if—

"(A) 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; and

"(B) the plan has been accepted by such agency.

"(c) ENGAGING IN ACTIVITIES THAT ARE FINANCIAL IN NATURE.—

"(1) FINANCIAL ACTIVITIES.—

"(A) IN GENERAL.—Notwithstanding section 4(a), a financial holding company may engage in any activity, and acquire and retain the shares of any company engaged in any activity, that the Board has determined (by regulation or order and in accordance with subparagraph (B)) to be—

"(i) financial in nature or incidental to such financial activities; or

"(ii) complementary to activities authorized under this subsection to the extent that the amount of such complementary activities remains small.

"(B) COORDINATION BETWEEN THE BOARD AND THE SECRETARY OF THE TREASURY.—

"(i) PROPOSALS RAISED BEFORE THE BOARD.—

"(I) CONSULTATION.—The Board shall notify the Secretary of the Treasury of, and consult with the Secretary of the Treasury concerning, any request, proposal, or application under this subsection, including a regulation or order proposed under paragraph (4), for a determination of whether an activity is financial in nature or incidental to such a financial activity.

"(II) TREASURY VIEW.—The Board shall not determine that any activity is financial in nature or incidental to a financial activity under this subsection if the Secretary of the Treasury notifies the Board in writing, not later than 30 days after the date of receipt of the notice described in subclause (I) (or such longer period as the Board determines to be appropriate in light of the circumstances) that the Secretary of the Treasury believes that the activity is not financial

in nature or incidental to a financial activity.

"(ii) PROPOSALS RAISED BY THE TREASURY.—

"(I) TREASURY RECOMMENDATION.—The Secretary of the Treasury may, at any time, recommend in writing that the Board find an activity to be financial in nature or incidental to a financial activity.

"(II) TIME PERIOD FOR BOARD ACTION.—Not later than 30 days after the date of receipt of a written recommendation from the Secretary of the Treasury under subclause (I) (or such longer period as the Secretary of the Treasury and the Board determine to be appropriate in light of the circumstances), the Board shall determine whether to initiate a public rulemaking proposing that the subject recommended activity be found to be financial in nature or incidental to a financial activity under this subsection, and shall notify the Secretary

of the Treasury in writing of the determination of the Board and, in the event that the Board determines not to seek public comment on the proposal, the reasons for that determination.

"(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 1999;

"(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 the enactment of the Financial Services Act of 1999, 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 the enactment of the Financial Services Act of 1999) 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 one or more entities (including entities, other than 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;

"(ii) such shares, assets, or ownership interests are acquired and held by an affiliate of the bank holding company that is a registered broker or dealer that is engaged in securities underwriting activities, or an affiliate of such broker or dealer, as part of a bona fide underwriting or investment

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 one 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 inter-

ests, 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) or providing and issuing annuities;

"(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) AUTHORIZATION OF NEW FINANCIAL ACTIVITIES.—The Board shall, by regulation or order and in accordance with paragraph (1)(B), 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 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 or in paragraph (6) of this subsection, a 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.

"(6) NOTICE REQUIRED FOR LARGE COMBINATIONS.—

"(A) IN GENERAL.—No financial holding company shall directly or indirectly acquire, and no company that becomes a financial holding company shall directly or indirectly acquire control of, any company in the United States, including through merger, consolidation, or other type of business combination, that—

"(i) is engaged in activities permitted under this subsection or subsection (g); and

"(ii) has consolidated total assets in excess of $40,000,000,000,

unless such holding company has provided notice to the Board, not later than 60 days prior to such proposed acquisition or prior to becoming a financial holding company, and during that time period, or such longer time period not exceeding an additional 60 days, as established by the Board, the Board has not issued a notice disapproving the proposed acquisition or retention.

"(B) FACTORS FOR CONSIDERATION.—In reviewing any prior notice filed under this paragraph, the Board shall take into consideration—

"(i) whether the company is in compliance with all applicable criteria set forth in subsection (b) and the provisions of subsection (d);

"(ii) whether the proposed combination represents an undue aggregation of resources;

"(iii) whether the proposed combination poses a risk to the deposit insurance system;

"(iv) whether the proposed combination poses a risk to State insurance guaranty funds;

"(v) whether the proposed combination can reasonably be expected to be in the best interests of depositors or policyholders of the respective entities;

"(vi) whether the proposed transaction can reasonably be expected to further the purposes of this Act and produce benefits to the public; and

"(vii) whether, and the extent to which, the proposed combination poses an undue risk to the stability of the financial system in the United States.

"(C) REQUIRED INFORMATION.—The Board may disapprove any prior notice filed under this paragraph if the company submitting such notice neglects, fails, or refuses to furnish to the Board all relevant information required by the Board.

1 "(D) SOLICITATION OF VIEWS OF OTHER
2 SUPERVISORY AGENCIES.—
3 "(i) IN GENERAL.—Upon receiving a
4 prior notice under this paragraph, in order
5 to provide for the submission of their views
6 and recommendations, the Board shall give
7 notice of the proposal to—
8 "(I) the appropriate Federal
9 banking agency of any bank involved;
10 "(II) the appropriate functional
11 regulator of any functionally regulated
12 nondepository institution (as defined
13 in section 5(c)(1)(C)) involved; and
14 "(III) the Secretary of the Treas-
15 ury, the Attorney General, and the
16 Federal Trade Commission.
17 "(ii) TIMING.—The views and rec-
18 ommendations of any agency provided no-
19 tice under this paragraph shall be sub-
20 mitted to the Board not later than 30 cal-
21 endar days after the date on which notice
22 to the agency was given, unless the Board
23 determines that another shorter time pe-
24 riod is appropriate.

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

"(1) IN GENERAL.—If the Board finds, after notice from or consultation with the appropriate Federal banking agency, 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) AUTHORITY TO IMPOSE LIMITATIONS.—Until the conditions described in a notice to a financial holding company under paragraph (1) are corrected—

"(A) 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; and

"(B) the appropriate Federal banking agency may impose such limitations on the conduct or activities of an affiliated depository institution or subsidiary of a depository institution as the appropriate Federal banking agency 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 or wholesale financial institution 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 wholesale financial institutions; and

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

"(f) AUTHORITY TO RETAIN LIMITED NONFINANCIAL ACTIVITIES AND AFFILIATIONS.—

"(1) IN GENERAL.—Notwithstanding 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 1999 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 the annual gross revenues derived by the holding company and all subsidiaries of the holding company (excluding revenues derived from subsidiary depository institutions), 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, consolida-

tion, 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), except this paragraph shall not apply with respect to a company that owns a broadcasting station licensed under title III of the Communications Act of 1934 and the shares of which have been controlled by an insurance company since January 1, 1998.

"(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 (excluding revenues derived from subsidiary depository institutions).

"(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 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.—A 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 section 10(c), this subsection, or subparagraph (H) or (I) of subsection (c)(3).

"(7) SUNSET OF GRANDFATHER.—A financial holding company engaged in any activity, or retaining direct or indirect ownership or control of shares of a company, pursuant to this subsection, shall terminate such activity and divest ownership or control of the shares of such company before the end of the

10-year period beginning on the date of the enactment of the Financial Services Act of 1999. The Board may, upon application by a financial holding company, extend such 10-year period by a period not to exceed an additional 5 years if such extension would not be detrimental to the public interest.

"(g) DEVELOPING ACTIVITIES.—A 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) neither the Board nor the Secretary of the Treasury has determined that the activity is not financial in nature or incidental to financial activities under subsection (c);

"(6) the holding company is not required to provide prior written notice of the transaction to the Board under subsection (c)(6); and

"(7) 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.".

(b) FACTORS FOR CONSIDERATION IN REVIEWING APPLICATION BY FINANCIAL HOLDING COMPANY TO ACQUIRE BANK.—Section 3(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(c)) is amended by adding at the end the following new paragraph:

"(6) 'TOO BIG TO FAIL' FACTOR.—In considering an acquisition, merger, or consolidation under this section involving a financial holding company or a company that would be any such holding company upon the consummation of the transaction, the Board shall consider whether, and the extent to

which, the proposed acquisition, merger, or consolidation poses an undue risk to the stability of the financial system of the United States.''.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) is amended by adding at the end the following new subsection:

''(p) INSURANCE COMPANY.—For purposes of sections 5, 6, and 10, the term 'insurance company' includes any person engaged in the business of insurance to the extent of such activities.''.

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

(A) in paragraph (1)(A), by inserting ''or in any complementary activity under section 6(c)(1)(B)'' after ''subsection (c)(8) or (a)(2)''; and

(B) in paragraph (3)—

(i) by inserting '', other than any complementary activity under section 6(c)(1)(B),'' after ''to engage in any activity''; and

(ii) by inserting ''or a company engaged in any complementary activity under

section 6(c)(1)(B)'' after ''insured depository institution''.

(d) REPORT.—

(1) IN GENERAL.—By the end of the 4-year period beginning on the date of the enactment of this Act and every 4 years thereafter, the Board of Governors of the Federal Reserve System and the Secretary of the Treasury shall submit a joint report to the Congress containing a summary of new activities which are financial in nature, including grandfathered commercial activities, in which any financial holding company is engaged pursuant to subsection (c)(1) or (f) of section 6 of the Bank Holding Company Act of 1956 (as added by subsection (a)).

(2) OTHER CONTENTS.—Each report submitted to the Congress pursuant to paragraph (1) shall also contain the following:

(A) A discussion of actions by the Board of Governors of the Federal Reserve System and the Secretary of the Treasury, whether by regulation, order, interpretation, or guideline or by approval or disapproval of an application, with regard to activities of financial holding companies which are incidental to activities fi-

nancial in nature or complementary to such financial activities.

(B) An analysis and discussion of the risks posed by commercial activities of financial holding companies to the safety and soundness of affiliate depository institutions.

(C) An analysis and discussion of the effect of mergers and acquisitions under section 6 of the Bank Holding Company Act of 1956 on market concentration in the financial services industry.

(D) An analysis and discussion, by the Board and the Secretary in consultation with the other Federal banking agencies (as defined in section 3(z) of the Federal Deposit Insurance Act), of the impact of the implementation of this Act, and the amendments made by this Act, on the extent of meeting community credit needs and capital availability under the Community Reinvestment Act of 1977.

SEC. 104. OPERATION OF STATE LAW.

(a) AFFILIATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), no State may, by statute, regulation, order, interpretation, or other action, prevent or re-

strict an insured depository institution or wholesale financial institution, or a subsidiary or affiliate thereof, from being affiliated directly or indirectly or associated with any person or entity, as authorized or permitted by this Act or any other provision of Federal law.

(2) INSURANCE.—With respect to affiliations between insured depository institutions or wholesale financial institutions, or any subsidiary or affiliate thereof, and persons or entities engaged in the business of insurance, paragraph (1) does not prohibit—

(A) any State from requiring any person or entity that proposes to acquire control of an entity that is engaged in the business of insurance and domiciled in that State (hereafter in this subparagraph referred to as the ''insurer'') to furnish to the insurance regulatory authority of that State, not later than 60 days before the effective date of the proposed acquisition—

(i) the name and address of each person by whom, or on whose behalf, the affiliation referred to in this subparagraph is to be effected (hereafter in this subparagraph referred to as the ''acquiring party'');

(ii) if the acquiring party is an individual, his or her principal occupation and all offices and positions held during the 5 years preceding the date of notification, and any conviction of crimes other than minor traffic violations during the 10 years preceding the date of notification;

(iii) if the acquiring party is not an individual—

(I) a report of the nature of its business operations during the 5 years preceding the date of notification, or for such shorter period as such person and any predecessors thereof shall have been in existence;

(II) an informative description of the business intended to be done by the acquiring party and any subsidiary thereof; and

(III) a list of all individuals who are, or who have been selected to become, directors or executive officers of the acquiring party or who perform, or will perform, functions appropriate to such positions, including, for each

1 such individual, the information re-
2 quired by clause (ii);
3 (iv) the source, nature, and amount of
4 the consideration used, or to be used, in ef-
5 fecting the merger or other acquisition of
6 control, a description of any transaction
7 wherein funds were, or are to be, obtained
8 for any such purpose, and the identity of
9 persons furnishing such consideration, ex-
10 cept that, if a source of such consideration
11 is a loan made in the lender's ordinary
12 course of business, the identity of the lend-
13 er shall remain confidential if the person
14 filing such statement so requests;
15 (v) fully audited financial information
16 as to the earnings and financial condition
17 of each acquiring party for the 5 fiscal
18 years preceding the date of notification of
19 each such acquiring party, or for such less-
20 er period as such acquiring party and any
21 predecessors thereof shall have been in ex-
22 istence, and similar unaudited information
23 as of a date not earlier than 90 days be-
24 fore the date of notification, except that, in
25 the case of an acquiring party that is an

insurer actively engaged in the business of insurance, the financial statements of such insurer need not be audited, but such audit may be required if the need therefor is determined by the insurance regulatory authority of the State;

(vi) any plans or proposals that each acquiring party may have to liquidate such insurer, to sell its assets, or to merge or consolidate it with any person or to make any other material change in its business or corporate structure or management;

(vii) the number of shares of any security of the insurer that each acquiring party proposes to acquire, the terms of any offer, request, invitation, agreement, or acquisition, and a statement as to the method by which the fairness of the proposal was arrived at;

(viii) the amount of each class of any security of the insurer that is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(ix) a full description of any contracts, arrangements, or understandings with respect to any security of the insurer in which any acquiring party is involved, including transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies, and identification of the persons with whom such contracts, arrangements, or understandings have been entered into;

(x) a description of the purchase of any security of the insurer during the 12-month period preceding the date of notification by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid, or agreed to be paid, therefor;

(xi) a description of any recommendations to purchase any security of the insurer made during the 12-month period preceding the date of notification by any acquiring party or by any person based

upon interviews or at the suggestion of such acquiring party;

(xii) copies of all tender offers for, requests or invitations for tenders of, exchange offers for and agreements to acquire or exchange any securities of the insurer and, if distributed, of additional soliciting material relating thereto; and

(xiii) the terms of any agreement, contract, or understanding made with any broker-dealer as to solicitation of securities of the insurer for tender and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto;

(B) in the case of a person engaged in the business of insurance which is the subject of an acquisition or change or continuation in control, the State of domicile of such person from reviewing or taking action (including approval or disapproval) with regard to the acquisition or change or continuation in control, as long as the State reviews and actions—

(i) are completed by the end of the 60-day period beginning on the later of the

date the State received notice of the proposed action or the date the State received the information required under State law regarding such acquisition or change or continuation in control;

(ii) do not have the effect of discriminating, intentionally or unintentionally, against an insured depository institution or affiliate thereof or against any other person based upon affiliation with an insured depository institution; and

(iii) are based on standards or requirements relating to solvency or managerial fitness;

(C) any State from requiring an entity that is acquiring control of an entity that is engaged in the business of insurance and domiciled in that State to maintain or restore the capital requirements of that insurance entity to the level required under the capital regulations of general applicability in that State to avoid the requirement of preparing and filing with the insurance regulatory authority of that State a plan to increase the capital of the entity, except that any determination by the State insurance

regulatory authority with respect to such requirement shall be made not later than 60 days after the date of notification under subparagraph (A);

(D) any State from taking actions with respect to the receivership or conservatorship of any insurance company;

(E) any State from restricting a change in the ownership of stock in an insurance company, or a company formed for the purpose of controlling such insurance company, for a period of not more than 3 years beginning on the date of the conversion of such company from mutual to stock form; or

(F) any State from requiring an organization which has been eligible at any time since January 1, 1987, to claim the special deduction provided by section 833 of the Internal Revenue Code of 1986 to meet certain conditions in order to undergo, as determined by the State, a reorganization, recapitalization, conversion, merger, consolidation, sale or other disposition of substantial operating assets, demutualization, dissolution, or to undertake other similar actions and which is governed under a State stat-

ute enacted on May 22, 1998, relating to hospital, medical, and dental service corporation conversions.

(3) PRESERVATION OF STATE ANTITRUST AND GENERAL CORPORATE LAWS.—

(A) IN GENERAL.—Subject to subsection (c) and the nondiscrimination provisions contained in such subsection, no provision in paragraph (1) shall be construed as affecting State laws, regulations, orders, interpretations, or other actions of general applicability relating to the governance of corporations, partnerships, limited liability companies or other business associations incorporated or formed under the laws of that State or domiciled in that State, or the applicability of the antitrust laws of any State or any State law that is similar to the antitrust laws.

(B) DEFINITION.—The term ''antitrust laws'' has the same meaning as in subsection (a) of the first section of the Clayton Act, and includes section 5 of the Federal Trade Commission Act to the extent that such section 5 relates to unfair methods of competition.

(b) ACTIVITIES.—

(1) IN GENERAL.—Except as provided in paragraph (3), and except with respect to insurance sales, solicitation, and cross marketing activities, which shall be governed by paragraph (2), no State may, by statute, regulation, order, interpretation, or other action, prevent or restrict an insured depository institution, wholesale financial institution, or subsidiary or affiliate thereof from engaging directly or indirectly, either by itself or in conjunction with a subsidiary, affiliate, or any other entity or person, in any activity authorized or permitted under this Act.

(2) INSURANCE SALES.—

(A) IN GENERAL.—In accordance with the legal standards for preemption set forth in the decision of the Supreme Court of the United States in Barnett Bank of Marion County N.A. v. Nelson, 517 U.S. 25 (1996), no State may, by statute, regulation, order, interpretation, or other action, prevent or significantly interfere with the ability of an insured depository institution or wholesale financial institution, or a subsidiary or affiliate thereof, to engage, directly or indirectly, either by itself or in conjunction with a subsidiary, affiliate, or any other party, in

1 any insurance sales, solicitation, or cross-mar-
2 keting activity.
3 (B) CERTAIN STATE LAWS PRESERVED.—
4 Notwithstanding subparagraph (A), a State
5 may impose any of the following restrictions, or
6 restrictions which are substantially the same as
7 but no more burdensome or restrictive than
8 those in each of the following clauses:
9 (i) Restrictions prohibiting the rejec-
10 tion of an insurance policy by an insured
11 depository institution, wholesale financial
12 institution, or any subsidiary or affiliate
13 thereof, solely because the policy has been
14 issued or underwritten by any person who
15 is not associated with such insured deposi-
16 tory institution or wholesale financial insti-
17 tution, or any subsidiary or affiliate there-
18 of, when such insurance is required in con-
19 nection with a loan or extension of credit.
20 (ii) Restrictions prohibiting a require-
21 ment for any debtor, insurer, or insurance
22 agent or broker to pay a separate charge
23 in connection with the handling of insur-
24 ance that is required in connection with a
25 loan or other extension of credit or the

provision of another traditional banking product by an insured depository institution, wholesale financial institution, or any subsidiary or affiliate thereof, unless such charge would be required when the insured depository institution or wholesale financial institution, or any subsidiary or affiliate thereof, is the licensed insurance agent or broker providing the insurance.

(iii) Restrictions prohibiting the use of any advertisement or other insurance promotional material by an insured depository institution or wholesale financial institution, or any subsidiary or affiliate thereof, that would cause a reasonable person to believe mistakenly that—

(I) a State or the Federal Government is responsible for the insurance sales activities of, or stands behind the credit of, the institution, affiliate, or subsidiary; or

(II) a State, or the Federal Government guarantees any returns on insurance products, or is a source of payment on any insurance obligation

of or sold by the institution, affiliate, or subsidiary;

(iv) Restrictions prohibiting the payment or receipt of any commission or brokerage fee or other valuable consideration for services as an insurance agent or broker to or by any person, unless such person holds a valid State license regarding the applicable class of insurance at the time at which the services are performed, except that, in this clause, the term ''services as an insurance agent or broker'' does not include a referral by an unlicensed person of a customer or potential customer to a licensed insurance agent or broker that does not include a discussion of specific insurance policy terms and conditions.

(v) Restrictions prohibiting any compensation paid to or received by any individual who is not licensed to sell insurance, for the referral of a customer that seeks to purchase, or seeks an opinion or advice on, any insurance product to a person that sells or provides opinions or advice on such

product, based on the purchase of insurance by the customer.

(vi) Restrictions prohibiting the release of the insurance information of a customer (defined as information concerning the premiums, terms, and conditions of insurance coverage, including expiration dates and rates, and insurance claims of a customer contained in the records of the insured depository institution or wholesale financial institution, or a subsidiary or affiliate thereof) to any person or entity other than an officer, director, employee, agent, subsidiary, or affiliate of an insured depository institution or a wholesale financial institution, for the purpose of soliciting or selling insurance, without the express consent of the customer, other than a provision that prohibits—

(I) a transfer of insurance information to an unaffiliated insurance company, agent, or broker in connection with transferring insurance in force on existing insureds of the insured depository institution or whole-

sale financial institution, or subsidiary or affiliate thereof, or in connection with a merger with or acquisition of an unaffiliated insurance company, agent, or broker; or

(II) the release of information as otherwise authorized by State or Federal law.

(vii) Restrictions prohibiting the use of health information obtained from the insurance records of a customer for any purpose, other than for its activities as a licensed agent or broker, without the express consent of the customer.

(viii) Restrictions prohibiting the extension of credit or any product or service that is equivalent to an extension of credit, lease or sale of property of any kind, or furnishing of any services or fixing or varying the consideration for any of the foregoing, on the condition or requirement that the customer obtain insurance from an insured depository institution, wholesale financial institution, a subsidiary or affiliate thereof, or a particular insurer, agent, or

1 broker, other than a prohibition that would
2 prevent any insured depository institution
3 or wholesale financial institution, or any
4 subsidiary or affiliate thereof—
5 (I) from engaging in any activity
6 described in this clause that would not
7 violate section 106 of the Bank Hold-
8 ing Company Act Amendments of
9 1970, as interpreted by the Board of
10 Governors of the Federal Reserve Sys-
11 tem; or
12 (II) from informing a customer
13 or prospective customer that insur-
14 ance is required in order to obtain a
15 loan or credit, that loan or credit ap-
16 proval is contingent upon the procure-
17 ment by the customer of acceptable
18 insurance, or that insurance is avail-
19 able from the insured depository insti-
20 tution or wholesale financial institu-
21 tion, or any subsidiary or affiliate
22 thereof.
23 (ix) Restrictions requiring, when an
24 application by a consumer for a loan or
25 other extension of credit from an insured

depository institution or wholesale financial institution is pending, and insurance is offered or sold to the consumer or is required in connection with the loan or extension of credit by the insured depository institution or wholesale financial institution or any affiliate or subsidiary thereof, that a written disclosure be provided to the consumer or prospective customer indicating that his or her choice of an insurance provider will not affect the credit decision or credit terms in any way, except that the insured depository institution or wholesale financial institution may impose reasonable requirements concerning the creditworthiness of the insurance provider and scope of coverage chosen.

(x) Restrictions requiring clear and conspicuous disclosure, in writing, where practicable, to the customer prior to the sale of any insurance policy that such policy—

(I) is not a deposit;

(II) is not insured by the Federal Deposit Insurance Corporation;

(III) is not guaranteed by the insured depository institution or wholesale financial institution or, if appropriate, its subsidiaries or affiliates or any person soliciting the purchase of or selling insurance on the premises thereof; and

(IV) where appropriate, involves investment risk, including potential loss of principal.

(xi) Restrictions requiring that, when a customer obtains insurance (other than credit insurance or flood insurance) and credit from an insured depository institution or wholesale financial institution, or its subsidiaries or affiliates, or any person soliciting the purchase of or selling insurance on the premises thereof, the credit and insurance transactions be completed through separate documents.

(xii) Restrictions prohibiting, when a customer obtains insurance (other than credit insurance or flood insurance) and credit from an insured depository institution or wholesale financial institution or its

subsidiaries or affiliates, or any person soliciting the purchase of or selling insurance on the premises thereof, inclusion of the expense of insurance premiums in the primary credit transaction without the express written consent of the customer.

(xiii) Restrictions requiring maintenance of separate and distinct books and records relating to insurance transactions, including all files relating to and reflecting consumer complaints, and requiring that such insurance books and records be made available to the appropriate State insurance regulator for inspection upon reasonable notice.

(C) LIMITATIONS.—

(i) OCC DEFERENCE.—Section 306(e) does not apply with respect to any State statute, regulation, order, interpretation, or other action regarding insurance sales, solicitation, or cross marketing activities described in subparagraph (A) that was issued, adopted, or enacted before September 3, 1998, and that is not described in subparagraph (B).

(ii) NONDISCRIMINATION.—Subsection (c) does not apply with respect to any State statute, regulation, order, interpretation, or other action regarding insurance sales, solicitation, or cross marketing activities described in subparagraph (A) that was issued, adopted, or enacted before September 3, 1998, and that is not described in subparagraph (B).

(iii) CONSTRUCTION.—Nothing in this paragraph shall be construed to limit the applicability of the decision of the Supreme Court in Barnett Bank of Marion County N.A. v. Nelson, 116 S. Ct. 1103 (1996) with respect to a State statute, regulation, order, interpretation, or other action that is not described in subparagraph (B).

(iv) LIMITATION ON INFERENCES.—Nothing in this paragraph shall be construed to create any inference with respect to any State statute, regulation, order, interpretation, or other action that is not referred to or described in this paragraph.

(3) INSURANCE ACTIVITIES OTHER THAN SALES.—State statutes, regulations, interpretations,

1 orders, and other actions shall not be preempted
2 under subsection (b)(1) to the extent that they—
3 (A) relate to, or are issued, adopted, or en-
4 acted for the purpose of regulating the business
5 of insurance in accordance with the Act of
6 March 9, 1945 (commonly known as the
7 ''McCarran-Ferguson Act'');
8 (B) apply only to persons or entities that
9 are not insured depository institutions or whole-
10 sale financial institutions, but that are directly
11 engaged in the business of insurance (except
12 that they may apply to depository institutions
13 engaged in providing savings bank life insur-
14 ance as principal to the extent of regulating
15 such insurance);
16 (C) do not relate to or directly or indirectly
17 regulate insurance sales, solicitations, or cross-
18 marketing activities; and
19 (D) are not prohibited under subsection
20 (c).
21 (4) FINANCIAL ACTIVITIES OTHER THAN INSUR-
22 ANCE.—No State statute, regulation, interpretation,
23 order, or other action shall be preempted under sub-
24 section (b)(1) to the extent that—

(A) it does not relate to, and is not issued and adopted, or enacted for the purpose of regulating, directly or indirectly, insurance sales, solicitations, or cross marketing activities covered under paragraph (2);

(B) it does not relate to, and is not issued and adopted, or enacted for the purpose of regulating, directly or indirectly, the business of insurance activities other than sales, solicitations, or cross marketing activities, covered under paragraph (3);

(C) it does not relate to securities investigations or enforcement actions referred to in subsection (d); and

(D) it—

(i) does not distinguish by its terms between insured depository institutions, wholesale financial institutions, and subsidiaries and affiliates thereof engaged in the activity at issue and other persons or entities engaged in the same activity in a manner that is in any way adverse with respect to the conduct of the activity by any such insured depository institution, wholesale financial institution, or subsidiary or

1 affiliate thereof engaged in the activity at
2 issue;
3 (ii) as interpreted or applied, does not
4 have, and will not have, an impact on de-
5 pository institutions, wholesale financial in-
6 stitutions, or subsidiaries or affiliates
7 thereof engaged in the activity at issue, or
8 any person or entity affiliated therewith,
9 that is substantially more adverse than its
10 impact on other persons or entities en-
11 gaged in the same activity that are not in-
12 sured depository institutions, wholesale fi-
13 nancial institutions, or subsidiaries or af-
14 filiates thereof, or persons or entities affili-
15 ated therewith;
16 (iii) does not effectively prevent a de-
17 pository institution, wholesale financial in-
18 stitution, or subsidiary or affiliate thereof
19 from engaging in activities authorized or
20 permitted by this Act or any other provi-
21 sion of Federal law; and
22 (iv) does not conflict with the intent
23 of this Act generally to permit affiliations
24 that are authorized or permitted by Fed-
25 eral law.

(c) NONDISCRIMINATION.—Except as provided in any restrictions described in subsection (b)(2)(B), no State may, by statute, regulation, order, interpretation, or other action, regulate the insurance activities authorized or permitted under this Act or any other provision of Federal law of an insured depository institution or wholesale financial institution, or subsidiary or affiliate thereof, to the extent that such statute, regulation, order, interpretation, or other action—

(1) distinguishes by its terms between insured depository institutions or wholesale financial institutions, or subsidiaries or affiliates thereof, and other persons or entities engaged in such activities, in a manner that is in any way adverse to any such insured depository institution or wholesale financial institution, or subsidiary or affiliate thereof;

(2) as interpreted or applied, has or will have an impact on depository institutions or wholesale financial institutions, or subsidiaries or affiliates thereof, that is substantially more adverse than its impact on other persons or entities providing the same products or services or engaged in the same activities that are not insured depository institutions, wholesale financial institutions, or subsidiaries

or affiliates thereof, or persons or entities affiliated therewith;

(3) effectively prevents a depository institution or wholesale financial institution, or subsidiary or affiliate thereof, from engaging in insurance activities authorized or permitted by this Act or any other provision of Federal law; or

(4) conflicts with the intent of this Act generally to permit affiliations that are authorized or permitted by Federal law between insured depository institutions or wholesale financial institutions, or subsidiaries or affiliates thereof, and persons and entities engaged in the business of insurance.

(d) LIMITATION.—Subsections (a) and (b) shall not be construed to affect the jurisdiction of the securities commission (or any agency or office performing like functions) of any State, under the laws of such State—

(1) 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; or

(2) to require the registration of securities or the licensure or registration of brokers, dealers, or investment advisers (consistent with section 203A of

the Investment Advisers Act of 1940), or the associated persons of a broker, dealer, or investment adviser (consistent with such section 203A).

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

(1) INSURED DEPOSITORY INSTITUTION.—The term ''insured depository institution'' includes any foreign bank that maintains a branch, agency, or commercial lending company in the United States.

(2) STATE.—The term ''State'' means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

SEC. 105. MUTUAL BANK HOLDING COMPANIES AUTHORIZED.

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. 105A. PUBLIC MEETINGS FOR LARGE BANK ACQUISITIONS AND MERGERS.

(a) BANK HOLDING COMPANY ACT OF 1956.—Section 3(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(c)(2)) is amended—

(1) by striking ''FACTORS.—In every case'' and inserting ''FACTORS.—

''(A) IN GENERAL.—In every case''; and

(2) by adding at the end the following new subparagraph:

''(B) PUBLIC MEETINGS.—In each case involving one or more insured depository institutions each of which has total assets of $1,000,000,000 or more, the Board shall, as necessary and on a timely basis, conduct public meetings in one or more areas where the Board believes, in the sole discretion of the Board, there will be a substantial public impact.''.

(b) FEDERAL DEPOSIT INSURANCE ACT.—Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) is amended by adding at the end the following new paragraph:

''(12) PUBLIC MEETINGS.—In each merger transaction involving one or more insured depository institutions each of which has total assets of $1,000,000,000 or more, the responsible agency shall, as necessary and on

a timely basis, conduct public meetings in one or more areas where the agency believes, in the sole discretion of the agency, there will be a substantial public impact.''.

(c) NATIONAL BANK CONSOLIDATION AND MERGER ACT.—The National Bank Consolidation and Merger Act (12 U.S.C. 215 et seq.) is amended by adding at the end the following new section:

''SEC. 6. PUBLIC MEETINGS FOR LARGE BANK CONSOLIDATIONS AND MERGERS.

''In each case of a consolidation or merger under this Act involving one or more banks each of which has total assets of $1,000,000,000 or more, the Comptroller shall, as necessary and on a timely basis, conduct public meetings in one or more areas where the Comptroller believes, in the sole discretion of the Comptroller, there will be a substantial public impact.''.

(d) HOME OWNERS' LOAN ACT.—Section 10(e) of the Home Owners' Loan Act (12 U.S.C. 1463) is amended by adding at the end the following new paragraph:

''(7) PUBLIC MEETINGS FOR LARGE DEPOSITORY INSTITUTION ACQUISITIONS AND MERGERS.—In each case involving one or more insured depository institutions each of which has total assets of $1,000,000,000 or more, the Director shall, as necessary and on a timely basis, conduct public meet-

ings in one or more areas where the Director believes, in the sole discretion of the Director, there will be a substantial public impact.''.

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 1999,'' 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.

(a) IN GENERAL.—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, consumer lending activities in which institutions described in subparagraph (F) or (H) of section 2(c)(2) 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, un-

less 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;

"(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; or

"(C) such overdraft—

"(i) is incurred on behalf of an affiliate solely in connection with an activity that is so closely related to banking, or

managing or controlling banks, as to be a proper incident thereto, to the extent the bank incurring the overdraft and the affiliate on whose behalf the overdraft is incurred each document that the overdraft is incurred for such purpose; and

"(ii) does not cause the bank to violate any provision of section 23A or 23B of the Federal Reserve Act, either directly, in the case of a member bank, or by virtue of section 18(j) of the Federal Deposit Insurance Act, in the case of a nonmember bank.

"(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.

The issuance of any notice under this paragraph that relates to the activities of a bank shall not be construed as affecting the authority of the bank to continue to engage in such activities until the expiration of such 180-day period.".

(b) INDUSTRIAL LOAN COMPANIES AFFILIATE OVERDRAFTS.—Section 2(c)(2)(H) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(H)) is amended by inserting before the period at the end ", or that is otherwise permissible for a bank controlled by a company described in section 4(f)(1)".

SEC. 109. GAO STUDY OF ECONOMIC IMPACT ON COMMUNITY BANKS, OTHER SMALL FINANCIAL INSTITUTIONS, INSURANCE AGENTS, AND CONSUMERS.

(a) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study of the projected economic impact and the actual economic impact that the enactment of this Act will have on financial institutions,

1 including community banks, registered brokers and deal-
2 ers and insurance companies, which have total assets of
3 $100,000,000 or less, insurance agents, and consumers.
4 (b) REPORTS TO THE CONGRESS.—
5 (1) IN GENERAL.—The Comptroller General of
6 the United States shall submit reports to the Con-
7 gress, at the times required under paragraph (2),
8 containing the findings and conclusions of the
9 Comptroller General with regard to the study re-
10 quired under subsection (a) and such recommenda-
11 tions for legislative or administrative action as the
12 Comptroller General may determine to be appro-
13 priate.
14 (2) TIMING OF REPORTS.—The Comptroller
15 General shall submit—
16 (A) an interim report before the end of the
17 6-month period beginning after the date of the
18 enactment of this Act;
19 (B) another interim report before the end
20 of the next 6-month period; and
21 (C) a final report before the end of the 1-
22 year period after such second 6-month period,''.

SEC. 110. 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), 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, 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.

SEC. 110A. STUDY OF FINANCIAL MODERNIZATION'S AFFECT ON THE ACCESSIBILITY OF SMALL BUSINESS AND FARM LOANS.

(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), shall conduct a study of the extent to which credit is being

provided to and for small business and farms, as a result of this Act.

(b) REPORT.—Before the end of the 5-year period beginning on the date of the enactment of this Act, the Secretary, in consultation with the Federal banking agencies, 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.

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 record-

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

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

22 "(C) DEFINITION.—For purposes of this
23 subsection, the term 'functionally regulated
24 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, or with any State, 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 SUBSIDI-

ARIES.—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; or

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

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 in-

stead reviewing the reports of examination made of—

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

"(ii) any investment adviser registered by or on behalf of either the Securities and Exchange Commission or any State, whichever is required by law;

"(iii) any licensed insurance company by or on behalf of any State regulatory authority responsible for the supervision of insurance companies; and

"(iv) 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;

"(ii) is registered as an investment adviser under the Investment Advisers Act of 1940, or with any State, whichever is required by law; or

"(iii) is licensed as an insurance agent with the appropriate State insurance authority.

"(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—

"(i) activities of a registered investment adviser other than investment advisory activities or activities incidental to investment advisory activities; or

"(ii) activities of a licensed insurance agent other than insurance agency activities or activities incidental to insurance agency activities.

"(C) LIMITATIONS ON INDIRECT ACTION.—In developing, establishing, or assessing

holding company capital or capital adequacy rules, guidelines, standards, or requirements for purposes of this paragraph, the Board shall not take into account the activities, operations, or investments of an affiliated investment company registered under the Investment Company Act of 1940, unless the investment company is—

"(i) a bank holding company; or

"(ii) controlled by a bank holding company by reason of ownership by the bank holding company (including through all of its affiliates) of 25 percent or more of the shares of the investment company, and the shares owned by the bank holding company have a market value equal to more than $1,000,000.

"(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 com-

pany 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 (and rules, regulations, orders, and other directives issued thereunder) relating to the activities, conduct, and operations of registered brokers, dealers, investment advisers, and investment companies;

"(B) the relevant State securities authorities with regard to all interpretations of, and the enforcement of, applicable State securities laws (and rules, regulations, orders, and other directives issued thereunder) relating to the activities, conduct, and operations of brokers, dealers, and investment advisers required to be registered under State law; and

"(C) the relevant State insurance authorities with regard to all interpretations of, and the enforcement of, applicable State insurance

laws (and rules, regulations, orders, and other directives issued thereunder) 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)(D) 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 primary supervisor for the bank, 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.

(a) BANK HOLDING COMPANIES.—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 ef-

fective nor enforceable with respect to an entity described in subparagraph (A) if—

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

"(i) a bank holding company that is an insurance company, a broker or dealer registered under the Securities Exchange Act of 1934, an investment company registered under the Investment Company Act of 1940, or an investment adviser registered by or on behalf of either the Securities and Exchange Commission or any State; or

"(ii) an affiliate of the depository institution which is an insurance company or a broker or dealer registered under the Securities Exchange Act of 1934, an investment company registered under the Investment Company Act of 1940, or an investment adviser registered by or on behalf of either the Securities and Exchange Commission or any State; and

"(B) the State insurance authority for the insurance company or the Securities and Exchange Commission for the registered broker,

dealer, investment adviser (solely with respect to investment advisory activities or activities incidental thereto), or investment company, 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, dealer, investment company, or investment adviser, 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, dealer, investment company, or investment adviser 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, the Securities and Exchange Commission, or State securities regulator, 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 that paragraph, the Board may order the bank holding company to divest the insured depository institution not later than 180 days after receiving the 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.".

(b) SUBSIDIARIES OF DEPOSITORY INSTITUTIONS.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et

1 seq.) is amended by adding at the end the following new
2 section:

3 **"SEC. 45. AUTHORITY OF STATE INSURANCE REGULATOR**
4 **AND SECURITIES AND EXCHANGE COMMIS-**
5 **SION.**

6 "(a) IN GENERAL.—Notwithstanding any other pro-
7 vision of law, any regulation, order, or other action of the
8 appropriate Federal banking agency which requires a sub-
9 sidiary to provide funds or other assets to an insured de-
10 pository institution shall not be effective nor enforceable
11 with respect to an entity described in paragraph (1) if—

12 "(1) such funds or assets are to be provided by
13 a subsidiary which is an insurance company, a
14 broker or dealer registered under the Securities Ex-
15 change Act of 1934, an investment company reg-
16 istered under the Investment Company Act of 1940,
17 or an investment adviser registered by or on behalf
18 of either the Securities and Exchange Commission
19 or any State; and

20 "(2) the State insurance authority for the in-
21 surance company or the Securities and Exchange
22 Commission for the registered broker or dealer, the
23 investment company, or the investment adviser, as
24 the case may be, determines in writing sent to the
25 insured depository institution and the appropriate

1 Federal banking agency that the subsidiary shall not
2 provide such funds or assets because such action
3 would have a material adverse effect on the financial
4 condition of the insurance company or the broker,
5 dealer, investment company, or investment adviser,
6 as the case may be.

7 "(b) NOTICE TO STATE INSURANCE AUTHORITY OR
8 SEC REQUIRED.—If the appropriate Federal banking
9 agency requires a subsidiary, which is an insurance com-
10 pany, a broker or dealer, an investment company, or an
11 investment adviser (solely with respect to investment advi-
12 sory activities or activities incidental thereto) described in
13 subsection (a)(1) to provide funds or assets to an insured
14 depository institution pursuant to any regulation, order,
15 or other action of the appropriate Federal banking agency
16 referred to in subsection (a), the appropriate Federal
17 banking agency shall promptly notify the State insurance
18 authority for the insurance company, the Securities and
19 Exchange Commission, or State securities regulator, as
20 the case may be, of such requirement.

21 "(c) DIVESTITURE IN LIEU OF OTHER ACTION.—If
22 the appropriate Federal banking agency receives a notice
23 described in subsection (a)(2) from a State insurance au-
24 thority or the Securities and Exchange Commission with
25 regard to a subsidiary referred to in that subsection, the

appropriate Federal banking agency may order the insured depository institution to divest the subsidiary not later than 180 days after receiving the notice, or such longer period as the appropriate Federal banking agency determines consistent with the safe and sound operation of the insured depository institution.

"(d) CONDITIONS BEFORE DIVESTITURE.—During the period beginning on the date an order to divest is issued by the appropriate Federal banking agency under subsection (c) to an insured depository institution and ending on the date the divestiture is complete, the appropriate Federal banking agency may impose any conditions or restrictions on the insured depository institution's ownership of the subsidiary including restricting or prohibiting transactions between the insured depository institution and the subsidiary, as are appropriate under the circumstances.".

SEC. 114. PRUDENTIAL SAFEGUARDS.

(a) COMPTROLLER OF THE CURRENCY.—

(1) IN GENERAL.—The Comptroller of the Currency may, by regulation or order, impose restrictions or requirements on relationships or transactions between a national bank and a subsidiary of the national bank which the Comptroller finds are consistent with the public interest, the purposes of

this Act, title LXII of the Revised Statutes of the United States, and other Federal law applicable to national banks, and the standards in paragraph (2).

(2) STANDARDS.—The Comptroller of the Currency may exercise authority under paragraph (1) if the Comptroller 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 banks.

(C) Avoid conflicts of interest or other abuses.

(D) Enhance the privacy of customers of the national bank or any subsidiary of the bank.

(E) Promote the application of national treatment and equality of competitive opportunity between subsidiaries owned or controlled by domestic banks and subsidiaries owned or controlled by foreign banks operating in the United States.

(3) REVIEW.—The Comptroller of the Currency 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 Comptroller finds is no longer required for such purposes.

(b) BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.—

(1) IN GENERAL.—The Board of Governors of the Federal Reserve System may, by regulation or order, impose restrictions or requirements on relationships or transactions—

(A) between a depository institution subsidiary of a bank holding company and any affiliate of such depository institution (other than a subsidiary of such institution); or

(B) between a State member bank and a subsidiary of such bank,

which the Board finds are consistent with the public interest, the purposes of this Act, the Bank Holding Company Act of 1956, the Federal Reserve Act, and other Federal law applicable to depository institution

1 subsidiaries of bank holding companies or State
2 banks (as the case may be), and the standards in
3 paragraph (2).
4 (2) STANDARDS.—The Board of Governors of
5 the Federal Reserve System may exercise authority
6 under paragraph (1) if the Board finds that such ac-
7 tion will have any of the following effects:
8 (A) Avoid any significant risk to the safety
9 and soundness of depository institutions or any
10 Federal deposit insurance fund.
11 (B) Enhance the financial stability of bank
12 holding companies.
13 (C) Avoid conflicts of interest or other
14 abuses.
15 (D) Enhance the privacy of customers of
16 the State member bank or any subsidiary of the
17 bank.
18 (E) Promote the application of national
19 treatment and equality of competitive oppor-
20 tunity between nonbank affiliates owned or con-
21 trolled by domestic bank holding companies and
22 nonbank affiliates owned or controlled by for-
23 eign banks operating in the United States.
24 (3) REVIEW.—The Board of Governors of the
25 Federal Reserve System 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.

(4) FOREIGN BANKS.—

(A) IN GENERAL.—The Board may, by regulation or order, impose restrictions or requirements on relationships or transactions between a branch, agency, or commercial lending company of a foreign bank in the United States and any affiliate in the United States of such foreign bank that the Board finds are consistent with the public interest, the purposes of this Act, the Bank Holding Company Act of 1956, the Federal Reserve Act, and other Federal law applicable to foreign banks and their affiliates in the United States, and the standards in paragraphs (2) and (3).

(B) EVASION.—In the event that the Board determines that there may be cir-

cumstances that would result in an evasion of this paragraph, the Board may also impose restrictions or requirements on relationships or transactions between a foreign bank outside the United States and any affiliate in the United States of such foreign bank that are consistent with national treatment and equality of competitive opportunity.

(c) FEDERAL DEPOSIT INSURANCE CORPORATION.—

(1) IN GENERAL.—The Federal Deposit Insurance Corporation may, by regulation or order, impose restrictions or requirements on relationships or transactions between a State nonmember bank (as defined in section 3 of the Federal Deposit Insurance Act) and a subsidiary of the State nonmember bank which the Corporation finds are consistent with the public interest, the purposes of this Act, the Federal Deposit Insurance Act, or other Federal law applicable to State nonmember banks and the standards in paragraph (2).

(2) STANDARDS.—The Federal Deposit Insurance Corporation may exercise authority under paragraph (1) if the Corporation 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 banks.

(C) Avoid conflicts of interest or other abuses.

(D) Enhance the privacy of customers of the State nonmember bank or any subsidiary of the bank.

(E) Promote the application of national treatment and equality of competitive opportunity between subsidiaries owned or controlled by domestic banks and subsidiaries owned or controlled by foreign banks operating in the United States.

(3) REVIEW.—The Federal Deposit Insurance Corporation 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 Corporation finds is no longer required for such purposes.

SEC. 115. EXAMINATION OF INVESTMENT COMPANIES.

(a) EXCLUSIVE COMMISSION AUTHORITY.—

(1) IN GENERAL.—Except as provided in paragraph (3), 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 or a savings and loan holding company.

(2) PROHIBITION ON BANKING AGENCIES.—Except as provided in paragraph (3), a Federal banking agency may not inspect or examine any registered investment company that is not a bank holding company or a savings and loan holding company.

(3) CERTAIN EXAMINATIONS AUTHORIZED.—Nothing in this subsection prevents the Federal Deposit Insurance Corporation, if the Corporation finds it necessary to determine the condition of an insured depository institution for insurance purposes, from examining an affiliate of any insured depository institution, pursuant to its authority under section 10(b)(4) of the Federal Deposit Insurance Act, as may be necessary to disclose fully the relationship

between the depository institution and the affiliate, and the effect of such relationship on the depository institution.

(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 same meaning as 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 same meaning as 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.

(5) SAVINGS AND LOAN HOLDING COMPANY.—The term ''savings and loan holding company'' has the same meaning as in section 10(a)(1)(D) of the Home Owners' Loan Act.

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 by or on behalf of either the Securities and Exchange Commission or any State, whichever is required by law, 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, with respect to the insurance activities and activities incidental to such insurance activities, 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.".

SEC. 117. EQUIVALENT REGULATION AND SUPERVISION.

(a) IN GENERAL.—Notwithstanding any other provision of law, the provisions of—

(1) section 5(c) of the Bank Holding Company Act of 1956 (as amended by this Act) that limit the authority of the Board of Governors of the Federal Reserve System to require reports from, to make examinations of, or to impose capital requirements on bank holding companies and their nonbank subsidiaries or that require deference to other regulators; and

(2) section 10A of the Bank Holding Company Act of 1956 (as added by this Act) that limit whatever authority the Board might otherwise have to take direct or indirect action with respect to bank holding companies and their nonbank subsidiaries,

shall also limit whatever authority that a Federal banking agency (as defined in section 3(z) of the Federal Deposit Insurance Act) might otherwise have under any statute to require reports, make examinations, impose capital requirements or take any other direct or indirect action with

respect to bank holding companies and their nonbank subsidiaries (including nonbank subsidiaries of depository institutions), subject to the same standards and requirements as are applicable to the Board under such provisions.

(b) CERTAIN EXAMINATIONS AUTHORIZED.—No provision of this section shall be construed as preventing the Federal Deposit Insurance Corporation, if the Corporation finds it necessary to determine the condition of an insured depository institution for insurance purposes, from examining an affiliate of any insured depository institution, pursuant to its authority under section 10(b)(4) of the Federal Deposit Insurance Act, as may be necessary to disclose fully the relationship between the depository institution and the affiliate, and the effect of such relationship on the depository institution.

SEC. 118. PROHIBITION ON FDIC ASSISTANCE TO AFFILIATES AND SUBSIDIARIES.

Section 11(a)(4)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(4)(B)) is amended by striking ''to benefit any shareholder of'' and inserting ''to benefit any shareholder, affiliate (other than an insured depository institution that receives assistance in accordance with the provisions of this Act), or subsidiary of''.

SEC. 119. REPEAL OF SAVINGS BANK PROVISIONS IN THE BANK HOLDING COMPANY ACT OF 1956.

Section 3(f) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(f)) is amended to read as follows:

''(f) [Repealed].''.

SEC. 120. TECHNICAL AMENDMENT.

Section 2(o)(1)(A) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(o)(1)(A)) is amended by striking ''section 38(b)'' and inserting ''section 38''.

Subtitle C—Subsidiaries of National Banks

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

(a) FINANCIAL SUBSIDIARIES OF NATIONAL BANKS.—Chapter 1 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 of the United States

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 ACTIVITIES WHICH ARE FINANCIAL IN NATURE.—Subject to paragraphs (3) and (4), a national bank may control a financial subsidiary, or hold an interest in a financial subsidiary, that is controlled by insured depository institutions or subsidiaries thereof.

"(3) ELIGIBILITY REQUIREMENTS.—A national bank may control or hold an interest in a company pursuant to paragraph (2) only if—

"(A) the national bank and all depository institution affiliates of the national bank are well capitalized;

"(B) the national bank and all depository institution affiliates of the national bank are well managed;

"(C) the national bank and all depository institution affiliates of such national bank have achieved a rating of 'satisfactory record of meeting community credit needs', or better, at the most recent examination of each such bank or institution; and

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

"(4) ACTIVITY LIMITATIONS.—In addition to any other limitation imposed on the activity of subsidiaries of national banks, a subsidiary of a national bank may not, pursuant to paragraph (2)—

"(A) engage as principal in insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death (other than in connection with credit-related insurance) or in providing or issuing annuities;

"(B) engage in real estate investment or development activities; or

"(C) engage in any activity permissible for a financial holding company under paragraph (3)(I) of section 6(c) of the Bank Holding Company Act of 1956 (relating to insurance company investments).

"(5) SIZE FACTOR WITH REGARD TO FREE-STANDING NATIONAL BANKS.—Notwithstanding paragraph (2), a national bank which has total assets of $10,000,000,000 or more may not control a subsidiary engaged in financial activities pursuant to such paragraph unless such national bank is a subsidiary of a bank holding company.

"(6) LIMITED EXCLUSIONS FROM COMMUNITY NEEDS REQUIREMENTS FOR NEWLY AFFILIATED DEPOSITORY INSTITUTIONS.—Any depository institution which becomes an affiliate of a national bank during the 12-month period preceding the date of an approval by the Comptroller of the Currency under paragraph (3)(D) for such bank, and any depository institution which becomes an affiliate of the national bank after such date, may be excluded for purposes of paragraph (3)(C) during the 12-month period beginning on the date of such affiliation if—

"(A) the national bank or such depository institution 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; and

"(B) the plan has been accepted by such agency.

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

"(A) COMPANY; CONTROL; AFFILIATE; SUBSIDIARY.—The terms 'company', 'control', 'affiliate', and 'subsidiary' have the same meanings as in section 2 of the Bank Holding Company Act of 1956.

"(B) FINANCIAL SUBSIDIARY.—The term 'financial subsidiary' means a company which is a subsidiary of an insured bank and is engaged in financial activities that have been determined to be financial in nature or incidental to such financial activities in accordance with subsection (b) or permitted in accordance with subsection (b)(4), other than activities that are permissible for a national bank to engage in directly or that are authorized under the Bank

Service Company Act, section 25 or 25A of the Federal Reserve Act, or any other Federal statute (other than this section) that specifically authorizes the conduct of such activities by its express terms and not by implication or interpretation.

"(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 depository institution that has been examined, unless otherwise determined in writing by the appropriate Federal banking agency—

"(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 examina-

1 tion or subsequent review of the de-
2 pository institution; and
3 ''(II) at least a rating of 2 for
4 management, if that rating is given;
5 or
6 ''(ii) in the case of any depository in-
7 stitution that has not been examined, the
8 existence and use of managerial resources
9 that the appropriate Federal banking agen-
10 cy determines are satisfactory.
11 ''(E) INCORPORATED DEFINITIONS.—The
12 terms 'appropriate Federal banking agency' and
13 'depository institution' have the same meanings
14 as in section 3 of the Federal Deposit Insur-
15 ance Act.
16 ''(b) ACTIVITIES THAT ARE FINANCIAL IN NA-
17 TURE.—
18 ''(1) FINANCIAL ACTIVITIES.—
19 ''(A) IN GENERAL.—For purposes of sub-
20 section (a)(7)(B), an activity shall be consid-
21 ered to have been determined to be financial in
22 nature or incidental to such financial activities
23 only if—
24 ''(i) such activity is permitted for a fi-
25 nancial holding company pursuant to sec-

tion 6(c)(3) of the Bank Holding Company Act of 1956 (to the extent such activity is not otherwise prohibited under this section or any other provision of law for a subsidiary of a national bank engaged in activities pursuant to subsection (a)(2)); or

"(ii) the Secretary of the Treasury determines the activity to be financial in nature or incidental to such financial activities in accordance with subparagraph (B) or paragraph (3).

"(B) COORDINATION BETWEEN THE BOARD AND THE SECRETARY OF THE TREASURY.—

"(i) PROPOSALS RAISED BEFORE THE SECRETARY OF THE TREASURY.—

"(I) CONSULTATION.—The Secretary of the Treasury shall notify the Board of, and consult with the Board concerning, any request, proposal, or application under this subsection, including any regulation or order proposed under paragraph (3), for a determination of whether an activity is

1 financial in nature or incidental to
2 such a financial activity.
3 "(II) BOARD VIEW.—The Sec-
4 retary of the Treasury shall not deter-
5 mine that any activity is financial in
6 nature or incidental to a financial ac-
7 tivity under this subsection if the
8 Board notifies the Secretary in writ-
9 ing, not later than 30 days after the
10 date of receipt of the notice described
11 in subclause (I) (or such longer period
12 as the Secretary determines to be ap-
13 propriate in light of the cir-
14 cumstances) that the Board believes
15 that the activity is not financial in na-
16 ture or incidental to a financial activ-
17 ity.
18 "(ii) PROPOSALS RAISED BY THE
19 BOARD.—
20 "(I) BOARD RECOMMENDA-
21 TION.—The Board may, at any time,
22 recommend in writing that the Sec-
23 retary of the Treasury find an activity
24 to be financial in nature or incidental
25 to a financial activity (other than an

activity which the Board has sole authority to regulate under subparagraph (C)).

"(II) TIME PERIOD FOR SECRETARIAL ACTION.—Not later than 30 days after the date of receipt of a written recommendation from the Board under subclause (I) (or such longer period as the Secretary of the Treasury and the Board determine to be appropriate in light of the circumstances), the Secretary shall determine whether to initiate a public rulemaking proposing that the subject recommended activity be found to be financial in nature or incidental to a financial activity under this subsection, and shall notify the Board in writing of the determination of the Secretary and, in the event that the Secretary determines not to seek public comment on the proposal, the reasons for that determination.

"(C) AUTHORITY OVER MERCHANT BANKING.—The Board shall have sole authority to

prescribe regulations and issue interpretations to implement this paragraph with respect to activities described in section 6(c)(3)(H) of the Bank Holding Company Act of 1956.

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

"(A) the purposes of this Act and the Financial Services Act of 1999;

"(B) changes or reasonably expected changes in the marketplace in which banks 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 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 ef-

ficacy 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) AUTHORIZATION OF NEW FINANCIAL ACTIVITIES.—The Secretary of the Treasury shall, by regulation or order and in accordance with paragraph (1)(B), 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.

"(4) DEVELOPING ACTIVITIES.—Subject to subsection (a)(2), a financial subsidiary of a national bank may engage directly or indirectly, or acquire

shares of any company engaged, in any activity that the Secretary has not determined to be financial in nature or incidental to financial activities under this subsection if—

"(A) the subsidiary reasonably concludes that the activity is financial in nature or incidental to financial activities;

"(B) the gross revenues from all activities conducted under this paragraph represent less than 5 percent of the consolidated gross revenues of the national bank;

"(C) the aggregate total assets of all companies the shares of which are held under this paragraph do not exceed 5 percent of the national bank's consolidated total assets;

"(D) the total capital invested in activities conducted under this paragraph represents less than 5 percent of the consolidated total capital of the national bank;

"(E) neither the Secretary of the Treasury nor the Board has determined that the activity is not financial in nature or incidental to financial activities under this subsection; and

"(F) the national bank provides written notice to the Secretary of the Treasury describ-

ing the activity commenced by the subsidiary or conducted by the company acquired no later than 10 business days after commencing the activity or consummating the acquisition.

"(c) PROVISIONS APPLICABLE TO NATIONAL BANKS THAT FAIL TO MEET REQUIREMENTS.—

"(1) IN GENERAL.—If a national bank or depository institution affiliate is not in compliance with the requirements of subparagraph (A), (B), or (C) of subsection (a)(3), the appropriate Federal banking agency shall notify the Comptroller of the Currency, who shall give notice of such finding to the national bank.

"(2) AGREEMENT TO CORRECT CONDITIONS REQUIRED.—Not later than 45 days after receipt by a national bank of a notice given under paragraph (1) (or such additional period as the Comptroller of the Currency may permit), the national bank and any relevant affiliated depository institution shall execute an agreement acceptable to the Comptroller of the Currency and the other appropriate Federal banking agencies, if any, to comply with the requirements applicable under subsection (a)(3).

"(3) COMPTROLLER OF THE CURRENCY MAY IMPOSE LIMITATIONS.—Until the conditions de-

1 scribed in a notice to a national bank under para-
2 graph (1) are corrected—
3 "(A) the Comptroller of the Currency may
4 impose such limitations on the conduct or ac-
5 tivities of the national bank or any subsidiary
6 of the bank as the Comptroller of the Currency
7 determines to be appropriate under the cir-
8 cumstances; and
9 "(B) the appropriate Federal banking
10 agency may impose such limitations on the con-
11 duct or activities of an affiliated depository in-
12 stitution or any subsidiary of the depository in-
13 stitution as such agency determines to be ap-
14 propriate under the circumstances.
15 "(4) FAILURE TO CORRECT.—If, after receiving
16 a notice under paragraph (1), a national bank and
17 other affiliated depository institutions do not—
18 "(A) execute and implement an agreement
19 in accordance with paragraph (2);
20 "(B) comply with any limitations imposed
21 under paragraph (3);
22 "(C) in the case of a notice of failure to
23 comply with subsection (a)(3)(A), restore the
24 national bank or any depository institution af-
25 filiate of the bank to well capitalized status be-

fore the end of the 180-day period beginning on the date such notice is received by the national bank (or such other period permitted by the Comptroller of the Currency); or

"(D) in the case of a notice of failure to comply with subparagraph (B) or (C) of subsection (a)(3), restore compliance with any such subparagraph on or before the date on which the next examination of the depository institution subsidiary is completed or by the end of such other period as the Comptroller of the Currency determines to be appropriate,

the Comptroller of the Currency may require such national bank, under such terms and conditions as may be imposed by the Comptroller of the Currency and subject to such extension of time as may be granted in the Comptroller of the Currency's discretion, to divest control of any subsidiary engaged in activities pursuant to subsection (a)(2) or, at the election of the national bank, instead to cease to engage in any activity conducted by a subsidiary of the national bank pursuant to subsection (a)(2).

"(5) CONSULTATION.—In taking any action under this subsection, the Comptroller of the Cur-

rency shall consult with all relevant Federal and State regulatory agencies.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 1 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. Subsidiaries of national banks.''.

SEC. 122. SAFETY AND SOUNDNESS FIREWALLS BETWEEN BANKS AND THEIR FINANCIAL SUBSIDIARIES.

(a) PURPOSES.—The purposes of this section are—

(1) to protect the safety and soundness of any insured bank that has a financial subsidiary;

(2) to apply to any transaction between the bank and the financial subsidiary (including a loan, extension of credit, guarantee, or purchase of assets), other than an equity investment, the same restrictions and requirements as would apply if the financial subsidiary were a subsidiary of a bank holding company having control of the bank; and

(3) to apply to any equity investment of the bank in the financial subsidiary restrictions and requirements equivalent to those that would apply if—

(A) the bank paid a dividend in the same dollar amount to a bank holding company having control of the bank; and

(B) the bank holding company used the proceeds of the dividend to make an equity investment in a subsidiary that was engaged in the same activities as the financial subsidiary of the bank.

(b) SAFETY AND SOUNDNESS FIREWALLS APPLICABLE TO SUBSIDIARIES OF BANKS.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 45 (as added by section 113(b) of this title) the following new section:

"SEC. 46. SAFETY AND SOUNDNESS FIREWALLS APPLICABLE TO SUBSIDIARIES OF BANKS.

''(a) LIMITING THE EQUITY INVESTMENT OF A BANK IN A SUBSIDIARY.—

''(1) CAPITAL DEDUCTION.—In determining whether an insured bank complies with applicable regulatory capital standards—

''(A) the appropriate Federal banking agency shall deduct from the assets and tangible equity of the bank the aggregate amount of the outstanding equity investments of the bank in financial subsidiaries of the bank; and

"(B) the assets and liabilities of such financial subsidiaries shall not be consolidated with those of the bank.

"(2) INVESTMENT LIMITATION.—An insured bank shall not, without the prior approval of the appropriate Federal banking agency, make any equity investment in a financial subsidiary of the bank if that investment would, when made, exceed the amount that the bank could pay as a dividend without obtaining prior regulatory approval.

"(3) TREATMENT OF RETAINED EARNINGS.—The amount of any net earnings retained by a financial subsidiary of an insured depository institution shall be treated as an outstanding equity investment of the bank in the subsidiary for purposes of paragraph (1).

"(b) OPERATIONAL AND FINANCIAL SAFEGUARDS FOR THE BANK.—An insured bank that has a financial subsidiary shall maintain procedures for identifying and managing any financial and operational risks posed by the financial subsidiary.

"(c) MAINTENANCE OF SEPARATE CORPORATE IDENTITY AND SEPARATE LEGAL STATUS.—

"(1) IN GENERAL.—Each insured bank shall ensure that the bank maintains and complies with

reasonable policies and procedures to preserve the separate corporate identity and legal status of the bank and any financial subsidiary or affiliate of the bank.

"(2) EXAMINATIONS.—The appropriate Federal banking agency, as part of each examination, shall review whether an insured bank is observing the separate corporate identity and separate legal status of any subsidiaries and affiliates of the bank.

"(d) FINANCIAL SUBSIDIARY DEFINED.—For purposes of this section, the term 'financial subsidiary' has the meaning given to such term in section 5136A(a)(7)(B) of the Revised Statutes of the United States.

"(e) REGULATIONS.—The appropriate Federal banking agencies shall jointly prescribe regulations implementing this section.".

(c) 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 is a subsidiary of a bank and is engaged in activities that are financial in nature or incidental to such financial activities pursuant to subsection (a)(2) or (b)(4) of section 5136A of the Revised Statutes of the United States.

"(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 or which are authorized by any Federal law other than section 5136A of the Revised Statutes of the United States.

"(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.''.

(d) 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 pursuant to subsection (a)(2) or (b)(4) of section 5136A of the Revised Statutes of the United States shall be deemed to be a subsidiary of a bank holding company, and not a subsidiary of a bank.''.

SEC. 123. 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 5 years, or both.

"(c) INSTITUTION-AFFILIATED PARTY DEFINED.—For purposes of this section, the term 'institution-affiliated party' has the same meaning as in section 3 of the Federal Deposit Insurance Act and any reference in that section shall also be deemed to refer 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. 124. 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.

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(f)(2);

"(C) controls one or more wholesale financial institutions;

"(D) does not control—

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

1 "(ii) an insured bank other than an
2 institution permitted under subparagraph
3 (D), (F), or (G) of section 2(c)(2); or
4 "(iii) a savings association; and
5 "(E) is not a foreign bank (as defined in
6 section 1(b)(7) of the International Banking
7 Act of 1978).
8 "(2) SAVINGS ASSOCIATION TRANSITION PE-
9 RIOD.—Notwithstanding paragraph (1)(D)(iii), the
10 Board may permit a company that controls a sav-
11 ings association and that otherwise meets the re-
12 quirements of paragraph (1) to become supervised
13 under paragraph (1), if the company divests control
14 of any such savings association within such period
15 not to exceed 5 years after becoming supervised
16 under paragraph (1) as permitted by the Board.
17 "(b) SUPERVISION BY THE BOARD.—
18 "(1) IN GENERAL.—The provisions of this sec-
19 tion shall govern the reporting, examination, and
20 capital requirements of wholesale financial holding
21 companies.
22 "(2) REPORTS.—
23 "(A) IN GENERAL.—The Board from time
24 to time may require any wholesale financial
25 holding company and any subsidiary of such

1 company to submit reports under oath to keep
2 the Board informed as to—
3 "(i) the company's or subsidiary's ac-
4 tivities, financial condition, policies, sys-
5 tems for monitoring and controlling finan-
6 cial and operational risks, and transactions
7 with depository institution subsidiaries of
8 the holding company; and
9 "(ii) the extent to which the company
10 or subsidiary has complied with the provi-
11 sions of this Act and regulations prescribed
12 and orders issued under this Act.
13 "(B) USE OF EXISTING REPORTS.—
14 "(i) IN GENERAL.—The Board shall,
15 to the fullest extent possible, accept re-
16 ports in fulfillment of the Board's report-
17 ing requirements under this paragraph
18 that the wholesale financial holding com-
19 pany or any subsidiary of such company
20 has provided or been required to provide to
21 other Federal and State supervisors or to
22 appropriate self-regulatory organizations.
23 "(ii) AVAILABILITY.—A wholesale fi-
24 nancial holding company or a subsidiary of
25 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 mon-

itoring 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 de-

1 pository institution affiliate of the holding
2 company.
3 "(C) DEFERENCE TO BANK EXAMINA-
4 TIONS.—The Board shall, to the fullest extent
5 possible, use the reports of examination of de-
6 pository institutions made by the Comptroller of
7 the Currency, the Federal Deposit Insurance
8 Corporation, the Director of the Office of Thrift
9 Supervision or the appropriate State depository
10 institution supervisory authority for the pur-
11 poses of this section.
12 "(D) DEFERENCE TO OTHER EXAMINA-
13 TIONS.—The Board shall, to the fullest extent
14 possible, address the circumstances which might
15 otherwise permit or require an examination by
16 the Board by forgoing an examination and by
17 instead reviewing the reports of examination
18 made of—
19 "(i) any registered broker or dealer or
20 any registered investment adviser by or on
21 behalf of the Commission; and
22 "(ii) any licensed insurance company
23 by or on behalf of any State government
24 insurance agency responsible for the super-
25 vision 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.

1 "(B) METHOD OF CALCULATION.—In de-
2 veloping rules or guidelines under this para-
3 graph, the following provisions shall apply:
4 "(i) FOCUS ON DOUBLE LEVERAGE.—
5 The Board shall focus on the use by whole-
6 sale financial holding companies of debt
7 and other liabilities to fund capital invest-
8 ments in subsidiaries.
9 "(ii) NO UNWEIGHTED CAPITAL
10 RATIO.—The Board shall not, by regula-
11 tion, guideline, order, or otherwise, impose
12 under this section a capital ratio that is
13 not based on appropriate risk-weighting
14 considerations.
15 "(iii) NO CAPITAL REQUIREMENT ON
16 REGULATED ENTITIES.—The Board shall
17 not, by regulation, guideline, order or oth-
18 erwise, prescribe or impose any capital or
19 capital adequacy rules, standards, guide-
20 lines, or requirements upon any subsidiary
21 that—
22 "(I) is not a depository institu-
23 tion; and
24 "(II) is in compliance with appli-
25 cable capital requirements of another

1 Federal regulatory authority (includ-
2 ing the Securities and Exchange Com-
3 mission) or State insurance authority.
4 "(iv) LIMITATION.—The Board shall
5 not, by regulation, guideline, order or oth-
6 erwise, prescribe or impose any capital or
7 capital adequacy rules, standards, guide-
8 lines, or requirements upon any subsidiary
9 that is not a depository institution and
10 that is registered as an investment adviser
11 under the Investment Advisers Act of
12 1940, except that this clause shall not be
13 construed as preventing the Board from
14 imposing capital or capital adequacy rules,
15 guidelines, standards, or requirements with
16 respect to activities of a registered invest-
17 ment adviser other than investment advi-
18 sory activities or activities incidental to in-
19 vestment advisory activities.
20 "(v) LIMITATIONS ON INDIRECT AC-
21 TION.—In developing, establishing, or as-
22 sessing holding company capital or capital
23 adequacy rules, guidelines, standards, or
24 requirements for purposes of this para-
25 graph, the Board shall not take into ac-

count the activities, operations, or investments of an affiliated investment company registered under the Investment Company Act of 1940, unless the investment company is—

"(I) a bank holding company; or

"(II) controlled by a bank holding company by reason of ownership by the bank holding company (including through all of its affiliates) of 25 percent or more of the shares of the investment company, and the shares owned by the bank holding company have a market value equal to more than $1,000,000.

"(vi) 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.

1 "(vii) INTERNAL RISK MANAGEMENT
2 MODELS.—The Board may incorporate in-
3 ternal risk management models of whole-
4 sale financial holding companies into its
5 capital adequacy guidelines or rules and
6 may take account of the extent to which
7 resources of a subsidiary depository insti-
8 tution may be used to service the debt or
9 other liabilities of the wholesale financial
10 holding company.
11 "(c) NONFINANCIAL ACTIVITIES AND INVEST-
12 MENTS.—
13 "(1) GRANDFATHERED ACTIVITIES.—
14 "(A) IN GENERAL.—Notwithstanding sec-
15 tion 4(a), a company that becomes a wholesale
16 financial holding company may continue to en-
17 gage, directly or indirectly, in any activity and
18 may retain ownership and control of shares of
19 a company engaged in any activity if—
20 "(i) on the date of the enactment of
21 the Financial Services Act of 1999, such
22 wholesale financial holding company was
23 lawfully engaged in that nonfinancial activ-
24 ity, held the shares of such company, or
25 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 1999, 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)

of section 6 may engage in any activity or own any shares pursuant to this paragraph.

"(2) 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.—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

1 holding companies under this section may not
2 exceed 5 percent of the total consolidated assets
3 of the wholesale financial holding company, ex-
4 cept that the Board may increase such percent-
5 age of total consolidated assets by such
6 amounts and under such circumstances as the
7 Board considers appropriate, consistent with
8 the purposes of this Act.

9 ''(3) CROSS MARKETING RESTRICTIONS.—A
10 wholesale financial holding company shall not per-
11 mit—

12 ''(A) any company whose shares it owns or
13 controls pursuant to paragraph (1) or (2) to
14 offer or market any product or service of an af-
15 filiated wholesale financial institution; or

16 ''(B) any affiliated wholesale financial in-
17 stitution to offer or market any product or serv-
18 ice of any company whose shares are owned or
19 controlled by such wholesale financial holding
20 company pursuant to such paragraphs.

21 ''(d) QUALIFICATION OF FOREIGN BANK AS WHOLE-
22 SALE FINANCIAL HOLDING COMPANY.—

23 ''(1) IN GENERAL.—Any foreign bank, or any
24 company that owns or controls a foreign bank, that
25 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, may request a determination from the Board that such bank or company be treated as a wholesale financial holding company other than for purposes of subsection (c), subject to such conditions as the Board considers appropriate, giving due regard to the principle of national treatment and equality of competitive opportunity and the requirements imposed on domestic banks and companies.

"(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, directly or indirectly, and which engages in any activity pursuant to subsection (c) or (g) of section 6, 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 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) 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, except that such bank or company shall be subject to the restrictions of paragraphs (2)(A) and (3) of this subsection.

"(5) 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.

"(6) 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.".

SEC. 132. AUTHORIZATION TO RELEASE REPORTS.

(a) FEDERAL RESERVE ACT.—The last sentence of the eighth 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 ex-

amination 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.—The Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.) is amended—

(1) in section 1101(7) of the (12 U.S.C. 3401(7))—

(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) in section 1112(e), 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 (1) DEFINITIONS.—Section 2 of the Bank
2 Holding Company Act of 1956 (12 U.S.C. 1841) is
3 amended by inserting after subsection (p) (as added
4 by section 103(b)(1)) the following new subsections:
5 ''(q) WHOLESALE FINANCIAL INSTITUTION.—The
6 term 'wholesale financial institution' means a wholesale fi-
7 nancial institution subject to section 9B of the Federal
8 Reserve Act.
9 ''(r) COMMISSION.—The term 'Commission' means
10 the Securities and Exchange Commission.
11 ''(s) DEPOSITORY INSTITUTION.—The term 'deposi-
12 tory institution'—
13 ''(1) has the meaning given to such term in sec-
14 tion 3 of the Federal Deposit Insurance Act; and
15 ''(2) includes a wholesale financial institution.''.
16 (2) DEFINITION OF BANK INCLUDES WHOLE-
17 SALE FINANCIAL INSTITUTION.—Section 2(c)(1) of
18 the Bank Holding Company Act of 1956 (12 U.S.C.
19 1841(c)(1)) is amended by adding at the end the fol-
20 lowing new subparagraph:
21 ''(C) A wholesale financial institution.''.
22 (3) INCORPORATED DEFINITIONS.—Section
23 2(n) of the Bank Holding Company Act of 1956 (12
24 U.S.C. 1841(n)) is amended by inserting '' 'insured
25 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 subject 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 1 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.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 1 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.".

1 (b) WHOLESALE FINANCIAL INSTITUTIONS.—The
2 Federal Reserve Act (12 U.S.C. 221 et seq.) is amended
3 by inserting after section 9A the following new section:
4 **"SEC. 9B. WHOLESALE FINANCIAL INSTITUTIONS.**
5 "(a) APPLICATION FOR MEMBERSHIP AS WHOLE-
6 SALE FINANCIAL INSTITUTION.—
7 "(1) APPLICATION REQUIRED.—
8 "(A) IN GENERAL.—Any bank may apply
9 to the Board of Governors of the Federal Re-
10 serve System to become a State wholesale fi-
11 nancial institution, or to the Comptroller of the
12 Currency to become a national wholesale finan-
13 cial institution, and, as a wholesale financial in-
14 stitution, to subscribe to the stock of the Fed-
15 eral Reserve bank organized within the district
16 where the applying bank is located.
17 "(B) TREATMENT AS MEMBER BANK.—
18 Any application under subparagraph (A) shall
19 be treated as an application under, and shall be
20 subject to the provisions of, section 9.
21 "(2) INSURANCE TERMINATION.—No bank the
22 deposits of which are insured under the Federal De-
23 posit Insurance Act may become a wholesale finan-
24 cial institution unless it has met all requirements

1 under that Act for voluntary termination of deposit
2 insurance.
3 "(b) GENERAL REQUIREMENTS APPLICABLE TO
4 WHOLESALE FINANCIAL INSTITUTIONS.—
5 "(1) FEDERAL RESERVE ACT.—Except as oth-
6 erwise provided in this section, wholesale financial
7 institutions shall be member banks and shall be sub-
8 ject to the provisions of this Act that apply to mem-
9 ber banks to the same extent and in the same man-
10 ner as State member insured banks or national
11 banks, except that a wholesale financial institution
12 may terminate membership under this Act only with
13 the prior written approval of the Board and on
14 terms and conditions that the Board determines are
15 appropriate to carry out the purposes of this Act.
16 "(2) PROMPT CORRECTIVE ACTION.—A whole-
17 sale financial institution shall be deemed to be an in-
18 sured depository institution for purposes of section
19 38 of the Federal Deposit Insurance Act except
20 that—
21 "(A) the relevant capital levels and capital
22 measures for each capital category shall be the
23 levels specified by the Board for wholesale fi-
24 nancial institutions;

"(B) subject to subparagraph (A), all references to the appropriate Federal banking agency or to the Corporation in that section shall be deemed to be references to the Comptroller of the Currency, in the case of a national wholesale financial institution, and to the Board, in the case of all other wholesale financial institutions; and

"(C) in the case of wholesale financial institutions, the purpose of prompt corrective action shall be to protect taxpayers and the financial system from the risks associated with the operation and activities of wholesale financial institutions.

"(3) ENFORCEMENT AUTHORITY.—Section 3(u), subsections (j) and (k) of section 7, subsections (b) through (n), (s), (u), 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 or national banks, as the case may be, 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 or a national 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, and with the approval of—

"(A) the Board, in the case of a State-chartered wholesale financial institution; and

"(B) the Comptroller of the Currency, in the case of a national bank wholesale financial institution.

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

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

"(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.—Except as otherwise provided in section 8A(f) of the Fed-

eral Deposit Insurance Act, no deposits held by a wholesale financial institution shall be insured deposits under the Federal Deposit Insurance Act.

"(C) ADVERTISING AND DISCLOSURE.—The Board and the Comptroller of the Currency shall prescribe jointly 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.

1 "(3) ADDITIONAL REQUIREMENTS APPLICABLE
2 TO WHOLESALE FINANCIAL INSTITUTIONS.—In addi-
3 tion to any requirement otherwise applicable to State
4 member insured banks or applicable, under this sec-
5 tion, to wholesale financial institutions, the Board
6 may impose, by regulation or order, upon wholesale
7 financial institutions—
8 "(A) limitations on transactions, direct or
9 indirect, with affiliates to prevent—
10 "(i) the transfer of risk to the deposit
11 insurance funds; or
12 "(ii) an affiliate from gaining access
13 to, or the benefits of, credit from a Federal
14 Reserve bank, including overdrafts at a
15 Federal Reserve bank;
16 "(B) special clearing balance requirements;
17 and
18 "(C) any additional requirements that the
19 Board determines to be appropriate or nec-
20 essary to—
21 "(i) promote the safety and soundness
22 of the wholesale financial institution or any
23 insured depository institution affiliate of
24 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 consistent 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 IN-

1 SURED BANK.—For purposes of section 23A(d)(1) of
2 the Federal Reserve Act, a wholesale financial insti-
3 tution that is affiliated with an insured bank shall
4 not be a bank.

5 ''(6) NO EFFECT ON OTHER PROVISIONS.—This
6 section shall not be construed as limiting the
7 Board's authority over member banks or the author-
8 ity of the Comptroller of the Currency over national
9 banks under any other provision of law, or to create
10 any obligation for any Federal Reserve bank to
11 make, increase, renew, or extend any advance or dis-
12 count under this Act to any member bank or other
13 depository institution.

14 ''(d) CAPITAL AND MANAGERIAL REQUIREMENTS.—

15 ''(1) IN GENERAL.—A wholesale financial insti-
16 tution shall be well capitalized and well managed.

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

22 ''(3) AGREEMENT TO RESTORE INSTITUTION.—
23 Not later than 45 days after the date of receipt of
24 a notice under paragraph (2) (or such additional pe-
25 riod not to exceed 90 days as the Board may per-

mit), 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 not later than 180 days after the date of 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 subject to such extension of time as may be granted in the discretion of the Board, 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) RESOLUTION OF WHOLESALE FINANCIAL INSTITUTIONS.—

"(1) CONSERVATORSHIP OR RECEIVERSHIP.—

"(A) APPOINTMENT.—The Board may appoint a conservator or receiver 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 or receiver for a national bank.

"(B) POWERS.—The conservator or receiver for a wholesale financial institution shall exercise the same powers, functions, and duties, subject to the same limitations, as a conservator or receiver for a national bank.

"(2) BOARD AUTHORITY.—The Board shall have the same authority with respect to any conservator or receiver appointed under paragraph (1), and the wholesale financial institution for which it has been appointed, as the Comptroller of the Currency has with respect to a conservator or receiver

for a national bank and the national bank for which the conservator or receiver has been appointed.

"(3) BANKRUPTCY PROCEEDINGS.—The Comptroller of the Currency (in the case of a national wholesale financial institution) or the Board may direct the conservator or receiver of a wholesale financial institution to file a petition pursuant to title 11, United States Code, in which case, title 11, United States Code, shall apply to the wholesale financial institution in lieu of otherwise applicable Federal or State insolvency law.

"(f) BOARD BACKUP AUTHORITY.—

"(1) NOTICE TO THE COMPTROLLER.—Before taking any action under section 8 of the Federal Deposit Insurance Act involving a wholesale financial institution that is chartered as a national bank, the Board shall notify the Comptroller and recommend that the Comptroller take appropriate action. If the Comptroller fails to take the recommended action or to provide an acceptable plan for addressing the concerns of the Board before the close of the 30-day period beginning on the date of receipt of the formal recommendation from the Board, the Board may take such action.

"(2) EXIGENT CIRCUMSTANCES.—Notwithstanding paragraph (1), the Board may exercise its authority without regard to the time period set forth in paragraph (1) where the Board finds that exigent circumstances exist and the Board notifies the Comptroller of the Board's action and of the exigent circumstances.

"(g) 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, in the case of an insured State bank, or to the Corporation and the Comptroller of the Currency, in the case of an insured national bank authorized to operate as a wholesale financial institution, 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, in the case of an insured State bank, or the Corporation and the Comptroller of the Currency, in the case of an insured national bank authorized to operate as a wholesale financial institution, has 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).

1 "(d) INSTITUTION MUST BECOME WHOLESALE FI-
2 NANCIAL INSTITUTION OR TERMINATE DEPOSIT-TAKING
3 ACTIVITIES.—Any depository institution which voluntarily
4 terminates such institution's status as an insured deposi-
5 tory institution under this section may not, upon termi-
6 nation of insurance, accept any deposits unless the institu-
7 tion is a wholesale financial institution subject to section
8 9B of the Federal Reserve Act.
9 "(e) EXIT FEES.—
10 "(1) IN GENERAL.—Any bank that voluntarily
11 terminates such bank's status as an insured deposi-
12 tory institution under this section shall pay an exit
13 fee in an amount that the Corporation determines is
14 sufficient to account for the institution's pro rata
15 share of the amount (if any) which would be re-
16 quired to restore the relevant deposit insurance fund
17 to the fund's designated reserve ratio as of the date
18 the bank provides a written notice under subsection
19 (a)(1).
20 "(2) PROCEDURES.—The Corporation shall pre-
21 scribe, by regulation, procedures for assessing any
22 exit fee under this subsection.
23 "(f) TEMPORARY INSURANCE OF DEPOSITS INSURED
24 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".

(d) TECHNICAL AND CONFORMING AMENDMENTS TO THE BANKRUPTCY CODE.—

(1) BANKRUPTCY CODE DEBTORS.—Section 109(b)(2) of title 11, United States Code, is amended by striking "; or" and inserting the following: ", except that—

"(A) a wholesale financial institution established under section 5136B of the Revised Statutes of the United States or section 9B of the Federal Reserve Act may be a debtor if a

petition is filed at the direction of the Comptroller of the Currency (in the case of a wholesale financial institution established under section 5136B of the Revised Statutes of the United States) or the Board of Governors of the Federal Reserve System (in the case of any wholesale financial institution); and

''(B) a corporation organized under section 25A of the Federal Reserve Act may be a debtor if a petition is filed at the direction of the Board of Governors of the Federal Reserve System; or''.

(2) CHAPTER 7 DEBTORS.—Section 109(d) of title 11, United States Code, is amended to read as follows:

''(d) Only a railroad and a person that may be a debtor under chapter 7 of this title, except that a stockbroker, a wholesale financial institution established under section 5136B of the Revised Statutes of the United States or section 9B of the Federal Reserve Act, a corporation organized under section 25A of the Federal Reserve Act, or a commodity broker, may be a debtor under chapter 11 of this title.''.

(3) DEFINITION OF FINANCIAL INSTITUTION.—Section 101(22) of title 11, United States Code, is amended to read as follows:

''(22) 'financial institution' means a person that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, wholesale financial institution established under section 5136B of the Revised Statutes of the United States or section 9B of the Federal Reserve Act, or corporation organized under section 25A of the Federal Reserve Act and, when any such person is acting as agent or custodian for a customer in connection with a securities contract, as defined in section 741 of this title, such customer,''.

(4) SUBCHAPTER V OF CHAPTER 7.—

(A) IN GENERAL.—Section 103 of title 11, United States Code, is amended—

(i) by redesignating subsections (e) through (i) as subsections (f) through (j), respectively; and

(ii) by inserting after subsection (d) the following:

''(e) Subchapter V of chapter 7 of this title applies only in a case under such chapter concerning the liquidation of a wholesale financial institution established under

1 section 5136B of the Revised Statutes of the United
2 States or section 9B of the Federal Reserve Act, or a cor-
3 poration organized under section 25A of the Federal Re-
4 serve Act.''.

5 (B) WHOLESALE BANK LIQUIDATION.—
6 Chapter 7 of title 11, United States Code, is
7 amended by adding at the end the following:

8 ''SUBCHAPTER V—WHOLESALE BANK
9 LIQUIDATION

10 **''§ 781. Definitions for subchapter**

11 ''In this subchapter—

12 ''(1) the term 'Board' means the Board of Gov-
13 ernors of the Federal Reserve System;

14 ''(2) the term 'depository institution' has the
15 same meaning as in section 3 of the Federal Deposit
16 Insurance Act, and includes any wholesale bank;

17 ''(3) the term 'national wholesale financial insti-
18 tution' means a wholesale financial institution estab-
19 lished under section 5136B of the Revised Statutes
20 of the United States; and

21 ''(4) the term 'wholesale bank' means a na-
22 tional wholesale financial institution, a wholesale fi-
23 nancial institution established under section 9B of
24 the Federal Reserve Act, or a corporation organized
25 under section 25A of the Federal Reserve Act.

"§ 782. Selection of trustee

''(a) Notwithstanding any other provision of this title, the conservator or receiver who files the petition shall be the trustee under this chapter, unless the Comptroller of the Currency (in the case of a national wholesale financial institution for which it appointed the conservator or receiver) or the Board (in the case of any wholesale bank for which it appointed the conservator or receiver) designates an alternative trustee. The Comptroller of the Currency or the Board (as applicable) may designate a successor trustee, if required.

''(b) Whenever the Comptroller of the Currency or the Board appoints or designates a trustee, chapter 3 and sections 704 and 705 of this title shall apply to the Comptroller or the Board, as applicable, in the same way and to the same extent that they apply to a United States trustee.

"§ 783. Additional powers of trustee

''(a) The trustee under this subchapter has power to distribute property not of the estate, including distributions to customers that are mandated by subchapters III and Iv of this chapter.

''(b) The trustee under this subchapter may, after notice and a hearing—

''(1) sell the wholesale bank to a depository institution or consortium of depository institutions

(which consortium may agree on the allocation of the wholesale bank among the consortium);

"(2) merge the wholesale bank with a depository institution;

"(3) transfer contracts to the same extent as could a receiver for a depository institution under paragraphs (9) and (10) of section 11(e) of the Federal Deposit Insurance Act;

"(4) transfer assets or liabilities to a depository institution;

"(5) transfer assets and liabilities to a bridge bank as provided in paragraphs (1), (3)(A), (5), (6), and (9) through (13), and subparagraphs (A) through (H) and (K) of paragraph (4) of section 11(n) of the Federal Deposit Insurance Act, except that—

"(A) the bridge bank shall be treated as a wholesale bank for the purpose of this subsection; and

"(B) any references in any such provision of law to the Federal Deposit Insurance Corporation shall be construed to be references to the appointing agency and that references to deposit insurance shall be omitted.

"(c) Any reference in this section to transfers of liabilities includes a ratable transfer of liabilities within a priority class.

"§ 784. Right to be heard

"The Comptroller of the Currency (in the case of a national wholesale financial institution), the Board (in the case of any wholesale bank), or a Federal Reserve bank (in the case of a wholesale bank that is a member of that bank) may raise and may appear and be heard on any issue in a case under this subchapter.

(C) CONFORMING AMENDMENT.—The table of sections for chapter 7 of title 11, United States Code, is amended by adding at the end the following:

"SUBCHAPTER V—WHOLESALE BANK LIQUIDATION

"781. Definitions for subchapter.
"782. Selection of trustee.
"783. Additional powers of trustee.
"784. Right to be heard.".

(e) RESOLUTION OF EDGE CORPORATIONS.—The sixteenth undesignated paragraph of section 25A of the Federal Reserve Act (12 U.S.C. 624) is amended to read as follows:

"(16) APPOINTMENT OF RECEIVER OR CONSERVATOR.—

"(A) IN GENERAL.—The Board may appoint a conservator or receiver for a corporation

organized under the provisions of this section to the same extent and in the same manner as the Comptroller of the Currency may appoint a conservator or receiver for a national bank, and the conservator or receiver for such corporation shall exercise the same powers, functions, and duties, subject to the same limitations, as a conservator or receiver for a national bank.

"(B) EQUIVALENT AUTHORITY.—The Board shall have the same authority with respect to any conservator or receiver appointed for a corporation organized under the provisions of this section under this paragraph and any such corporation as the Comptroller of the Currency has with respect to a conservator or receiver of a national bank and the national bank for which a conservator or receiver has been appointed.

"(C) TITLE 11 PETITIONS.—The Board may direct the conservator or receiver of a corporation organized under the provisions of this section to file a petition pursuant to title 11, United States Code, in which case, title 11, United States Code, shall apply to the corpora-

tion in lieu of otherwise applicable Federal or State insolvency law.''.

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 first 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 Com-

pany 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 AMENDMENTS.—

(1) BANKS.—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 the following: ", except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) is subject to section 6 of the Bank Holding Company Act of 1956; and (B) does not require agency approval under section 3 of the Bank Holding Company Act of 1956".

(2) BANK HOLDING COMPANIES.—Section 7A(c)(8) of the Clayton Act (15 U.S.C. 18a(c)(8)) is amended by inserting before the semicolon at the end the following: ", except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) is subject to section 6 of the Bank Holding Company Act of 1956; and (B) does not require agency approval under section 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.

(c) SUNSET.—This section shall not apply after the end of the 5-year period beginning on the date of the enactment of this Act.

Subtitle F—National Treatment

SEC. 151. 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)(D) or 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 the enactment of the Financial Services Act of 1999, 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 114 of the Financial Services Act.''.

SEC. 152. 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 insur-

ance 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.''.

SEC. 153. REPRESENTATIVE OFFICES.

(a) DEFINITION OF ''REPRESENTATIVE OFFICE''.—Section 1(b)(15) of the International Banking Act of 1978 (12 U.S.C. 3101(15)) is amended by striking ''State agency, or subsidiary of a foreign bank'' and inserting ''or State agency''.

(b) EXAMINATIONS.—Section 10(c) of the International Banking Act of 1978 (12 U.S.C. 3107(c)) is amended by adding at the end the following: ''The Board may also make examinations of any affiliate of a foreign bank conducting business in any State if the Board deems it necessary to determine and enforce compliance with this Act, the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or other applicable Federal banking law.''.

SEC. 154. RECIPROCITY.

(a) NATIONAL TREATMENT REPORTS.—

(1) REPORT REQUIRED IN THE EVENT OF CERTAIN ACQUISITIONS.—

(A) IN GENERAL.—Whenever a person from a foreign country announces its intention to acquire or acquires a bank, a securities un-

1 derwriter, broker, or dealer, an investment ad-
2 viser, or insurance company that ranks within
3 the top 50 firms in that line of business in the
4 United States, the Secretary of Commerce, in
5 the case of an insurance company, or the Sec-
6 retary of the Treasury, in the case of a bank,
7 a securities underwriter, broker, or dealer, or
8 an investment adviser, shall, within the earlier
9 of 6 months of such announcement or such ac-
10 quisition and in consultation with other appro-
11 priate Federal and State agencies, prepare and
12 submit to the Congress a report on whether a
13 United States person would be able, de facto or
14 de jure, to acquire an equivalent sized firm in
15 the country in which such person from a foreign
16 country is located.

17 (B) ANALYSIS AND RECOMMENDATIONS.—
18 If a report submitted under subparagraph (A)
19 states that the equivalent treatment referred to
20 in such subparagraph, de facto and de jure, is
21 not provided in the country which is the subject
22 of the report, the Secretary of Commerce or the
23 Secretary of the Treasury, as the case may be
24 and in consultation with other appropriate Fed-
25 eral and State agencies, shall include in the re-

port analysis and recommendations as to how that country's laws and regulations would need to be changed so that reciprocal treatment would exist.

(2) REPORT REQUIRED BEFORE FINANCIAL SERVICES NEGOTIATIONS COMMENCE.—The Secretary of Commerce, with respect to insurance companies, and the Secretary of the Treasury, with respect to banks, securities underwriters, brokers, dealers, and investment advisers, shall, not less than 6 months before the commencement of the financial services negotiations of the World Trade Organization and in consultation with other appropriate Federal and State agencies, prepare and submit to the Congress a report containing—

(A) an assessment of the 30 largest financial services markets with regard to whether reciprocal access is available in such markets to United States financial services providers; and

(B) with respect to any such financial services markets in which reciprocal access is not available to United States financial services providers, an analysis and recommendations as to what legislative, regulatory, or enforcement

changes would be required to ensure full reciprocity for such providers.

(3) PERSON OF A FOREIGN COUNTRY DEFINED.—For purposes of this subsection, the term ''person of a foreign country'' means a person, or a person which directly or indirectly owns or controls that person, that is a resident of that country, is organized under the laws of that country, or has its principal place of business in that country.

(b) PROVISIONS APPLICABLE TO SUBMISSIONS.—

(1) NOTICE.—Before preparing any report required under subsection (a), the Secretary of Commerce or the Secretary of the Treasury, as the case may be, shall publish notice that a report is in preparation and seek comment from United States persons.

(2) PRIVILEGED SUBMISSIONS.—Upon the request of the submitting person, any comments or related communications received by the Secretary of Commerce or the Secretary of the Treasury, as the case may be, with regard to the report shall, for the purposes of section 552 of title 5, of the United States Code, be treated as commercial information obtained from a person that is privileged or confidential, regardless of the medium in which the in-

formation is obtained. This confidential information shall be the property of the Secretary and shall be privileged from disclosure to any other person. However, this privilege shall not be construed as preventing access to that confidential information by the Congress.

(3) PROHIBITION OF UNAUTHORIZED DISCLOSURES.—No person in possession of confidential information, provided under this section may disclose that information, in whole or in part, except for disclosure made in published statistical material that does not disclose, either directly or when used in conjunction with publicly available information, the confidential information of any person.

Subtitle G—Federal Home Loan Bank System Modernization

SEC. 161. SHORT TITLE.

This subtitle may be cited as the ''Federal Home Loan Bank System Modernization Act of 1999''.

SEC. 162. DEFINITIONS.

Section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422) is amended—

(1) in paragraph (1), by striking ''term 'Board' means'' and inserting ''terms 'Finance Board' and 'Board' mean'';

(2) by striking paragraph (3) and inserting the following:

"(3) STATE.—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."; and

(3) by adding at the end the following new paragraph:

"(13) COMMUNITY FINANCIAL INSTITUTION.—

"(A) IN GENERAL.—The term 'community financial institution' means a member—

"(i) the deposits of which are insured under the Federal Deposit Insurance Act; and

"(ii) that has, as of the date of the transaction at issue, less than $500,000,000 in average total assets, based on an average of total assets over the 3 years preceding that date.

"(B) ADJUSTMENTS.—The $500,000,000 limit referred to in subparagraph (A)(ii) shall be adjusted annually by the Finance Board, based on the annual percentage increase, if any, in the Consumer Price Index for all urban con-

sumers, as published by the Department of Labor.''.

SEC. 163. SAVINGS ASSOCIATION MEMBERSHIP.

Section 5(f) of the Home Owners' Loan Act (12 U.S.C. 1464(f)) is amended to read as follows:

''(f) FEDERAL HOME LOAN BANK MEMBERSHIP.—On and after January 1, 1999, 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.''.

SEC. 164. ADVANCES TO MEMBERS; COLLATERAL.

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

(1) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively, and indenting appropriately;

(2) by striking ''(a) Each'' and inserting the following:

''(a) IN GENERAL.—

''(1) ALL ADVANCES.—Each'';

(3) by striking the second sentence and inserting the following:

''(2) PURPOSES OF ADVANCES.—A long-term advance may only be made for the purposes of—

"(A) providing funds to any member for residential housing finance; and

"(B) providing funds to any community financial institution for small business, agricultural, rural development, or low-income community development lending.";

(4) by striking "A Bank" and inserting the following:

"(3) COLLATERAL.—A Bank";

(5) in paragraph (3) (as so designated by paragraph (4) of this subsection)—

(A) in subparagraph (C) (as so redesignated by paragraph (1) of this subsection) by striking "Deposits" and inserting "Cash or deposits";

(B) in subparagraph (D) (as so redesignated by paragraph (1) of this subsection), by striking the second sentence; and

(C) by inserting after subparagraph (D) (as so redesignated by paragraph (1) of this subsection) the following new subparagraph:

"(E) Secured loans for small business, agriculture, rural development, or low-income community development, or securities representing a whole interest in such secured

loans, in the case of any community financial institution.";

(6) in paragraph (5)—

(A) in the second sentence, by striking "and the Board";

(B) in the third sentence, by striking "Board" and inserting "Federal home loan bank"; and

(C) by striking "(5) Paragraphs (1) through (4)" and inserting the following:

"(4) ADDITIONAL BANK AUTHORITY.—Subparagraphs (A) through (E) of paragraph (3)"; and

(7) by adding at the end the following:

"(5) REVIEW OF CERTAIN COLLATERAL STANDARDS.—The Board may review the collateral standards applicable to each Federal home loan bank for the classes of collateral described in subparagraphs (D) and (E) of paragraph (3), and may, if necessary for safety and soundness purposes, require an increase in the collateral standards for any or all of those classes of collateral.

"(6) DEFINITIONS.—For purposes of this subsection, the terms 'small business', 'agriculture', 'rural development', and 'low-income community de-

velopment' shall have the meanings given those terms by rule or regulation of the Finance Board.''.

(b) CLERICAL AMENDMENT.—The section heading for section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430) is amended to read as follows:

''SEC. 10. ADVANCES TO MEMBERS.''.

(c) CONFORMING AMENDMENTS RELATING TO MEMBERS WHICH ARE NOT QUALIFIED THRIFT LENDERS—The first of the 2 subsections designated as subsection (e) of section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430(e)(1)) is amended—

(1) in the last sentence of paragraph (1), by inserting ''or, in the case of any community financial institution, for the purposes described in subsection (a)(2)'' before the period; and

(2) in paragraph (5)(C), by inserting ''except that, in determining the actual thrift investment percentage of any community financial institution for purposes of this subsection, the total investment of such member in loans for small business, agriculture, rural development, or low-income community development, or securities representing a whole interest in such loans, shall be treated as a qualified thrift investment (as defined in such section 10(m))'' before the period.

SEC. 165. ELIGIBILITY CRITERIA.

Section 4(a) of the Federal Home Loan Bank Act (12 U.S.C. 1424(a)) is amended—

(1) in paragraph (2)(A), by inserting, ''(other than a community financial institution)'' after ''institution''; and

(2) by adding at the end the following new paragraph:

''(3) LIMITED EXEMPTION FOR COMMUNITY FINANCIAL INSTITUTIONS.—A community financial institution that otherwise meets the requirements of paragraph (2) may become a member without regard to the percentage of its total assets that is represented by residential mortgage loans, as described in subparagraph (A) of paragraph (2).''.

SEC. 166. MANAGEMENT OF BANKS.

(a) BOARD OF DIRECTORS.—Section 7(d) of the Federal Home Loan Bank Act (12 U.S.C. 1427(d)) is amended—

(1) by striking ''(d) The term'' and inserting the following:

''(d) TERMS OF OFFICE.—The term''; and

(2) by striking ''shall be two years''.

(b) COMPENSATION.—Section 7(i) of the Federal Home Loan Bank Act (12 U.S.C. 1427(i)) is amended by striking '', subject to the approval of the board''.

(c) 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).

(d) SECTION 12.—Section 12 of the Federal Home Loan Bank Act (12 U.S.C. 1432) is amended—

(1) in subsection (a)—

(A) by striking ", but, except" and all that follows through "ten years";

(B) by striking "subject to the approval of the Board" the first place that term appears;

(C) by striking "and, by its Board of directors," and all that follows through "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 laws and regulations, as administered by the Finance Board. No officer, employee, attorney, or agent of a Federal home loan bank"; and

(D) by striking "Board of directors" where such term appears in the penultimate sentence and inserting "board of directors"; and

(2) in subsection (b), by striking ''loans banks'' and inserting ''loan banks''.

(e) POWERS AND DUTIES OF FEDERAL HOUSING FINANCE BOARD.—

(1) ISSUANCE OF NOTICES OF VIOLATIONS.—Section 2B(a) of the Federal Home Loan Bank Act (12 U.S.C. 1422b(a)) is amended by adding at the end the following new paragraphs:

''(5) To issue and serve a notice of charges upon a Federal home loan bank or upon any executive officer or director of a Federal home loan bank if, in the determination of the Finance Board, the bank, executive officer, or director is engaging or has engaged in, or the Finance Board has reasonable cause to believe that the bank, executive officer, or director is about to engage in, any conduct that violates any provision of this Act or any law, order, rule, or regulation or any condition imposed in writing by the Finance Board in connection with the granting of any application or other request by the bank, or any written agreement entered into by the bank with the agency, in accordance with the procedures provided in section 1371(c) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992. Such authority includes the same

1 authority to take affirmative action to correct condi-
2 tions resulting from violations or practices or to
3 limit activities of a bank or any executive officer or
4 director of a bank as appropriate Federal banking
5 agencies have to take with respect to insured deposi-
6 tory institutions under paragraphs (6) and (7) of
7 section 8(b) of the Federal Deposit Insurance Act,
8 and to have all other powers, rights, and duties to
9 enforce this Act with respect to the Federal home
10 loan banks and their executive officers and directors
11 as the Office of Federal Housing Enterprise Over-
12 sight has to enforce the Federal Housing Enter-
13 prises Financial Safety and Soundness Act of 1992,
14 the Federal National Mortgage Association Charter
15 Act, or the Federal Home Loan Mortgage Corpora-
16 tion Act with respect to the Federal housing enter-
17 prises under the Federal Housing Enterprises Fi-
18 nancial Safety and Soundness Act of 1992.

19 ''(6) To address any insufficiencies in capital
20 levels resulting from the application of section 5(f)
21 of the Home Owners' Loan Act.

22 ''(7) To sue and be sued, by and through its
23 own attorneys.''.

24 (2) TECHNICAL AMENDMENT.—Section 111 of
25 Public Law 93–495 (12 U.S.C. 250) is amended by

striking ''Federal Home Loan Bank Board,'' and inserting ''Director of the Office of Thrift Supervision, ''the Federal Housing Finance Board,''.

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

(A) in subsection (c)—

(i) in the first sentence, by striking ''Board'' and inserting ''Federal home loan bank''; and

(ii) by striking the second sentence;

(B) in subsection (d)—

(i) in the first sentence, by striking ''and the approval of the Board''; and

(ii) by striking ''Subject to the approval of the Board, any'' and inserting ''Any''; and

(C) in subsection (j)(1)—

(i) by striking ''to subsidize the interest rate on advances'' and inserting ''to provide subsidies, including subsidized interest rates on advances'';

(ii) by striking ''Pursuant'' and inserting the following:

''(A) ESTABLISHMENT.—Pursuant''; and

(iii) by adding at the end the following new subparagraph:

''(B) NONDELEGATION OF APPROVAL AUTHORITY.—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.''.

(g) SECTION 16.—Section 16(a) of the Federal Home Loan Bank Act (12 U.S.C. 1436(a)) is amended—

(1) in the third sentence—

(A) by striking ''net earnings'' and inserting ''previously retained earnings or current net earnings''; and

(B) by striking ", and then only with the approval of the Federal Housing Finance Board"; and

(2) by striking the fourth sentence.

(h) SECTION 18.—Section 18(b) of the Federal Home Loan Bank Act (12 U.S.C. 1438(b)) is amended by striking paragraph (4).

SEC. 167. 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.—

"(i) IN GENERAL.—To the extent that 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 in each calendar year, 20.75 percent of the net earnings of that bank (after deducting expenses relating to section 10(j) and operating expenses).

"(ii) ANNUAL DETERMINATION.—The Board annually shall determine the extent

to which the value of the aggregate amounts paid by the Federal home loan banks exceeds or falls short of the value of an annuity of $300,000,000 per year that commences on the issuance date and ends on the final scheduled maturity date of the obligations, and shall select appropriate present value factors for making such determinations.

"(iii) PAYMENT TERM ALTERATIONS.—The Board shall extend or shorten the term of the payment obligations of a Federal home loan bank under this subparagraph as necessary to ensure that the value of all payments made by the banks is equivalent to the value of an annuity referred to in clause (ii).

"(iv) TERM BEYOND MATURITY.—If the Board extends the term of payments beyond the final scheduled maturity date for the obligations, each Federal home loan bank shall continue to pay 20.75 percent of its net earnings (after deducting expenses relating to section 10(j) and operating expenses) to the Treasury of the

United States until the value of all such payments by the Federal home loan banks is equivalent to the value of an annuity referred to in clause (ii). In the final year in which the Federal home loan banks are required to make any payment to the Treasury under this subparagraph, if the dollar amount represented by 20.75 percent of the net earnings of the Federal home loan banks exceeds the remaining obligation of the banks to the Treasury, the Finance Board shall reduce the percentage pro rata to a level sufficient to pay the remaining obligation.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective on January 1, 1999. Payments made by a Federal home loan bank before that effective date shall be counted toward the total obligation of that bank under section 21B(f)(2)(C) of the Federal Home Loan Bank Act, as amended by this section.

SEC. 168. CAPITAL STRUCTURE OF FEDERAL HOME LOAN BANKS.

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) REGULATIONS.—

"(1) CAPITAL STANDARDS.—Not later than 1 year after the date of the enactment of the Financial Services Act of 1999, the Finance Board shall issue regulations prescribing uniform capital standards applicable to each Federal home loan bank, which shall require each such bank to meet—

"(A) the leverage requirement specified in paragraph (2); and

"(B) the risk-based capital requirements, in accordance with paragraph (3).

"(2) LEVERAGE REQUIREMENT.—

"(A) IN GENERAL.—The leverage requirement shall require each Federal home loan bank to maintain a minimum amount of total capital based on the aggregate on-balance sheet assets of the bank and shall be 5 percent.

"(B) TREATMENT OF STOCK AND RETAINED EARNINGS.—In determining compliance with the minimum leverage ratio established under subparagraph (A), the paid-in value of the outstanding Class B stock shall be multiplied by 1.5, the paid-in value of the outstanding Class C stock and the amount of re-

tained earnings shall be multiplied by 2.0, and such higher amounts shall be deemed to be capital for purposes of meeting the 5 percent minimum leverage ratio.

"(3) RISK-BASED CAPITAL STANDARDS.—

"(A) IN GENERAL.—Each Federal home loan bank shall maintain permanent capital in an amount that is sufficient, as determined in accordance with the regulations of the Finance Board, to meet—

"(i) the credit risk to which the Federal home loan bank is subject; and

"(ii) the market risk, including interest rate risk, to which the Federal home loan bank is subject, based on a stress test established by the Finance Board that rigorously tests for changes in market variables, including changes in interest rates, rate volatility, and changes in the shape of the yield curve.

"(B) CONSIDERATION OF OTHER RISK-BASED STANDARDS.—In establishing the risk-based standard under subparagraph (A)(ii), the Finance Board shall take due consideration of any risk-based capital test established pursuant

to section 1361 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4611) for the enterprises (as defined in that Act), with such modifications as the Finance Board determines to be appropriate to reflect differences in operations between the Federal home loan banks and those enterprises.

"(4) OTHER REGULATORY REQUIREMENTS.—The regulations issued by the Finance Board under paragraph (1) shall—

"(A) permit each Federal home loan bank to issue, with such rights, terms, and preferences, not inconsistent with this Act and the regulations issued hereunder, as the board of directors of that bank may approve, any one or more of—

"(i) Class A stock, which shall be redeemable in cash and at par 6 months following submission by a member of a written notice of its intent to redeem such shares;

"(ii) Class B stock, which shall be redeemable in cash and at par 5 years following submission by a member of a writ-

ten notice of its intent to redeem such shares; and

"(iii) Class C stock, which shall be nonredeemable;

"(B) provide that the stock of a Federal home loan bank may be issued to and held by only members of the bank, and that a bank may not issue any stock other than as provided in this section;

"(C) prescribe the manner in which stock of a Federal home loan bank may be sold, transferred, redeemed, or repurchased; and

"(D) provide the manner of disposition of outstanding stock held by, and the liquidation of any claims of the Federal home loan bank against, an institution that ceases to be a member of the bank, through merger or otherwise, or that provides notice of intention to withdraw from membership in the bank.

"(5) DEFINITIONS OF CAPITAL.—For purposes of determining compliance with the capital standards established under this subsection—

"(A) permanent capital of a Federal home loan bank shall include (as determined in ac-

cordance with generally accepted accounting principles)—

"(i) the amounts paid for the Class C stock and any other nonredeemable stock approved by the Finance Board;

"(ii) the amounts paid for the Class B stock, in an amount not to exceed 1 percent of the total assets of the bank; and

"(iii) the retained earnings of the bank; and

"(B) total capital of a Federal home loan bank shall include—

"(i) permanent capital;

"(ii) the amounts paid for the Class A stock, Class B stock (excluding any amount treated as permanent capital under subparagraph (5)(A)(ii)), or any other class of redeemable stock approved by the Finance Board;

"(iii) consistent with generally accepted accounting principles, and subject to the regulation of the Finance Board, a general allowance for losses, which may not include any reserves or allowances made or held against specific assets; and

"(iv) any other amounts from sources available to absorb losses incurred by the bank that the Finance Board determines by regulation to be appropriate to include in determining total capital.

"(6) TRANSITION PERIOD.—Notwithstanding any other provisions of this Act, the requirements relating to purchase and retention of capital stock of a Federal home loan bank by any member thereof in effect on the day before the date of the enactment of the Federal Home Loan Bank System Modernization Act of 1999, shall continue in effect with respect to each Federal home loan bank until the regulations required by this subsection have taken effect and the capital structure plan required by subsection (b) has been approved by the Finance Board and implemented by such bank.

"(b) CAPITAL STRUCTURE PLAN.—

"(1) APPROVAL OF PLANS.—Not later than 270 days after the date of publication by the Finance Board of final regulations in accordance with subsection (a), 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 that—

"(A) the board of directors determines is best suited for the condition and operation of the bank and the interests of the members of the bank;

"(B) meets the requirements of subsection (c); and

"(C) meets the minimum capital standards and requirements established under subsection (a) and other regulations prescribed by the Finance Board.

"(2) APPROVAL OF MODIFICATIONS.—The board of directors of a Federal home loan bank shall submit to the Finance Board for approval any modifications that the bank proposes to make to an approved capital structure plan.

"(c) CONTENTS OF PLAN.—The capital structure plan of each Federal home loan bank shall contain provisions addressing each of the following:

"(1) MINIMUM INVESTMENT.—

"(A) IN GENERAL.—Each capital structure plan of a Federal home loan bank shall require each member of the bank to maintain a minimum investment in the stock of the bank, the amount of which shall be determined in a manner to be prescribed by the board of directors

of each bank and to be included as part of the plan.

"(B) INVESTMENT ALTERNATIVES.—

"(i) IN GENERAL.—In establishing the minimum investment required for each member under subparagraph (A), a Federal home loan bank may, in its discretion, include any one or more of the requirements referred to in clause (ii), or any other provisions approved by the Finance Board.

"(ii) AUTHORIZED REQUIREMENTS.—A requirement is referred to in this clause if it is a requirement for—

"(I) a stock purchase based on a percentage of the total assets of a member; or

"(II) a stock purchase based on a percentage of the outstanding advances from the bank to the member.

"(C) MINIMUM AMOUNT.—Each capital structure plan of a Federal home loan bank shall require that the minimum stock investment established for members shall be set at a level that is sufficient for the bank to meet the

minimum capital requirements established by the Finance Board under subsection (a).

"(D) ADJUSTMENTS TO MINIMUM REQUIRED INVESTMENT.—The capital structure plan of each Federal home loan bank shall impose a continuing obligation on the board of directors of the bank to review and adjust the minimum investment required of each member of that bank, as necessary to ensure that the bank remains in compliance with applicable minimum capital levels established by the Finance Board, and shall require each member to comply promptly with any adjustments to the required minimum investment.

"(2) TRANSITION RULE.—

"(A) IN GENERAL.—The capital structure plan of each Federal home loan bank shall specify the date on which it shall take effect, and may provide for a transition period of not longer than 3 years to allow the bank to come into compliance with the capital requirements prescribed under subsection (a), and to allow any institution that was a member of the bank on the date of the enactment of the Financial Services Act of 1999, to come into compliance

with the minimum investment required pursuant to the plan.

"(B) INTERIM PURCHASE REQUIREMENTS.—The capital structure plan of a Federal home loan bank may allow any member referred to in subparagraph (A) that would be required by the terms of the capital structure plan to increase its investment in the stock of the bank to do so in periodic installments during the transition period.

"(3) DISPOSITION OF SHARES.—The capital structure plan of a Federal home loan bank shall provide for the manner of disposition of any stock held by a member of that bank that terminates its membership or that provides notice of its intention to withdraw from membership in that bank.

"(4) CLASSES OF STOCK.—

"(A) IN GENERAL.—The capital structure plan of a Federal home loan bank shall afford each member of that bank the option of maintaining its required investment in the bank through the purchase of any combination of classes of stock authorized by the board of directors of the bank and approved by the Finance Board in accordance with its regulations.

"(B) RIGHTS REQUIREMENT.—A Federal home loan bank shall include in its capital structure plan provisions establishing terms, rights, and preferences, including minimum investment, dividends, voting, and liquidation preferences of each class of stock issued by the bank, consistent with Finance Board regulations and market requirements.

"(C) REDUCED MINIMUM INVESTMENT.—The capital structure plan of a Federal home loan bank may provide for a reduced minimum stock investment for any member of that bank that elects to purchase Class B, Class C, or any other class of nonredeemable stock, in a manner that is consistent with meeting the minimum capital requirements of the bank, as established by the Finance Board.

"(D) LIQUIDATION OF CLAIMS.—The capital structure plan of a Federal home loan bank shall provide for the liquidation in an orderly manner, as determined by the bank, of any claim of that bank against a member, including claims for any applicable prepayment fees or penalties resulting from prepayment of advances prior to stated maturity.

"(5) LIMITED TRANSFERABILITY OF STOCK.—The capital structure plan of a Federal home loan bank shall—

"(A) provide that—

"(i) any stock issued by that bank shall be available only to, held only by, and tradable only among members of that bank and between that bank and its members; and

"(ii) a bank has no obligation to repurchase its outstanding Class C stock but may do so, provided it is consistent with Finance Board regulations and is at a price that is mutually agreeable to the bank and the member; and

"(B) establish standards, criteria, and requirements for the issuance, purchase, transfer, retirement, and redemption of stock issued by that bank.

"(6) BANK REVIEW OF PLAN.—Before filing a capital structure plan with the Finance Board, each Federal home loan bank shall conduct a review of the plan by—

"(A) an independent certified public accountant, to ensure, to the extent possible, that

implementation of the plan would not result in any write-down of the redeemable bank stock investment of its members; and

"(B) at least one major credit rating agency, to determine, to the extent possible, whether implementation of the plan would have any material effect on the credit ratings of the bank.

"(d) TERMINATION OF MEMBERSHIP.—

"(1) VOLUNTARY WITHDRAWAL.—Any member may withdraw from a Federal home loan bank by providing written notice to the bank of its intent to do so. The applicable stock redemption notice periods shall commence upon receipt of the notice by the bank. Upon the expiration of the applicable notice period for each class of redeemable stock, the member may surrender such stock to the bank, and shall be entitled to receive in cash the par value of the stock. During the applicable notice periods, the member shall be entitled to dividends and other membership rights commensurate with continuing stock ownership.

"(2) INVOLUNTARY WITHDRAWAL.—

"(A) IN GENERAL.—The board of directors of a Federal home loan bank may terminate the

membership of any institution if, subject to Finance Board regulations, it determines that—

"(i) the member has failed to comply with a provision of this Act or any regulation prescribed under this Act; or

"(ii) the member 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 the member.

"(B) STOCK DISPOSITION.—An institution, the membership of which is terminated in accordance with subparagraph (A)—

"(i) shall surrender redeemable stock to the Federal home loan bank, and shall receive in cash the par value of the stock, upon the expiration of the applicable notice period under subsection (a)(4)(A);

"(ii) shall receive any dividends declared on its redeemable stock, during the applicable notice period under subsection (a)(4)(A); and

"(iii) shall not be entitled to any other rights or privileges accorded to members after the date of the termination.

"(C) COMMENCEMENT OF NOTICE PERIOD.—With respect to an institution, the membership of which is terminated in accordance with subparagraph (A), the applicable notice period under subsection (a)(4) for each class of redeemable stock shall commence on the earlier of—

"(i) the date of such termination; or

"(ii) the date on which the member has provided notice of its intent to redeem such stock.

"(3) LIQUIDATION OF INDEBTEDNESS.—Upon the termination of the membership of an institution for any reason, the outstanding indebtedness of the member to the bank shall be liquidated in an orderly manner, as determined by the bank and, upon the extinguishment of all such indebtedness, the bank shall return to the member all collateral pledged to secure the indebtedness.

"(e) REDEMPTION OF EXCESS STOCK.—

"(1) IN GENERAL.—A Federal home loan bank, in its sole discretion, may redeem or repurchase, as

appropriate, any shares of Class A or Class B stock issued by the bank and held by a member that are in excess of the minimum stock investment required of that member.

"(2) EXCESS STOCK.—Shares of stock held by a member shall not be deemed to be 'excess stock' for purposes of this subsection by virtue of a member's submission of a notice of intent to withdraw from membership or termination of its membership in any other manner.

"(3) PRIORITY.—A Federal home loan bank may not redeem any excess Class B stock prior to the end of the 5-year notice period, unless the member has no Class A stock outstanding that could be redeemed as excess.

"(f) IMPAIRMENT OF CAPITAL.—If the Finance Board or the board of directors of a Federal home loan bank determines that the bank has incurred or is likely to incur losses that result in or are expected to result in charges against the capital of the bank, the bank shall not redeem or repurchase any stock of the bank without the prior approval of the Finance Board while such charges are continuing or are expected to continue. In no case may a bank redeem or repurchase any applicable cap-

1 ital stock if, following the redemption, the bank would fail
2 to satisfy any minimum capital requirement.

3 "(g) REJOINING AFTER DIVESTITURE OF ALL
4 SHARES.—

5 "(1) IN GENERAL.—Except as provided in para-
6 graph (2), and notwithstanding any other provision
7 of this Act, an institution that divests all shares of
8 stock in a Federal home loan bank may not, after
9 such divestiture, acquire shares of any Federal home
10 loan bank before the end of the 5-year period begin-
11 ning on the date of the completion of such divesti-
12 ture, unless the divestiture is a consequence of a
13 transfer of membership on an uninterrupted basis
14 between banks.

15 "(2) EXCEPTION FOR WITHDRAWALS FROM
16 MEMBERSHIP BEFORE 1998.—Any institution that
17 withdrew from membership in any Federal home
18 loan bank before December 31, 1997, may acquire
19 shares of a Federal home loan bank at any time
20 after that date, subject to the approval of the Fi-
21 nance Board and the requirements of this Act.

22 "(h) TREATMENT OF RETAINED EARNINGS.—

23 "(1) IN GENERAL.—The holders of the Class C
24 stock of a Federal home loan bank, and any other
25 classes of nonredeemable stock approved by the Fi-

nance Board (to the extent provided in the terms thereof), shall own the retained earnings, surplus, undivided profits, and equity reserves, if any, of the bank.

"(2) NO NONREDEEMABLE CLASSES OF STOCK.—If a Federal home loan bank has no outstanding Class C or other such nonredeemable stock, then the holders of any other classes of stock of the bank then outstanding shall have ownership in, and a private property right in, the retained earnings, surplus, undivided profits, and equity reserves, if any, of the bank.

"(3) EXCEPTION.—Except as specifically provided in this section or through the declaration of a dividend or a capital distribution by a Federal home loan bank, or in the event of liquidation of the bank, a member shall have no right to withdraw or otherwise receive distribution of any portion of the retained earnings of the bank.

"(4) LIMITATION.—A Federal home loan bank may not make any distribution of its retained earnings unless, following such distribution, the bank would continue to meet all applicable capital requirements.".

Subtitle H—ATM Fee Reform

SEC. 171. SHORT TITLE.

This subtitle may be cited as the ''ATM Fee Reform Act of 1999''.

SEC. 172. ELECTRONIC FUND TRANSFER FEE DISCLOSURES AT ANY HOST ATM.

Section 904(d) of the Electronic Fund Transfer Act (15 U.S.C. 1693b(d)) is amended by adding at the end the following new paragraph:

''(3) FEE DISCLOSURES AT AUTOMATED TELLER MACHINES.—

''(A) IN GENERAL.—The regulations prescribed under paragraph (1) shall require any automated teller machine operator who imposes a fee on any consumer for providing host transfer services to such consumer to provide notice in accordance with subparagraph (B) to the consumer (at the time the service is provided) of—

''(i) the fact that a fee is imposed by such operator for providing the service; and

''(ii) the amount of any such fee.

''(B) NOTICE REQUIREMENTS.—

"(i) ON THE MACHINE.—The notice required under clause (i) of subparagraph (A) with respect to any fee described in such subparagraph shall be posted in a prominent and conspicuous location on or at the automated teller machine at which the electronic fund transfer is initiated by the consumer; and

"(ii) ON THE SCREEN.—The notice required under clauses (i) and (ii) of subparagraph (A) with respect to any fee described in such subparagraph shall appear on the screen of the automated teller machine, or on a paper notice issued from such machine, after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction.

"(C) PROHIBITION ON FEES NOT PROPERLY DISCLOSED AND EXPLICITLY ASSUMED BY CONSUMER.—No fee may be imposed by any automated teller machine operator in connection with any electronic fund transfer initiated by a consumer for which a notice is required under subparagraph (A), unless—

"(i) the consumer receives such notice in accordance with subparagraph (B); and

"(ii) the consumer elects to continue in the manner necessary to effect the transaction after receiving such notice.

"(D) DEFINITIONS.—For purposes of this paragraph, the following definitions shall apply:

"(i) ELECTRONIC FUND TRANSFER.—The term 'electronic fund transfer' includes a transaction which involves a balance inquiry initiated by a consumer in the same manner as an electronic fund transfer, whether or not the consumer initiates a transfer of funds in the course of the transaction.

"(ii) AUTOMATED TELLER MACHINE OPERATOR.—The term 'automated teller machine operator' means any person who—

"(I) operates an automated teller machine at which consumers initiate electronic fund transfers; and

"(II) is not the financial institution which holds the account of such

consumer from which the transfer is made.

"(iii) HOST TRANSFER SERVICES.—The term 'host transfer services' means any electronic fund transfer made by an automated teller machine operator in connection with a transaction initiated by a consumer at an automated teller machine operated by such operator.".

SEC. 173. DISCLOSURE OF POSSIBLE FEES TO CONSUMERS WHEN ATM CARD IS ISSUED.

Section 905(a) of the Electronic Fund Transfer Act (15 U.S.C. 1693c(a)) is amended—

(1) by striking "and" at the end of paragraph (8);

(2) by striking the period at the end of paragraph (9) and inserting "; and"; and

(3) by inserting after paragraph (9) the following new paragraph:

"(10) a notice to the consumer that a fee may be imposed by—

"(A) an automated teller machine operator (as defined in section 904(d)(3)(D)(ii)) if the consumer initiates a transfer from an automated teller machine which is not operated by

the person issuing the card or other means of access; and

"(B) any national, regional, or local network utilized to effect the transaction.".

SEC. 174. FEASIBILITY STUDY.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the feasibility of requiring, in connection with any electronic fund transfer initiated by a consumer through the use of an automated teller machine—

(1) a notice to be provided to the consumer before the consumer is irrevocably committed to completing the transaction, which clearly states the amount of any fee which will be imposed upon the consummation of the transaction by—

(A) any automated teller machine operator (as defined in section 904(d)(3)(D)(ii) of the Electronic Fund Transfer Act) involved in the transaction;

(B) the financial institution holding the account of the consumer;

(C) any national, regional, or local network utilized to effect the transaction; and

(D) any other party involved in the transfer; and

(2) the consumer to elect to consummate the transaction after receiving the notice described in paragraph (1).

(b) FACTORS TO BE CONSIDERED.—In conducting the study required under subsection (a) with regard to the notice requirement described in such subsection, the Comptroller General shall consider the following factors:

(1) The availability of appropriate technology.

(2) Implementation and operating costs.

(3) The competitive impact any such notice requirement would have on various sizes and types of institutions, if implemented.

(4) The period of time which would be reasonable for implementing any such notice requirement.

(5) The extent to which consumers would benefit from any such notice requirement.

(6) Any other factor the Comptroller General determines to be appropriate in analyzing the feasibility of imposing any such notice requirement.

(c) REPORT TO THE CONGRESS.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report to the Congress containing—

(1) the findings and conclusions of the Comptroller General in connection with the study required under subsection (a); and

(2) the recommendation of the Comptroller General with regard to the question of whether a notice requirement described in subsection (a) should be implemented and, if so, how such requirement should be implemented.

SEC. 175. NO LIABILITY IF POSTED NOTICES ARE DAMAGED.

Section 910 of the Electronic Fund Transfer Act (15 U.S.C 1693h) is amended by adding at the end the following new subsection:

''(d) EXCEPTION FOR DAMAGED NOTICES.—If the notice required to be posted pursuant to section 904(d)(3)(B)(i) by an automated teller machine operator has been posted by such operator in compliance with such section and the notice is subsequently removed, damaged, or altered by any person other than the operator of the automated teller machine, the operator shall have no liability under this section for failure to comply with section 904(d)(3)(B)(i).''.

Subtitle I—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 one or more States, or any public agency or authority of any State or political subdivision of a State, if the national bank is well capitalized (as defined in section 38 of the Federal Deposit Insurance Act).''.

Subtitle J—Deposit Insurance Funds

SEC. 186. STUDY OF SAFETY AND SOUNDNESS OF FUNDS.

(a) STUDY REQUIRED.—The Board of Directors of the Federal Deposit Insurance Corporation shall conduct a study of the following issues with regard to the Bank Insurance Fund and the Savings Association Insurance Fund:

(1) SAFETY AND SOUNDNESS.—The safety and soundness of the funds and the adequacy of the reserve requirements applicable to the funds in light of—

(A) the size of the insured depository institutions which are resulting from mergers and consolidations since the effective date of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994; and

(B) the affiliation of insured depository institutions with other financial institutions pursuant to this Act and the amendments made by this Act.

(2) CONCENTRATION LEVELS.—The concentration levels of the funds, taking into account the number of members of each fund and the geographic distribution of such members, and the extent to

which either fund is exposed to higher risks due to a regional concentration of members or an insufficient membership base relative to the size of member institutions.

(3) MERGER ISSUES.—Issues relating to the planned merger of the funds, including the cost of merging the funds and the manner in which such costs will be distributed among the members of the respective funds.

(b) REPORT REQUIRED.—

(1) IN GENERAL.—Before the end of the 9-month period beginning on the date of the enactment of this Act, the Board of Directors of the Federal Deposit Insurance Corporation shall submit a report to the Congress on the study conducted pursuant to subsection (a).

(2) CONTENTS OF REPORT.—The report shall include—

(A) detailed findings of the Board of Directors with regard to the issues described in subsection (a);

(B) a description of the plans developed by the Board of Directors for merging the Bank Insurance Fund and the Savings Association Insurance Fund, including an estimate of the

amount of the cost of such merger which would be borne by Savings Association Insurance Fund members; and

(C) such recommendations for legislative and administrative action as the Board of Directors determines to be necessary or appropriate to preserve the safety and soundness of the deposit insurance funds, reduce the risks to such funds, provide for an efficient merger of such funds, and for other purposes.

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

(1) INSURED DEPOSITORY INSTITUTION.—The term ''insured depository institution'' has the same meaning as in section 3(c) of the Federal Deposit Insurance Act.

(2) BIF AND SAIF MEMBERS.—The terms ''Bank Insurance Fund member'' and ''Savings Association Insurance Fund member'' have the same meanings as in section 7(l) of the Federal Deposit Insurance Act.

SEC. 187. ELIMINATION OF SAIF AND DIF SPECIAL RESERVES.

(a) SAIF SPECIAL RESERVES.—Section 11(a)(6) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(6)) is amended by striking subparagraph (L).

(b) DIF SPECIAL RESERVES.—Section 2704 of the Deposit Insurance Funds Act of 1996 (12 U.S.C. 1821 note) is amended—

(1) by striking subsection (b); and

(2) in subsection (d)—

(A) by striking paragraph (4);

(B) in paragraph (6)(C)(i), by striking ''(6) and (7)'' and inserting ''(5), (6), and (7)''; and

(C) in paragraph (6)(C), by striking clause (ii) and inserting the following:

''(ii) by redesignating paragraph (8) as paragraph (5).''.

Subtitle K—Miscellaneous Provisions

SEC. 191. TERMINATION OF "KNOW YOUR CUSTOMER" REGULATIONS.

(a) IN GENERAL.—None of the proposed regulations described in subsection (b) may be published in final form and, to the extent any such regulation has become effec-

tive before the date of the enactment of this Act, such regulation shall cease to be effective as of such date.

(b) PROPOSED REGULATIONS DESCRIBED.—The proposed regulations referred to in subsection (a) are as follows:

(1) The regulation proposed by the Comptroller of the Currency to amend part 21 of title 12 of the Code of Federal Regulations, as published in the Federal Register on December 7, 1998.

(2) The regulation proposed by the Director of the Office of Thrift Supervision to amend part 563 of title 12 of the Code of Federal Regulations, as published in the Federal Register on December 7, 1998.

(3) The regulation proposed by the Board of Governors of the Federal Reserve System to amend parts 208, 211, and 225 of title 12 of the Code of Federal Regulations, as published in the Federal Register on December 7, 1998.

(4) The regulation proposed by the Federal Deposit Insurance Corporation to amend part 326 of title 12 of the Code of Federal Regulations, as published in the Federal Register on December 7, 1998.

SEC. 192. STUDY AND REPORT ON FEDERAL ELECTRONIC FUND TRANSFERS.

(a) STUDY.—The Secretary of the Treasury shall conduct a feasibility study to determine—

(1) whether all electronic payments issued by Federal agencies could be routed through the Regional Finance Centers of the Department of the Treasury for verification and reconciliation;

(2) whether all electronic payments made by the Federal Government could be subjected to the same level of reconciliation as United States Treasury checks, including matching each payment issued with each corresponding deposit at financial institutions;

(3) whether the appropriate computer security controls are in place in order to ensure the integrity of electronic payments;

(4) the estimated costs of implementing, if so recommended, the processes and controls described in paragraphs (1), (2), and (3); and

(5) a possible timetable for implementing those processes if so recommended.

(b) REPORT TO CONGRESS.—Not later than October 1, 2000, the Secretary of the Treasury shall submit a report to Congress containing the results of the study required by subsection (a).

(c) DEFINITION.—For purposes of this section, the term ''electronic payment'' means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tapes so as to order, instruct, or authorize a debit or credit to a financial account.

SEC. 193. GENERAL ACCOUNTING OFFICE STUDY OF CONFLICTS OF INTEREST

(a) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study analyzing the conflict of interest faced by the Board of Governors of the Federal Reserve System between its role as a primary regulator of the banking industry and its role as a vendor of services to the banking and financial services industry.

(b) SPECIFIC CONFLICT REQUIRED TO BE ADDRESSED.—In the course of the study required under subsection (a), the Comptroller General shall address the conflict of interest faced by the Board of Governors of the Federal Reserve System between the role of the Board as a regulator of the payment system, generally, and its participation in the payment system as a competitor with private entities who are providing payment services.

(c) REPORT TO CONGRESS.—Before the end of the 1-year period beginning on the date of the enactment of

this Act, the Comptroller General shall submit a report to the Congress containing the findings and conclusions of the Comptroller General in connection with the study required under this section, together with such recommendations for such legislative or administrative actions as the Comptroller General may determine to be appropriate, including recommendations for resolving any such conflict of interest.

SEC. 194. STUDY OF COST OF ALL FEDERAL BANKING REGULATIONS.

(a) IN GENERAL.—In accordance with the finding in the Board of Governors of the Federal Reserve System Staff Study Numbered 171 (April, 1998) that ''Further research covering more and different types of regulations and regulatory requirements is clearly needed to make informed decisions about regulations'', the Board of Governors of the Federal Reserve System, in consultation with the other Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act) shall conduct a comprehensive study of the total annual costs and benefits of all Federal financial regulations and regulatory requirements applicable to banks.

(b) REPORT REQUIRED.—Before the end of the 2-year period beginning on the date of the enactment of this Act, the Board of Governors of the Federal Reserve Sys-

tem shall submit a comprehensive report to the Congress containing the findings and conclusions of the Board in connection with the study required under subsection (a) and such recommendations for legislative and administrative action as the Board may determine to be appropriate.

SEC. 195. STUDY AND REPORT ON ADAPTING EXISTING LEGISLATIVE REQUIREMENTS TO ONLINE BANKING AND LENDING.

(a) STUDY REQUIRED.—The Federal banking agencies shall conduct a study of banking regulations regarding the delivery of financial services, including those regulations that may assume that there will be person-to-person contact during the course of a financial services transaction, and report their recommendations on adapting those existing requirements to online banking and lending.

(b) REPORT REQUIRED.—Within 1 year of the date of the enactment of this Act, the Federal banking agencies shall submit a report to the Congress on the findings and conclusions of the agencies with respect to the study required under subsection (a), together with such recommendations for legislative or regulatory action as the agencies may determine to be appropriate.

(c) DEFINITION.—For purposes of this section, the term ''Federal banking agencies'' means each Federal

banking agency (as defined in section 3(z) of the Federal Deposit Insurance Act).

SEC. 196. REGULATION OF UNINSURED STATE MEMBER BANKS.

Section 9 of the Federal Reserve Act (12 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. 197. CLARIFICATION OF SOURCE OF STRENGTH DOCTRINE.

Section 18 of the Federal Deposit Insurance Act (21 U.S.C. 1828) is amended by adding at the end the following new subsection:

"(t) LIMITATION ON CLAIMS.—

"(1) IN GENERAL.—Notwithstanding any other provision of law other than paragraph (2), no person shall have any claim for monetary damages or return of assets or other property against any Federal banking agency (including in its capacity as conservator or receiver) relating to the transfer of money, assets, or other property to increase the capital of an insured depository institution by any depository institution holding company or controlling shareholder for such depository institution, or any affiliate or subsidiary of such depository institution, if at the time of the transfer—

"(A) the insured depository institution is subject to any direction issued in writing by a Federal banking agency to increase its capital;

"(B) the depository institution is undercapitalized, significantly undercapitalized, or critically undercapitalized (as defined in section 38 of this Act); and

"(C) for that portion of the transfer that is made by an entity covered by section 5(g) of the Bank Holding Company Act of 1956 or section 45 of this Act, the Federal banking agency has followed the procedure set forth in such section.

"(2) EXCEPTION.—No provision of this subsection shall be construed as limiting—

"(A) the right of an insured depository institution, a depository institution holding company, or any other agency or person to seek direct review of an order or directive issued by a Federal banking agency under this Act, the Bank Holding Company Act of 1956, the National Bank Receivership Act, the Bank Conservation Act, or the Home Owners' Loan Act;

"(B) the rights of any party to a contract pursuant to section 11(e) of this Act; or

"(C) the rights of any party to a contract with a depository institution holding company or a subsidiary of a depository institution holding company (other than an insured depository institution).".

SEC. 198. INTEREST RATES AND OTHER CHARGES AT INTERSTATE BRANCHES.

Section 44 of the Federal Deposit Insurance Act (12 U.S.C. 1831u) is amended—

(1) by redesignating subsection (f) as subsection (g); and

(2) by inserting after subsection (e) the following:

1 "(f) APPLICABLE RATE AND OTHER CHARGE LIMI-
2 TATIONS.—
3 "(1) IN GENERAL.—Except as provided for in
4 paragraph (3), upon the establishment of a branch
5 of any insured depository institution in a host State
6 under this section, the maximum interest rate or
7 amount of interest, discount points, finance charges,
8 or other similar charges that may be charged, taken,
9 received, or reserved from time to time in any loan
10 or discount made or upon any note, bill of exchange,
11 financing transaction, or other evidence of debt by
12 any insured depository institution in such State shall
13 be equal to not more than the greater of—
14 "(A) the maximum interest rate or amount
15 of interest, discount points, finance charges, or
16 other similar charges that may be charged,
17 taken, received, or reserved in a similar trans-
18 action under the constitution, statutory, or
19 other lows of the home State of the insured de-
20 pository institution establishing any such
21 branch, without reference to this section, as
22 such maximum interest rate or amount of inter-
23 est may change from time to time; or
24 "(B) the maximum rate or amount of in-
25 terest, discount points, finance charges, or

other similar charges that may be charged, taken, received, or reserved in a similar transaction by an insured depository institution under the constitution, statutory, or other laws of the host State, without reference to this section.

"(2) PREEMPTION.—The limitations established under paragraph (1) shall apply only in any State that has a constitutional provision that sets a maximum lawful rate of interest on any contract at not more than 5 percent per annum above the Federal Reserve Discount Rate or 90-day commercial paper in effect in the Federal Reserve Bank in the Federal Reserve District in which the State is located.

"(3) RULE OF CONSTRUCTION.—No provision of this subsection shall be construed as superseding section 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980.

SEC. 198A. INTERSTATE BRANCHES AND AGENCIES OF FOREIGN BANKS.

Section 5(a)(7) of the International Banking Act of 1978 (12 U.S.C. 3103(a)(7)), is amended to read as follows:

"(7) ADDITIONAL AUTHORITY FOR INTERSTATE BRANCHES AND AGENCIES OF FOREIGN BANKS, UP-

1 GRADES OF CERTAIN FOREIGN BANK AGENCIES AND
2 BRANCHES.—Notwithstanding paragraphs (1) and
3 (2), a foreign bank may—
4 "(A) with the approval of the Board and
5 the Comptroller of the Currency, establish and
6 operate a Federal branch or Federal agency or,
7 with the approval of the Board and the appro-
8 priate State bank supervisor, a State branch or
9 State agency in any State outside the foreign
10 bank's home State if—
11 "(i) the establishment and operation
12 of such branch or agency is permitted by
13 the State in which the branch or agency is
14 to be established; and
15 "(ii) in the case of a Federal or State
16 branch, the branch receives only such de-
17 posits as would be permitted for a corpora-
18 tion organized under section 25A of the
19 Federal Reserve Act (12 U.S.C. 611 et
20 seq.); or
21 "(B) with the approval of the Board and
22 the relevant licensing authority (the Comp-
23 troller in the case of a Federal branch or the
24 appropriate State supervisor in the case of a
25 State branch), upgrade an agency, or a branch

of the type referred to in subparagraph (A)(ii), located in a State outside the foreign bank's home State, into a Federal or State branch if—

"(i) the establishment and operation of such branch is permitted by such State; and

"(ii) such agency or branch—

"(I) was in operation in such State on the day before September 29, 1994; or

"(II) has been in operation in such State for a period of time that meets the State's minimum age requirement permitted under section 44(a)(5) of the Federal Deposit Insurance Act.".

SEC. 198B. FAIR TREATMENT OF WOMEN BY FINANCIAL ADVISERS.

(a) FINDINGS.—The Congress finds as follows:

(1) Women's stature in society has risen considerably, as they are now able to vote, own property, and pursue independent careers, and are granted equal protection under the law.

(2) Women are at least as fiscally responsible as men, and more than half of all women have sole

1 responsibility for balancing the family checkbook and
2 paying the bills.
3 (3) Estate planners, trust officers, investment
4 advisers, and other financial planners and advisers
5 still encourage the unjust and outdated practice of
6 leaving assets in trust for the category of wives and
7 daughters, along with senile parents, minors, and
8 mentally incompetent children.
9 (4) Estate planners, trust officers, investment
10 advisers, and other financial planners and advisers
11 still use sales themes and tactics detrimental to
12 women by stereotyping women as uncomfortable
13 handling money and needing protection from their
14 own possible errors of judgment and ''fortune hunt-
15 ers''.
16 (b) SENSE OF THE CONGRESS.—It is the sense of
17 the Congress that estate planners, trust officers, invest-
18 ment advisers, and other financial planners and advisers
19 should—
20 (1) eliminate examples in their training mate-
21 rials which portray women as incapable and foolish;
22 and
23 (2) develop fairer and more balanced presen-
24 tations that eliminate outmoded and stereotypical

examples which lead clients to take actions that are financially detrimental to their wives and daughters.

Subtitle L—Effective Date of Title

SEC. 199. 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 180-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 one or more of the following activities under the conditions described:

1 "(i) THIRD PARTY BROKERAGE AR-
2 RANGEMENTS.—The bank enters into a
3 contractual or other written arrangement
4 with a broker or dealer registered under
5 this title under which the broker or dealer
6 offers brokerage services on or off the
7 premises of the bank if—
8 "(I) such broker or dealer is
9 clearly identified as the person per-
10 forming the brokerage services;
11 "(II) the broker or dealer per-
12 forms brokerage services in an area
13 that is clearly marked and, to the ex-
14 tent practicable, physically separate
15 from the routine deposit-taking activi-
16 ties of the bank;
17 "(III) any materials used by the
18 bank to advertise or promote generally
19 the availability of brokerage services
20 under the arrangement clearly indi-
21 cate that the brokerage services are
22 being provided by the broker or dealer
23 and not by the bank;
24 "(IV) any materials used by the
25 bank to advertise or promote generally

the availability of brokerage services under the 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 types of investment vehicles available from the bank and the broker or dealer under the arrangement;

"(VI) bank employees do not 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-regu-

latory 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 as permitted under clause (ii) or (viii) of this subparagraph; 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

1 are not insured by the Federal De-
2 posit Insurance Corporation.
3 "(ii) TRUST ACTIVITIES.—The bank
4 effects transactions in a trustee or fidu-
5 ciary capacity in its trust department, or
6 another department where the trust or fi-
7 duciary activity is regularly examined by
8 bank examiners under the same standards
9 and in the same way as such activities are
10 examined in the trust department, and—
11 "(I) is chiefly compensated for
12 such transactions, consistent with fi-
13 duciary principles and standards, on
14 the basis of an administration or an-
15 nual fee (payable on a monthly, quar-
16 terly, or other basis), a percentage of
17 assets under management, or a flat or
18 capped per order processing fee equal
19 to not more than the cost incurred by
20 the bank in connection with executing
21 securities transactions for trustee and
22 fiduciary customers, or any combina-
23 tion of such fees; and
24 "(II) does not solicit brokerage
25 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) EMPLOYEE BENEFIT PLANS.—The bank effects transactions, as a registered transfer agent (including as a registrar of stocks), 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 affiliates (as defined in section 2 of the Bank Holding Company Act of 1956), 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 chiefly of administration fees, or flat or capped per order processing fees, or both.

"(II) DIVIDEND REINVESTMENT PLANS.—The bank effects transactions, as a registered transfer agent

(including as a registrar of stocks), 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 chiefly of administration fees, or flat or capped per order processing fees, or both.

"(III) ISSUER PLANS.—The bank effects transactions, as a registered transfer agent (including as a registrar of stocks), in the securities of an issuer as part of that issuer's plan

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 chiefly of administration fees, or flat or capped per order processing fees, or both.

"(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 em-

ployees 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 1999; 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 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 (as defined in section 2 of the Bank Holding Company Act of 1956) of the bank 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 the date that is 1 year after the date of the enactment of the Financial Services Act of 1999, is not affiliated with a broker or dealer that has been registered for more than 1 year in accordance with this Act, and engages in dealing, market making, or underwriting activities, other than with respect to exempted securities; 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, if the bank maintains records separately identifying the securities and the customer.

"(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) of this title 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) EXCEPTED BANKING PRODUCTS.—The bank effects transactions in excepted banking products, as defined in section 206 of the Financial Services Act of 1999.

"(x) MUNICIPAL SECURITIES.—The bank effects transactions in municipal securities.

"(xi) DE MINIMIS EXCEPTION.—The bank effects, other than in transactions referred to in clauses (i) through (x), 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 broker or 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) 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 1999, subject to section 15(e) of this title; 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

1 "(IV) any standardized, credit
2 enhanced debt security issued by a
3 foreign government pursuant to the
4 March 1989 plan of then Secretary of
5 the Treasury Brady, used by such for-
6 eign government to retire outstanding
7 commercial bank loans.
8 "(ii) INVESTMENT, TRUSTEE, AND FI-
9 DUCIARY TRANSACTIONS.—The bank buys
10 or sells securities for investment pur-
11 poses—
12 "(I) for the bank; or
13 "(II) for accounts for which the
14 bank acts as a trustee or fiduciary.
15 "(iii) ASSET-BACKED TRANS-
16 ACTIONS.—The bank engages in the
17 issuance or sale to qualified investors,
18 through a grantor trust or other separate
19 entity, of securities backed by or rep-
20 resenting an interest in notes, drafts, ac-
21 ceptances, loans, leases, receivables, other
22 obligations (other than securities of which
23 the bank is not the issuer), or pools of any
24 such obligations predominantly originated
25 by—

"(I) the bank;

"(II) an affiliate of any such bank other than a broker or dealer; or

"(III) a syndicate of banks of which the bank is a member, if the obligations or pool of obligations consists of mortgage obligations or consumer-related receivables.

"(iv) EXCEPTED BANKING PRODUCTS.—The bank buys or sells excepted banking products, as defined in section 206 of the Financial Services Act of 1999.

"(v) DERIVATIVE INSTRUMENTS.—The bank issues, buys, or sells any derivative instrument to which the bank is a party—

"(I) 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. 78o–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 Securi-

ties 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 the enactment of this Act, engaged in effecting such sales.''.

SEC. 204. 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. 205. TREATMENT OF NEW HYBRID PRODUCTS.

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 HYBRID 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 hybrid 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 hybrid product unless the Commission determines that—

"(A) the new hybrid 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) CONSIDERATIONS.—In making a determination under paragraph (2), the Commission shall consider—

"(A) the nature of the new hybrid product; and

"(B) the history, purpose, extent, and appropriateness of the regulation of the new hybrid product under the Federal securities laws and under the Federal banking laws.

"(4) CONSULTATION.—In promulgating rules under this subsection, the Commission shall consult with and consider the views of the Board of Governors of the Federal Reserve System regarding the nature of the new hybrid product, the history, purpose, extent, and appropriateness of the regulation of the new product under the Federal banking laws, and the impact of the proposed rule on the banking industry.

"(5) NEW HYBRID PRODUCT.—For purposes of this subsection, the term 'new hybrid product' means a product that—

"(A) was not subjected to regulation by the Commission as a security prior to the date of the enactment of this subsection; and

"(B) is not an excepted banking product, as such term is defined in section 206 of the Financial Services Act of 1999.".

SEC. 206. DEFINITION OF EXCEPTED BANKING PRODUCT.

(a) DEFINITION OF EXCEPTED BANKING PRODUCT.—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 "excepted banking product" means—

(1) a deposit account, savings account, certificate of deposit, or other deposit instrument issued by a bank;

(2) a banker's acceptance;

(3) a letter of credit issued or loan made by a bank;

(4) a debit account at a bank arising from a credit card or similar arrangement;

(5) 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—

(A) to qualified investors; or

(B) 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

(6) a derivative instrument that involves or relates to—

(A) currencies, except options on currencies that trade on a national securities exchange;

(B) interest rates, except interest rate derivative instruments that—

(i) 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) provide for the delivery of one or more securities (other than government securities); or

(iii) trade on a national securities exchange; or

(C) commodities, other rates, indices, or other assets, except derivative instruments that—

(i) 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) provide for the delivery of one or more securities (other than government securities); or

(iii) trade on a national securities exchange.

(b) CLASSIFICATION LIMITED.—Classification of a particular product as an excepted banking product pursuant to this section shall not be construed as finding or implying that such product 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.

(c) INCORPORATED DEFINITIONS.—For purposes of this section—

(1) the terms ''bank'', ''qualified investor'', and ''securities laws'' have the same meanings given in

section 3(a) of the Securities Exchange Act of 1934, as amended by this Act; and

(2) the term ''government securities'' has the meaning given in section 3(a)(42) of such Act (as amended by this Act), and, for purposes of this section, commercial paper, bankers acceptances, and commercial bills shall be treated in the same manner as government securities.

SEC. 207. ADDITIONAL DEFINITIONS.

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 an excepted banking product, as defined in paragraphs (1) through (5) of section 206(a) of the Financial Services Act of 1999.

"(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, 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 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;

1 "(viii) any associated person of a
2 broker or dealer other than a natural per-
3 son;
4 "(ix) any foreign bank (as defined in
5 section 1(b)(7) of the International Bank-
6 ing Act of 1978);
7 "(x) the government of any foreign
8 country;
9 "(xi) any corporation, company, or
10 partnership that owns and invests on a dis-
11 cretionary basis, not less than $10,000,000
12 in investments;
13 "(xii) any natural person who owns
14 and invests on a discretionary basis, not
15 less than $10,000,000 in investments;
16 "(xiii) any government or political
17 subdivision, agency, or instrumentality of a
18 government who owns and invests on a dis-
19 cretionary basis not less than $50,000,000
20 in investments; or
21 "(xiv) any multinational or supra-
22 national entity or any agency or instru-
23 mentality thereof.
24 "(B) ADDITIONAL AUTHORITY.—The Com-
25 mission may, by rule or order, define a 'quali-

fied investor' as any other person, taking into consideration such factors as the financial sophistication of the person, 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 sections 15, 15C, and 17A as applied to a bank, a qualified Canadian government obligation as defined in section 5136 of the Revised Statutes of the United States.''.

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.

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.).

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 second, third, fourth, and fifth 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 the 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 same meanings given 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 given in section 3 of 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 given 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)(A) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)(A)) is amended 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 sepa-

rately 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 given in section 3 of 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 given in section 3 of 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, 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 other provision of law.

''(c) DEFINITION.—For purposes of this section, the term 'appropriate Federal banking agency' shall have the same meaning given 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 sub-

ject 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. STATUTORY DISQUALIFICATION FOR BANK WRONGDOING.

Section 9(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-9(a)) is amended in paragraphs (1) and (2) by striking "securities dealer, transfer agent," and inserting "securities dealer, bank, transfer agent,".

SEC. 224. 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. 225. 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. 226. CHURCH PLAN EXCLUSION.

Section 3(c)(14) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(14)) is amended—

(1) by redesignating clauses (i) and (ii) of subparagraph (B) as subclauses (I) and (II), respectively;

(2) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(3) by inserting ''(A)'' after ''(14)''; and

(4) by adding at the end the following new subparagraph:

''(B) If a registered investment company would be excluded from the definition of investment company under this subsection but for the fact that some of the company's assets do not satisfy the condition of subparagraph (A)(ii) of this paragraph, then any investment adviser to the company or affiliated person of such investment adviser shall not be subject to the requirements of section 15(g)(1)(B) with respect to shares of the investment company.''.

SEC. 227. 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 (k); and

(2) by inserting after subsection (h) the following new subsection:

"(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

1 Holding Company Act of 1956), or a sav-
2 ings association;
3 "(ii) a foreign bank, foreign company,
4 or company that is described in section
5 8(a) of the International Banking Act of
6 1978; or
7 "(iii) a foreign bank that controls, di-
8 rectly or indirectly, a corporation chartered
9 under section 25A of the Federal Reserve
10 Act,
11 may elect to become supervised by filing with
12 the Commission a notice of intention to become
13 supervised, pursuant to subparagraph (B) of
14 this paragraph. Any investment bank holding
15 company filing such a notice shall be supervised
16 in accordance with this section and comply with
17 the rules promulgated by the Commission appli-
18 cable to supervised investment bank holding
19 companies.
20 "(B) NOTIFICATION OF STATUS AS A SU-
21 PERVISED INVESTMENT BANK HOLDING COM-
22 PANY.—An investment bank holding company
23 that elects under subparagraph (A) to become
24 supervised by the Commission shall file with the
25 Commission a written notice of intention to be-

1 come supervised by the Commission in such
2 form and containing such information and doc-
3 uments concerning such investment bank hold-
4 ing company as the Commission, by rule, may
5 prescribe as necessary or appropriate in fur-
6 therance of the purposes of this section. Unless
7 the Commission finds that such supervision is
8 not necessary or appropriate in furtherance of
9 the purposes of this section, such supervision
10 shall become effective 45 days after the date of
11 receipt of such written notice by the Commis-
12 sion or within such shorter time period as the
13 Commission, by rule or order, may determine.
14 ''(2) ELECTION NOT TO BE SUPERVISED BY
15 THE COMMISSION AS AN INVESTMENT BANK HOLD-
16 ING COMPANY.—
17 ''(A) VOLUNTARY WITHDRAWAL.—A su-
18 pervised investment bank holding company that
19 is supervised pursuant to paragraph (1) may,
20 upon such terms and conditions as the Commis-
21 sion deems necessary or appropriate, elect not
22 to be supervised by the Commission by filing a
23 written notice of withdrawal from Commission
24 supervision. Such notice shall not become effec-
25 tive until 1 year after receipt by the Commis-

sion, 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

1 promptly at any time upon request by the
2 Commission. Such records and reports may
3 include—
4 "(I) a balance sheet and income
5 statement;
6 "(II) an assessment of the con-
7 solidated capital of the supervised in-
8 vestment bank holding company;
9 "(III) an independent auditor's
10 report attesting to the supervised in-
11 vestment bank holding company's
12 compliance with its internal risk man-
13 agement and internal control objec-
14 tives; and
15 "(IV) reports concerning the ex-
16 tent to which the company or affiliate
17 has complied with the provisions of
18 this title and any regulations pre-
19 scribed and orders issued under this
20 title.
21 "(B) USE OF EXISTING REPORTS.—
22 "(i) IN GENERAL.—The Commission
23 shall, to the fullest extent possible, accept
24 reports in fulfillment of the requirements
25 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

1 supervised investment bank holding com-
2 pany to—
3 "(I) the company; and
4 "(II) any affiliate of the company
5 that, because of its size, condition, or
6 activities, the nature or size of the
7 transactions between such affiliate
8 and any affiliated broker or dealer, or
9 the centralization of functions within
10 the holding company system, could, in
11 the discretion of the Commission,
12 have a materially adverse effect on the
13 operational or financial condition of
14 the broker or dealer.
15 "(iii) DEFERENCE TO OTHER EXAMI-
16 NATIONS.—For purposes of this subpara-
17 graph, the Commission shall, to the fullest
18 extent possible, use the reports of examina-
19 tion of an institution described in subpara-
20 graph (D), (F), or (G) of section 2(c)(2),
21 or held under section 4(f), of the Bank
22 Holding Company Act of 1956 made by
23 the appropriate regulatory agency, or of a
24 licensed insurance company made by the
25 appropriate State insurance regulator.

1 "(4) HOLDING COMPANY CAPITAL.—

2 "(A) AUTHORITY.—If the Commission
3 finds that it is necessary to adequately super-
4 vise investment bank holding companies and
5 their broker or dealer affiliates consistent with
6 the purposes of this subsection, the Commission
7 may adopt capital adequacy rules for supervised
8 investment bank holding companies.

9 "(B) METHOD OF CALCULATION.—In de-
10 veloping rules under this paragraph:

11 "(i) DOUBLE LEVERAGE.—The Com-
12 mission shall consider the use by the su-
13 pervised investment bank holding company
14 of debt and other liabilities to fund capital
15 investments in affiliates.

16 "(ii) NO UNWEIGHTED CAPITAL
17 RATIO.—The Commission shall not impose
18 under this section a capital ratio that is
19 not based on appropriate risk-weighting
20 considerations.

21 "(iii) NO CAPITAL REQUIREMENT ON
22 REGULATED ENTITIES.—The Commission
23 shall not, by rule, regulation, guideline,
24 order or otherwise, impose any capital ade-
25 quacy 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', 'savings association', and 'wholesale financial institution' have the same meanings given in section 2 of

the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

"(D) The term 'insured bank' has the same meaning given in section 3 of the Federal Deposit Insurance Act.

"(E) The term 'foreign bank' has the same meaning given 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' mean 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 subparagraph:

''(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—Disclosure of Customer Costs of Acquiring Financial Products

SEC. 241. IMPROVED AND CONSISTENT DISCLOSURE.

(a) REVISED REGULATIONS REQUIRED.—Within 1 year after the date of the 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, 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 appro-

priate 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.

Subtitle E—Banks and Bank Holding Companies

SEC. 251. CONSULTATION.

(a) IN GENERAL.—The Securities and Exchange Commission shall consult and coordinate comments with the appropriate Federal banking agency before taking any action or rendering any opinion with respect to the manner in which any insured depository institution or depository institution holding company reports loan loss reserves

in its financial statement, including the amount of any such loan loss reserve.

(b) DEFINITIONS.—For purposes of subsection (a), the terms ''insured depository institution'', ''depository institution holding company'', and ''appropriate Federal banking agency'' have the same meaning as in section 3 of the Federal Deposit Insurance Act.

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 shall engage in the business of insurance in a State as principal or agent unless such person is licensed as required by the appropriate insurance regulator of such State in accordance with the relevant State insurance law, subject to section 104.

SEC. 303. FUNCTIONAL REGULATION OF INSURANCE.

The insurance activities of any person (including a national bank exercising its power to act as agent under the eleventh undesignated paragraph of section 13 of the Federal Reserve Act) shall be functionally regulated by the States, subject to section 104.

SEC. 304. INSURANCE UNDERWRITING IN NATIONAL BANKS.

(a) IN GENERAL.—Except as provided in section 305, 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, 1999, 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

1 treatment under section 72 of the Internal Revenue
2 Code of 1986.
3 (c) DEFINITION.—For purposes of this section, the
4 term ''insurance'' means—
5 (1) any product regulated as insurance as of
6 January 1, 1999, in accordance with the relevant
7 State insurance law, in the State in which the prod-
8 uct is provided;
9 (2) any product first offered after January 1,
10 1999, which—
11 (A) a State insurance regulator determines
12 shall be regulated as insurance in the State in
13 which the product is provided because the prod-
14 uct insures, guarantees, or indemnifies against
15 liability, loss of life, loss of health, or loss
16 through damage to or destruction of property,
17 including, but not limited to, surety bonds, life
18 insurance, health insurance, title insurance, and
19 property and casualty insurance (such as pri-
20 vate passenger or commercial automobile,
21 homeowners, mortgage, commercial multiperil,
22 general liability, professional liability, workers'
23 compensation, fire and allied lines, farm owners
24 multiperil, aircraft, fidelity, surety, medical

1 malpractice, ocean marine, inland marine, and
2 boiler and machinery insurance); and
3 (B) is not a product or service of a bank
4 that is—
5 (i) a deposit product;
6 (ii) a loan, discount, letter of credit,
7 or other extension of credit;
8 (iii) a trust or other fiduciary service;
9 (iv) a qualified financial contract (as
10 defined in or determined pursuant to sec-
11 tion 11(e)(8)(D)(i) of the Federal Deposit
12 Insurance Act); or
13 (v) a financial guaranty, except that
14 this subparagraph (B) shall not apply to a
15 product that includes an insurance compo-
16 nent such that if the product is offered or
17 proposed to be offered by the bank as prin-
18 cipal—
19 (I) it would be treated as a life
20 insurance contract under section 7702
21 of the Internal Revenue Code of 1986;
22 or
23 (II) in the event that the product
24 is not a letter of credit or other simi-
25 lar extension of credit, a qualified fi-

nancial 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, if the bank were subject to tax as an insurance company under section 831 of that 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.

SEC. 305. TITLE INSURANCE ACTIVITIES OF NATIONAL BANKS AND THEIR AFFILIATES.

(a) GENERAL PROHIBITION.—No national bank, and no subsidiary of a national bank, may engage in any activity involving the underwriting or sale of title insurance.

(b) NONDISCRIMINATION PARITY EXCEPTION.—

(1) IN GENERAL.—Notwithstanding any other provision of law (including section 104 of this Act), in the case of any State in which banks organized under the laws of such State are authorized to sell title insurance as agency, a national bank and a subsidiary of a national bank may sell title insurance as agent in such State, but only in the same manner, to the same extent, and under the same restrictions

as such State banks are authorized to sell title insurance as agent in such State.

(2) COORDINATION WITH ''WILDCARD'' PROVISION.—A State law which authorizes State banks to engage in any activities in such State in which a national bank may engage shall not be treated as a statute which authorizes State banks to sell title insurance as agent, for purposes of paragraph (1).

(c) GRANDFATHERING WITH CONSISTENT REGULATION.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3) and notwithstanding subsections (a) and (b), a national bank, and a subsidiary of a national bank, may conduct title insurance activities which such national bank or subsidiary was actively and lawfully conducting 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 the underwriting 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 other than a subsidiary which provides insurance as principal, the national bank may not directly engage in any activity involving the underwriting of title insurance.

(d) "AFFILIATE" AND "SUBSIDIARY" DEFINED.—For purposes of this section, the terms "affiliate" and "subsidiary" have the same meanings as in section 2 of the Bank Holding Company Act of 1956.

(e) RULE OF CONSTRUCTION.—No provision of this Act or any other Federal law shall be construed as superseding or affecting a State law which was in effect before the date of the enactment of this Act and which prohibits title insurance from being offered, provided, or sold in such State, or from being underwritten with respect to real property in such State, by any person whatsoever.

SEC. 306. EXPEDITED AND EQUALIZED DISPUTE RESOLUTION FOR FEDERAL REGULATORS.

(a) FILING IN COURT OF APPEALS.—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

1 regulator may seek expedited judicial review of such deter-
2 mination by the United States Court of Appeals for the
3 circuit in which the State is located or in the United
4 States Court of Appeals for the District of Columbia Cir-
5 cuit by filing a petition for review in such court.

6 (b) EXPEDITED REVIEW.—The United States Court
7 of Appeals in which a petition for review is filed in accord-
8 ance with subsection (a) shall complete all action on such
9 petition, including rendering a judgment, before the end
10 of the 60-day period beginning on the date on which such
11 petition is filed, unless all parties to such proceeding agree
12 to any extension of such period.

13 (c) SUPREME COURT REVIEW.—Any request for cer-
14 tiorari to the Supreme Court of the United States of any
15 judgment of a United States Court of Appeals with respect
16 to a petition for review under this section shall be filed
17 with the Supreme Court of the United States as soon as
18 practicable after such judgment is issued.

19 (d) STATUTE OF LIMITATION.—No petition may be
20 filed under this section challenging an order, ruling, deter-
21 mination, or other action of a Federal regulator or State
22 insurance regulator after the later of—

23 (1) the end of the 12-month period beginning
24 on the date on which the first public notice is made

of such order, ruling, determination or other action in its final form; or

(2) the end of the 6-month period beginning on the date on which such order, ruling, determination, or other action takes effect.

(e) STANDARD OF REVIEW.—The court shall decide a petition 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. 307. CONSUMER PROTECTION REGULATIONS.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 46 (as added by section 122(b) of this Act) the following new section:

"SEC. 47. 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 the Financial Services Act of 1999, consumer protection regulations (which the agencies jointly determine to be appropriate) that—

"(A) apply to retail sales practices, solicitations, advertising, or offers of any insurance

1 product by any insured depository institution or
2 wholesale financial institution or any person
3 who is engaged in such activities at an office of
4 the institution or on behalf of the institution;
5 and

6 ''(B) are consistent with the requirements
7 of this Act and provide such additional protec-
8 tions for consumers to whom such sales, solici-
9 tations, advertising, or offers are directed as
10 the agency determines to be appropriate.

11 ''(2) APPLICABILITY TO SUBSIDIARIES.—The
12 regulations prescribed pursuant to paragraph (1)
13 shall extend such protections to any subsidiaries of
14 an insured depository institution, as deemed appro-
15 priate by the regulators referred to in paragraph (3),
16 where such extension is determined to be necessary
17 to ensure the consumer protections provided by this
18 section.

19 ''(3) CONSULTATION AND JOINT REGULA-
20 TIONS.—The Federal banking agencies shall consult
21 with each other and prescribe joint regulations pur-
22 suant to paragraph (1), after consultation with the
23 State insurance regulators, as appropriate.

24 ''(b) SALES PRACTICES.—The regulations prescribed
25 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

"(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 (iii), at the time of application for an extension of credit:

"(i) UNINSURED STATUS.—As appropriate, the product is not insured by the

1 Federal Deposit Insurance Corporation,
2 the United States Government, or the in-
3 sured depository institution.
4 ''(ii) INVESTMENT RISK.—In the case
5 of a variable annuity or other insurance
6 product which involves an investment risk,
7 that there is an investment risk associated
8 with the product, including possible loss of
9 value.
10 ''(iii) COERCION.—The approval of an
11 extension of credit may not be conditioned
12 on—
13 ''(I) the purchase of an insurance
14 product from the institution in which
15 the application for credit is pending or
16 any of its affiliates or subsidiaries; or
17 ''(II) an agreement by the con-
18 sumer not to obtain, or a prohibition
19 on the consumer from obtaining, an
20 insurance product from an unaffili-
21 ated entity.
22 ''(B) MAKING DISCLOSURE READILY UN-
23 DERSTANDABLE.—Regulations prescribed under
24 subparagraph (A) shall encourage the use of
25 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'.

"(iv) 'NOT INSURED BY ANY GOVERNMENT AGENCY'.

"(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;

"(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; or

"(C) in the case of an institution or subsidiary at which insurance products are sold or offered for sale, the fact that—

"(i) the approval of an extension of credit to a customer by the institution or subsidiary may not be conditioned on the purchase of an insurance product by such customer from the institution or subsidiary; and

"(ii) the customer is free to purchase the insurance product from another source.".

"(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 is kept, to the extent practicable, physically segregated from insurance product activity.

"(2) REQUIREMENTS.—Regulations prescribed pursuant to paragraph (1) shall include the following:

"(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 the public in an area where such transactions are routinely conducted in an insured depository in-

1 stitution to refer a customer who seeks to pur-
2 chase any insurance product to a qualified per-
3 son who sells such product, only if the person
4 making the referral receives no more than a
5 one-time nominal fee of a fixed dollar amount
6 for each referral that does not depend on
7 whether the referral results in a transaction.

8 ''(C) QUALIFICATION AND LICENSING RE-
9 QUIREMENTS.—Standards prohibiting any in-
10 sured depository institution from permitting
11 any person to sell or offer for sale any insur-
12 ance product in any part of any office of the in-
13 stitution, or on behalf of the institution, unless
14 such person is appropriately qualified and li-
15 censed.

16 ''(e) DOMESTIC VIOLENCE DISCRIMINATION PROHI-
17 BITION.—

18 ''(1) IN GENERAL.—In the case of an applicant
19 for, or an insured under, any insurance product de-
20 scribed in paragraph (2), the status of the applicant
21 or insured as a victim of domestic violence, or as a
22 provider of services to victims of domestic violence,
23 shall not be considered as a criterion in any decision
24 with regard to insurance underwriting, pricing, re-
25 newal, 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 wholesale financial 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 one 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, se-

vere 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) IN GENERAL.—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) except as provided in paragraph (2), any authority of any State insurance commissioner or other State authority under any State law.

"(2) COORDINATION WITH STATE LAW.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), 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 en-

gaged 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.

"(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.

"(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. 308. CERTAIN STATE AFFILIATION LAWS PREEMPTED FOR INSURANCE COMPANIES AND AFFILIATES.

Except as provided in section 104(a)(2), no State may, by law, regulation, order, interpretation, or otherwise—

(1) prevent or significantly interfere with the ability of any insurer, or any affiliate of an insurer (whether such affiliate is organized as a stock company, mutual holding company, or otherwise), to become a financial holding company or to acquire 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, significantly interfere with, 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.

SEC. 309. INTERAGENCY CONSULTATION.

(a) PURPOSE.—It is the intention of the 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

1 engaged in insurance activities. The purpose of this sec-
2 tion is to encourage this coordination and confidential
3 sharing of information, and to thereby improve both the
4 efficiency and the quality of the supervision of financial
5 holding companies and their affiliated depository institu-
6 tions and companies engaged in insurance activities.

7 (b) EXAMINATION RESULTS AND OTHER INFORMA-
8 TION.—

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

24 (2) BANKING AGENCY INFORMATION.—Upon
25 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'' 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'' have the same

meanings as in section 2 of the Bank Holding Company Act of 1956.

SEC. 310. DEFINITION OF STATE.

For purposes of this subtitle, the term ''State'' means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

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.

1 (b) RESULTING DOMICILE.—Upon complying with
2 the applicable law of the transferee domicile governing
3 transfers of domicile and completion of a transfer pursu-
4 ant to this section, the mutual insurer shall cease to be
5 a domestic insurer in the transferor domicile and, as a
6 continuation of its corporate existence, shall be a domestic
7 insurer of the transferee domicile.

8 (c) LICENSES PRESERVED.—The certificate of au-
9 thority, agents' appointments and licenses, rates, approv-
10 als and other items that a licensed State allows and that
11 are in existence immediately prior to the date that a re-
12 domesticating insurer transfers its domicile pursuant to
13 this subtitle shall continue in full force and effect upon
14 transfer, if the insurer remains duly qualified to transact
15 the business of insurance in such licensed State.

16 (d) EFFECTIVENESS OF OUTSTANDING POLICIES
17 AND CONTRACTS.—

18 (1) IN GENERAL.—All outstanding insurance
19 policies and annuities contracts of a redomesticating
20 insurer shall remain in full force and effect and need
21 not be endorsed as to the new domicile of the in-
22 surer, unless so ordered by the State insurance regu-
23 lator of a licensed State, and then only in the case
24 of outstanding policies and contracts whose owners
25 reside in such licensed State.

(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 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 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 li-

1 censed insurers or policyholders under the laws of
2 the licensed State;
3 (3) register with and designate the State insur-
4 ance regulator as its agent solely for the purpose of
5 receiving service of legal documents or process;
6 (4) submit to an examination by the State in-
7 surance regulator in any licensed state in which the
8 redomesticated insurer is doing business to deter-
9 mine the insurer's financial condition, if—
10 (A) the State insurance regulator of the
11 transferee domicile has not begun an examina-
12 tion of the redomesticated insurer and has not
13 scheduled such an examination to begin before
14 the end of the 1-year period beginning on the
15 date of the redomestication; and
16 (B) any such examination is coordinated to
17 avoid unjustified duplication and repetition;
18 (5) comply with a lawful order issued in—
19 (A) a delinquency proceeding commenced
20 by the State insurance regulator of any licensed
21 State if there has been a judicial finding of fi-
22 nancial impairment under paragraph (7); or
23 (B) a voluntary dissolution proceeding;
24 (6) comply with any State law regarding decep-
25 tive, false, or fraudulent acts or practices, except

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

1 insurer has a certificate of authority in effect imme-
2 diately prior to the redomestication.
3 (6) MUTUAL INSURER.—The term ''mutual in-
4 surer'' means a mutual insurer organized under the
5 laws of any State.
6 (7) PERSON.—The term ''person'' means an in-
7 dividual, institution, government or governmental
8 agency, State or political subdivision of a State, pub-
9 lic corporation, board, association, estate, trustee, or
10 fiduciary, or other similar entity.
11 (8) POLICYHOLDER.—The term ''policyholder''
12 means the owner of a policy issued by a mutual in-
13 surer, except that, with respect to voting rights, the
14 term means a member of a mutual insurer or mu-
15 tual holding company granted the right to vote, as
16 determined under applicable State law.
17 (9) REDOMESTICATED INSURER.—The term
18 ''redomesticated insurer'' means a mutual insurer
19 that has redomesticated pursuant to this subtitle.
20 (10) REDOMESTICATING INSURER.—The term
21 ''redomesticating insurer'' means a mutual insurer
22 that is redomesticating pursuant to this subtitle.
23 (11) REDOMESTICATION OR TRANSFER.—The
24 terms ''redomestication'' and ''transfer'' mean the

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 the 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, not later than 3 years after 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 that such producer is permitted to sell or solicit the purchase of insurance in its State, if the producer's home State also awards such licenses on such a reciprocal basis, 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.

(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 uni-

formity 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 2 years after the date on which such uniformity or reciprocity ceases to exist, 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.

(g) UNIFORM LICENSING.—Nothing in this section shall be construed to require any State to adopt new or additional licensing requirements to achieve the uniformity necessary to satisfy subsection (a)(1).

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;

(2) have succession until dissolved by an Act of Congress;

(3) not be an agent or instrumentality 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'').

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 period pre-

ceding the date on which 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, includ-

ing 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.

1 (i) OFFICE OF CONSUMER COMPLAINTS.—

2 (1) IN GENERAL.—The Association shall estab-
3 lish an office of consumer complaints that shall—

4 (A) receive and investigate complaints
5 from both consumers and State insurance regu-
6 lators related to members of the Association;
7 and

8 (B) recommend to the Association any dis-
9 ciplinary actions that the office considers appro-
10 priate, to the extent that any such rec-
11 ommendation is not inconsistent with State law.

12 (2) RECORDS AND REFERRALS.—The office of
13 consumer complaints of the Association shall—

14 (A) maintain records of all complaints re-
15 ceived in accordance with paragraph (1) and
16 make such records available to the NAIC and
17 to each State insurance regulator for the State
18 of residence of the consumer who filed the com-
19 plaint; and

20 (B) refer, when appropriate, any such com-
21 plaint to any appropriate State insurance regu-
22 lator.

23 (3) TELEPHONE AND OTHER ACCESS.—The of-
24 fice of consumer complaints shall maintain a toll-free
25 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 seven members appointed by the NAIC.

(2) REQUIREMENT.—At least four 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 seven members of the Board of the Association, the initial Board shall consist of the seven State insurance regulators of the seven 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 seven 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 one-third 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 appoint-

ment 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 NAIC 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 by-

1 laws or any proposed amendment to the bylaws, ac-
2 companied by a concise general statement of the
3 basis and purpose of such proposal.
4 (2) EFFECTIVE DATE.—Except as provided in
5 paragraph (3), any proposed bylaw or proposed
6 amendment shall take effect—
7 (A) thirty days after the date of the filing
8 of a copy with the NAIC;
9 (B) upon such later date as the Associa-
10 tion may designate; or
11 (C) upon such earlier date as the NAIC
12 may determine.
13 (3) DISAPPROVAL BY THE NAIC.—Notwith-
14 standing paragraph (2), a proposed bylaw or amend-
15 ment shall not take effect if, after public notice and
16 opportunity to participate in a public hearing—
17 (A) the NAIC disapproves such proposal as
18 being contrary to the public interest or contrary
19 to the purposes of this subtitle and provides no-
20 tice to the Association setting forth the reasons
21 for such disapproval; or
22 (B) the NAIC finds that such proposal in-
23 volves a matter of such significant public inter-
24 est that public comment should be obtained, in
25 which case it may, after notifying the Associa-

tion 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 subsection.

(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.—Not later than 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 not later than 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 on which 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 relat-

ing to the administration or organization of the Association shall 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 clause (ii) of this subparagraph, 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 policy-

1 holders, or otherwise in furtherance of the
2 purposes of this subtitle.
3 (ii) EFFECT OF RECONSIDERATION BY
4 THE NAIC.—Any action of the NAIC pur-
5 suant to clause (i) shall—
6 (I) not affect the validity or force
7 of a rule change during the period
8 such rule or amendment was in effect;
9 and
10 (II) not be considered to be a
11 final action.
12 (c) ACTION REQUIRED BY THE NAIC.—The NAIC
13 may, in accordance with such rules as the NAIC deter-
14 mines to be necessary or appropriate to the public interest
15 or to carry out the purposes of this subtitle, require the
16 Association to adopt, amend, or repeal any bylaw, rule or
17 amendment of the Association, whenever adopted.
18 (d) DISCIPLINARY ACTION BY THE ASSOCIATION.—
19 (1) SPECIFICATION OF CHARGES.—In any pro-
20 ceeding to determine whether membership shall be
21 denied, suspended, revoked, or not renewed (here-
22 after in this section referred to as a ''disciplinary ac-
23 tion''), the Association shall bring specific charges,
24 notify such member of such charges, give the mem-

ber 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.—

(1) IN GENERAL.—In any proceeding to review such action, after notice and the opportunity for hearing, the NAIC shall—

(A) determine whether the action should be taken;

(B) affirm, modify, or rescind the disciplinary sanction; or

(C) remand to the Association for further proceedings.

(2) DISMISSAL OF REVIEW.—The NAIC may dismiss a proceeding to review disciplinary action if the NAIC finds that—

(A) the specific grounds on which the action is based exist in fact;

(B) the action is in accordance with applicable rules and regulations; and

(C) such rules and regulations are, and were, applied in a manner consistent with the purposes of this subtitle.

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 that the NAIC 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) EXAMINATIONS.—The NAIC may make such examinations and inspections of the Association

and require the Association to furnish to the NAIC 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) REPORT BY ASSOCIATION.—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 en-

1 tities engaged in the business of insurance, including pro-
2 visions imposing premium taxes, regulating insurer sol-
3 vency or financial condition, establishing guaranty funds
4 and levying assessments, or requiring claims settlement
5 practices.

6 (b) LIABILITY OF THE ASSOCIATION, ITS DIREC-
7 TORS, OFFICERS, AND EMPLOYEES.—Neither the Associa-
8 tion nor any of its directors, officers, or employees shall
9 have any liability to any person for any action taken or
10 omitted in good faith under or in connection with any mat-
11 ter subject to this subtitle.

12 **SEC. 332. ELIMINATION OF NAIC OVERSIGHT.**

13 (a) IN GENERAL.—The Association shall be estab-
14 lished without NAIC oversight and the provisions set forth
15 in section 324, subsections (a), (b), (c), and (e) of section
16 328, and sections 329(b) and 330 of this subtitle shall
17 cease to be effective if, at the end of the 2-year period
18 beginning on the date on which the provisions of this sub-
19 title take effect pursuant to section 321—

20 (1) at least a majority of the States rep-
21 resenting at least 50 percent of the total United
22 States commercial-lines insurance premiums have
23 not satisfied the uniformity or reciprocity require-
24 ments of subsections (a), (b), and (c) of section 321;
25 and

(2) the NAIC has not approved the Association's bylaws as required by section 328 or 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, the following shall apply:

(1) GENERAL APPOINTMENT POWER.—The President, with the advice and consent of the 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 subsection (a) take effect, the NAIC shall, not later than 60 days thereafter, provide a list of recommended candidates to the President. If the NAIC 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 Senate, make the requisite appointments without considering the views of the NAIC.

(B) SUBSEQUENT APPOINTMENTS.—After the initial appointments, the NAIC shall provide a list of at least six recommended candidates for the Board to the President by January 15 of each subsequent year. If the NAIC fails to provide a list by that date, or if any list that is provided does not include at least six 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.

(c) ANNUAL REPORT.—As soon as practicable after the close of each fiscal year, the Association shall submit to the President and to the 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 other actions purporting to regulate insurance producers shall be preempted as provided in subsection (b).

(b) PROHIBITED ACTIONS.—No State shall—

(1) 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) 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) 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 from 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; or

(4) implement the procedures of such State's system of licensing or renewing the licenses of insur-

ance producers in a manner different from the authority of the Association under section 325.

(c) SAVINGS PROVISION.—Except as provided in subsections (a) and (b), no provision of this section shall be construed as altering or affecting the continuing effectiveness of any law, regulation, provision, or other 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.

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 shall be required to 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) 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.

(2) INSURANCE.—The term ''insurance'' means any product, other than title insurance, defined or regulated as insurance by the appropriate State insurance regulatory authority.

(3) 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.

(4) STATE.—The term ''State'' includes any State, the District of Columbia, American Samoa, Guam, Puerto Rico, and the United States Virgin Islands.

(5) 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.

Subtitle D—Rental Car Agency Insurance Activities

SEC. 341. STANDARD OF REGULATION FOR MOTOR VEHICLE RENTALS.

(a) PROTECTION AGAINST RETROACTIVE APPLICATION OF REGULATORY AND LEGAL ACTION.—Except as provided in subsection (b), during the 3-year period beginning on the date of the enactment of this Act, it shall be a presumption that no State law imposes any licensing, appointment, or education requirements on any person who solicits the purchase of or sells insurance connected with, and incidental to, the lease or rental of a motor vehicle.

(b) PREEMINENCE OF STATE INSURANCE LAW.—No provision of this section shall be construed as altering the validity, interpretation, construction, or effect of—

(1) any State statute;

(2) the prospective application of any court judgment interpreting or applying any State statute; or

(3) the prospective application of any final State regulation, order, bulletin, or other statutorily authorized interpretation or action,

which, by its specific terms, expressly regulates or exempts from regulation any person who solicits the purchase of or sells insurance connected with, and incidental to, the short-term lease or rental of a motor vehicle.

(c) SCOPE OF APPLICATION.—This section shall apply with respect to—

(1) the lease or rental of a motor vehicle for a total period of 90 consecutive days or less; and

(2) insurance which is provided in connection with, and incidentally to, such lease or rental for a period of consecutive days not exceeding the lease or rental period.

(d) MOTOR VEHICLE DEFINED.—For purposes of this section, the term ''motor vehicle'' has the meaning

given to such term in section 13102 of title 49, United States Code.

Subtitle E—Confidentiality

SEC. 351. CONFIDENTIALITY OF HEALTH AND MEDICAL INFORMATION.

(a) IN GENERAL.—A company which underwrites or sells annuities contracts or contracts insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death (other than credit-related insurance) and any subsidiary or affiliate thereof shall maintain a practice of protecting the confidentiality of individually identifiable customer health and medical and genetic information and may disclose such information only—

(1) with the consent, or at the direction, of the customer;

(2) for insurance underwriting and reinsuring policies, account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), providing information to the customer's physician or other health care provider, participating in research projects, enabling the purchase, transfer, merger, or sale of any insurance-related business, or as other-

1 wise required or specifically permitted by Federal or
2 State law; or
3 (3) in connection with—
4 (A) the authorization, settlement, billing,
5 processing, clearing, transferring, reconciling,
6 or collection of amounts charged, debited, or
7 otherwise paid using a debit, credit, or other
8 payment card or account number, or by other
9 payment means;
10 (B) the transfer of receivables, accounts,
11 or interest therein;
12 (C) the audit of the debit, credit, or other
13 payment information;
14 (D) compliance with Federal, State, or
15 local law;
16 (E) compliance with a properly authorized
17 civil, criminal, or regulatory investigation by
18 Federal, State, or local authorities as governed
19 by the requirements of this section; or
20 (F) fraud protection, risk control, resolving
21 customer disputes or inquiries, communicating
22 with the person to whom the information re-
23 lates, or reporting to consumer reporting agen-
24 cies.

(b) STATE ACTIONS FOR VIOLATIONS.—In addition to such other remedies as are provided under State law, if the chief law enforcement officer of a State, State insurance regulator, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this title, the State may bring an action to enjoin such violation in any appropriate United States district court or in any other court of competent jurisdiction.

(c) EFFECTIVE DATE; SUNSET.—

(1) EFFECTIVE DATE.—Except as provided in paragraph (2), subsection (a) shall take effect on February 1, 2000.

(2) SUNSET.—Subsection (a) shall not take effect if, or shall cease to be effective on and after the date on which, legislation is enacted that satisfies the requirements in section 264(c)(1) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191; 110 Stat. 2033).

(d) CONSULTATION.—While subsection (a) is in effect, State insurance regulatory authorities, through the National Association of Insurance Commissioners, shall consult with the Secretary of Health and Human Services in connection with the administration of such subsection.

TITLE IV—UNITARY SAVINGS AND LOAN HOLDING COMPANIES

SEC. 401. PROHIBITION ON NEW UNITARY SAVINGS AND LOAN 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 HOLDING COMPANY.—

"(A) IN GENERAL.—Subject to subparagraph (B) and notwithstanding paragraph (3), no company may directly or indirectly, including through any merger, consolidation, or other type of business combination, acquire control of a savings association after March 4, 1999, unless the company is engaged, directly or indirectly (including through a subsidiary other than a savings association), only in activities that are permitted—

"(i) under paragraph (1)(C) or (2); or

"(ii) for financial holding companies under section 6(c) of the Bank Holding Company Act of 1956.

"(B) EXISTING UNITARY 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 one or more savings associations described in paragraph (3) pursuant to applications at least one of which was filed on or before March 4, 1999; or

"(II) subject to subparagraph (C), became a savings and loan holding company by acquiring control of the company described in subclause (I); and

"(ii) continues to control the savings association referred to in clause (i)(II) or the successor to any such savings association.

"(C) NOTICE PROCESS FOR NONFINANCIAL ACTIVITIES BY A SUCCESSOR UNITARY HOLDING COMPANY.—

"(i) NOTICE REQUIRED.—Subparagraph (B) shall not apply to any company described in subparagraph (B)(i)(II) which engages, directly or indirectly, in any activity other than activities described in clauses (i) and (ii) of subparagraph (A), unless—

"(I) in addition to an application to the Director under this section to become a savings and loan holding company, the company submits a notice to the Board of Governors of the Federal Reserve System of such nonfinancial activities in the same manner as a notice of nonbanking activities is filed with the Board under section 4(j) of the Bank Holding Company Act of 1956; and

"(II) before the end of the applicable period under such section 4(j), the Board either approves or does not disapprove of the continuation of such activities by such company, directly or indirectly, after becoming a savings and loan holding company.

"(ii) PROCEDURE.—Section 4(j) of the Bank Holding Company Act of 1956, including the standards for review, shall apply to any notice filed with the Board under this subparagraph in the same manner as it applies to notices filed under such section.".

(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".

(c) CONFORMING AMENDMENT.—Section 10(o)(5) of the Home Owners' Loan Act (12 U.S.C. 1467a(o)(5)) is amended—

(1) in subparagraph (E), by striking ", except subparagraph (B)"; and

(2) by adding at the end the following new subparagraph:

"(F) In the case of a mutual holding company which is a savings and loan holding company described in subsection (c)(3), engaging in the activities permitted for financial holding companies under section 6(c) of the Bank Holding Company Act of 1956.".

SEC. 402. RETENTION OF "FEDERAL" IN NAME OF CONVERTED FEDERAL SAVINGS ASSOCIATION.

Section 2 of the Act entitled "An Act to enable national banking associations to increase their capital stock and to change their names or locations", approved May 1, 1886 (12 U.S.C. 30), is amended by adding at the end the following new subsection:

"(d) RETENTION OF 'FEDERAL' IN NAME OF CONVERTED FEDERAL SAVINGS ASSOCIATION.—

"(1) IN GENERAL.—Notwithstanding subsection (a) or any other provision of law, any depository institution the charter of which is converted from that of a Federal savings association to a national bank or a State bank after the date of the enactment of the Financial Services Act of 1999 may retain the term 'Federal' in the name of such institution if such depository institution remains an insured depository institution.

"(2) DEFINITIONS.—For purposes of this subsection, the terms 'depository institution', 'insured depository institution', 'national bank', and 'State bank' have the same meanings as in section 3 of the Federal Deposit Insurance Act.".

TITLE V—PRIVACY

Subtitle A—Disclosure of Nonpublic Personal Information

SEC. 501. PROTECTION OF NONPUBLIC PERSONAL INFORMATION.

(a) PRIVACY OBLIGATION POLICY.—It is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information.

(b) FINANCIAL INSTITUTIONS SAFEGUARDS.—In furtherance of the policy in subsection (a), each agency or authority described in section 505(a) shall establish appropriate standards for the financial institutions subject to their jurisdiction relating to administrative, technical, and physical safeguards—

(1) to insure the security and confidentiality of customer records and information;

(2) to protect against any anticipated threats or hazards to the security or integrity of such records; and

(3) to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.

SEC. 502. OBLIGATIONS WITH RESPECT TO DISCLOSURES OF PERSONAL INFORMATION.

(a) NOTICE REQUIREMENTS.—Except as otherwise provided in this subtitle, a financial institution may not, directly or through any affiliate, disclose to a nonaffiliated third party any nonpublic personal information, unless such financial institution provides or has provided to the consumer a notice that complies with section 503(b).

(b) OPT OUT.—

(1) IN GENERAL.—A financial institution may not disclose nonpublic personal information to nonaffiliated third parties unless—

(A) such financial institution clearly and conspicuously discloses to the consumer, in writing or in electronic form (or other form permitted by the regulations prescribed under section 504), that such information may be disclosed to such third parties;

(B) the consumer is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such third parties; and

(C) the consumer is given an explanation of how the consumer can exercise that nondisclosure option.

(2) EXCEPTION.—This subsection shall not prevent a financial institution from providing nonpublic personal information to a nonaffiliated third party to perform services or functions on behalf of the financial institution, including marketing of the financial institution's own products or services or financial products or services offered pursuant to joint agreements between two or more financial institutions that comply with the requirements imposed by the regulations prescribed under section 504, if the financial institution fully discloses the providing of such information and enters into a contractual agreement with the third party that requires the third party to maintain the confidentiality of such information.

(c) LIMITS ON REUSE OF INFORMATION.—Except as otherwise provided in this subtitle, a nonaffiliated third party that receives from a financial institution nonpublic personal information under this section shall not, directly or through an affiliate of such receiving third party, disclose such information to any other person that is a nonaffiliated third party of both the financial institution and such receiving third party, unless such disclosure would be lawful if made directly to such other person by the financial institution.

(d) LIMITATIONS ON THE SHARING OF ACCOUNT NUMBER INFORMATION FOR MARKETING PURPOSES.—A financial institution shall not disclose an account number or similar form of access number or access code for a credit card account, deposit account, or transaction account of a consumer to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

(e) GENERAL EXCEPTIONS.—Subsections (a) and (b) shall not prohibit the disclosure of nonpublic personal information—

(1) as necessary to effect, administer, or enforce a transaction requested or authorized by the consumer, or in connection with—

(A) servicing or processing a financial product or service requested or authorized by the consumer;

(B) maintaining or servicing the consumer's account with the financial institution; or

(C) a proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer;

(2) with the consent or at the direction of the consumer;

(3) to protect the confidentiality or security of its records pertaining to the consumer, the service or product, or the transaction therein, or to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability, for required institutional risk control, or for resolving customer disputes or inquiries, or to persons holding a beneficial interest relating to the consumer, or to persons acting in a fiduciary capacity on behalf of the consumer;

(4) to provide information to insurance rate advisory organizations, guaranty funds or agencies, applicable rating agencies of the financial institution, persons assessing the institution's compliance with industry standards, and the institution's attorneys, accountants, and auditors;

(5) to the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978, to law enforcement agencies (including a Federal functional regulator, a State insurance authority, or the Federal Trade Commission), self-regu-

1 latory organizations, or for an investigation on a
2 matter related to public safety;
3 (6) to a consumer reporting agency in accord-
4 ance with the Fair Credit Reporting Act, or in ac-
5 cordance with interpretations of such Act by the
6 Board of Governors of the Federal Reserve System
7 or the Federal Trade Commission, including inter-
8 pretations published as commentary (16 CFR 601–
9 622);
10 (7) in connection with a proposed or actual
11 sale, merger, transfer, or exchange of all or a por-
12 tion of a business or operating unit if the disclosure
13 of nonpublic personal information concerns solely
14 consumers of such business or unit; or
15 (8) to comply with Federal, State, or local laws,
16 rules, and other applicable legal requirements; to
17 comply with a properly authorized civil, criminal, or
18 regulatory investigation or subpoena by Federal,
19 State, or local authorities; or to respond to judicial
20 process or government regulatory authorities having
21 jurisdiction over the financial institution for exam-
22 ination, compliance, or other purposes as authorized
23 by law.

SEC. 503. DISCLOSURE OF INSTITUTION PRIVACY POLICY.

(a) DISCLOSURE REQUIRED.—A financial institution shall clearly and conspicuously disclose to each consumer, at the time of establishing the customer relationship with the consumer and not less than annually, in writing or in electronic form (or other form permitted by the regulations prescribed under section 504), its policies and practices with respect to protecting the nonpublic personal information of consumers in accordance with the rules prescribed under section 504.

(b) INFORMATION TO BE INCLUDED.—The disclosure required by subsection (a) shall include—

(1) the policy and practices of the institution with respect to disclosing nonpublic personal information to nonaffiliated third parties, other than agents of the institution, consistent with section 502 of this subtitle, and including—

(A) the categories of persons to whom the information is or may be disclosed, other than the persons to whom the information may be provided pursuant to section 502(e); and

(B) the practices and policies of the institution with respect to disclosing of nonpublic personal information of persons who have ceased to be customers of the financial institution;

(2) the categories of nonpublic personal information that are collected by the financial institution;

(3) the policies that the institution maintains to protect the confidentiality and security of nonpublic personal information in accordance with section 501; and

(4) the disclosures required, if any, under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act.

SEC. 504. RULEMAKING.

(a) REGULATORY AUTHORITY.—The Federal banking agencies, the National Credit Union Association, the Secretary of the Treasury, and the Securities and Exchange Commission, shall jointly prescribe, after consultation with the Federal Trade Commission, and representatives of State insurance authorities designated by the National Association of Insurance Commissioners, such regulations as may be necessary to carry out the purposes of this subtitle. Such regulations shall be prescribed in accordance with applicable requirements of the title 5, United States Code, and shall be issued in final form within 6 months after the date of enactment of this Act.

(b) AUTHORITY TO GRANT EXCEPTIONS.—The regulations prescribed under subsection (a) may include such additional exceptions to subsections (a) and (b) of section

502 as are deemed consistent with the purposes of this subtitle.

SEC. 505. ENFORCEMENT.

(a) IN GENERAL.—This subtitle and the rules prescribed thereunder shall be enforced by the Federal functional regulators, the State insurance authorities, and the Federal Trade Commission with respect to financial institutions subject to their jurisdiction under applicable law, as follows:

(1) Under section 8 of the Federal Deposit Insurance Act, in the case of—

(A) national banks, Federal branches and Federal agencies of foreign banks, and any subsidiaries of such entities, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act, bank holding companies and their nonbank subsidiaries or affiliates (except broker-dealers, af-

filiates providing insurance, investment companies, and investment advisers), by the Board of Governors of the Federal Reserve System;

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), insured State branches of foreign banks, and any subsidiaries of such entities, by the Board of Directors of the Federal Deposit Insurance Corporation; and

(D) savings association the deposits of which are insured by the Federal Deposit Insurance Corporation, and any subsidiaries of such a savings association, by the Director of the Office of Thrift Supervision.

(2) Under the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal or state chartered credit union, and any subsidiaries of such an entity.

(3) Under the Farm Credit Act of 1971, by the Farm Credit Administration with respect to the Federal Agricultural Mortgage Corporation, any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association.

(4) Under the Securities Exchange Act of 1934, by the Securities and Exchange Commission with respect to any broker-dealer.

(5) Under the Investment Company Act of 1940, by the Securities and Exchange Commission with respect to investment companies.

(6) Under the Investment Advisers Act of 1940, by the Securities and Exchange Commission with respect to investment advisers registered with the Commission under such Act.

(7) Under Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U. S. C. 4501 et seq.), by the Office of Federal Housing Enterprise Oversight with respect to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(8) Under the Federal Home Loan Bank Act, by the Federal Housing Finance Board with respect to Federal home loan banks.

(9) Under State insurance law, in the case of any person engaged in providing insurance, by the State insurance authority of the State in which the person is domiciled, subject to section 104 of this Act.

(10) Under the Federal Trade Commission Act, by the Federal Trade Commission for any other financial institution that is not subject to the jurisdiction of any agency or authority under paragraphs (1) through (9) of this subsection.

(b) ENFORCEMENT OF SECTION 501.—

(1) IN GENERAL.—Except as provided in paragraph (2), the agencies and authorities described in subsection (a) shall implement the standards prescribed under section 501(b) in the same manner, to the extent practicable, as standards prescribed pursuant to subsection (a) of section 39 of the Federal Deposit Insurance Act are implemented pursuant to such section.

(2) EXCEPTION.—The agencies and authorities described in paragraphs (4), (5), (6), (9), and (10) of subsection (a) shall implement the standards prescribed under section 501(b) by rule with respect to the financial institutions subject to their respective jurisdictions under subsection (a).

(c) DEFINITIONS.—The terms used in subsection (a)(1) that are not defined in this subtitle or otherwise defined in section 3(s) of the Federal Deposit Insurance Act shall have the meaning given to them in section 1(b) of the International Banking Act of 1978.

SEC. 506. FAIR CREDIT REPORTING ACT AMENDMENT.

(a) AMENDMENT.—Section 621 of the Fair Credit Reporting Act (15 U.S.C. 1681s) is amended—

(1) in subsection (d), by striking everything following the end of the second sentence; and

(2) by striking subsection ''(e)'' and inserting in lieu thereof the following:

''(e) REGULATORY AUTHORITY.—

''(1) The Federal banking agencies referred to in paragraphs (1) and (2) of subsection (b) shall jointly prescribe such regulations as necessary to carry out the purposes of this Act with respect to any persons identified under paragraphs (1) and (2) of subsection (b), or to the holding companies and affiliates of such persons.

''(2) The Administrator of the National Credit Union Administration shall prescribe such regulations as necessary to carry out the purposes of this Act with respect to any persons identified under paragraph (3) of subsection (b).''.

(b) CONFORMING AMENDMENT.—Section 621(a) of the Fair Credit Reporting Act (15 U.S.C. 1681s(a)) is amended by striking paragraph (4).

SEC. 507. RELATION TO OTHER PROVISIONS.

This subtitle shall not apply to any information to which subtitle D of title III applies.

SEC. 508. STUDY OF INFORMATION SHARING AMONG FINANCIAL AFFILIATES.

(a) IN GENERAL.—The Secretary of the Treasury, in conjunction with the Federal functional regulators and the Federal Trade Commission, shall conduct a study of information sharing practices among financial institutions and their affiliates. Such study shall include—

(1) the purposes for the sharing of confidential customer information with affiliates or with nonaffiliated third parties;

(2) the extent and adequacy of security protections for such information;

(3) the potential risks for customer privacy of such sharing of information;

(4) the potential benefits for financial institutions and affiliates of such sharing of information;

(5) the potential benefits for customers of such sharing of information;

(6) the adequacy of existing laws to protect customer privacy;

(7) the adequacy of financial institution privacy policy and privacy rights disclosure under existing law;

(8) the feasibility of different approaches, including opt-out and opt-in, to permit customers to

direct that confidential information not be shared with affiliates and nonaffiliated third parties; and

(9) the feasibility of restricting sharing of information for specific uses or of permitting customers to direct the uses for which information may be shared.

(b) CONSULTATION.—The Secretary shall consult with representatives of State insurance authorities designated by the National Association of Insurance Commissioners, and also with financial services industry, consumer organizations and privacy groups, and other representatives of the general public, in formulating and conducting the study required by subsection (a).

(c) REPORT.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Secretary shall submit a report to the Congress containing the findings and conclusions of the study required under subsection (a), together with such recommendations for legislative or administrative action as may be appropriate.

SEC. 509. DEFINITIONS.

As used in this subtitle:

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

(2) FEDERAL FUNCTIONAL REGULATOR.—The term ''Federal functional regulator'' means—

(A) the Board of Governors of the Federal Reserve System;

(B) the Office of the Comptroller of the Currency;

(C) the Board of Directors of the Federal Deposit Insurance Corporation;

(D) the Director of the Office of Thrift Supervision;

(E) the National Credit Union Administration Board;

(F) the Farm Credit Administration; and

(G) the Securities and Exchange Commission.

(3) FINANCIAL INSTITUTION.—The term ''financial institution'' means any institution the business of which is engaging in financial activities or activities that are incidental to financial activities, as described in section 6(c) of the Bank Holding Company Act of 1956.

(4) NONPUBLIC PERSONAL INFORMATION.—

(A) The term ''nonpublic personal information'' means personally identifiable financial information—

(i) provided by a consumer to a financial institution;

(ii) resulting from any transaction with the consumer or the service performed for the consumer; or

(iii) otherwise obtained by the financial institution.

(B) Such term does not include publicly available information, as such term is defined by the regulations prescribed under section 504.

(C) Notwithstanding subparagraph (B), such term shall include any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable information other than publicly available information.

(5) NONAFFILIATED THIRD PARTIES.—The term ''nonaffiliated third parties'' means any entity that is not an affiliate of, or related by common ownership or affiliated by corporate control with, the financial institution, but does not include a joint employee of such institution.

(6) AFFILIATE.—The term ''affiliate'' means any company that controls, is controlled by, or is under common control with another company.

(7) NECESSARY TO EFFECT, ADMINISTER, OR ENFORCE.—The term ''as necessary to effect, administer or enforce the transaction'' means—

(A) the disclosure is required, or is a usual, appropriate or acceptable method, to carry out the transaction or the product or service business of which the transaction is a part, and record or service or maintain the consumer's account in the ordinary course of providing the financial service or financial product, or to administer or service benefits or claims relating to the transaction or the product or service business of which it is a part, and includes—

(i) providing the consumer or the consumer's agent or broker with a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product; and

(ii) the accrual or recognition of incentives or bonuses associated with the

1 transaction that are provided by the finan-
2 cial institution or any other party;
3 (B) the disclosure is required, or is one of
4 the lawful or appropriate methods, to enforce
5 the rights of the financial institution or of other
6 persons engaged in carrying out the financial
7 transaction, or providing the product or service;
8 (C) the disclosure is required, or is a
9 usual, appropriate, or acceptable method, for
10 insurance underwriting at the consumer's re-
11 quest or for reinsurance purposes, or for any of
12 the following purposes as they relate to a con-
13 sumer's insurance: account administration, re-
14 porting, investigating, or preventing fraud or
15 material misrepresentation, processing premium
16 payments, processing insurance claims, admin-
17 istering insurance benefits (including utilization
18 review activities), participating in research
19 projects, or as otherwise required or specifically
20 permitted by Federal or State law; or
21 (D) the disclosure is required, or is a
22 usual, appropriate or acceptable method, in con-
23 nection with—
24 (i) the authorization, settlement, bill-
25 ing, processing, clearing, transferring, rec-

onciling, or collection of amounts charged, debited, or otherwise paid using a debit, credit or other payment card, check, or account number, or by other payment means;

(ii) the transfer of receivables, accounts or interests therein; or

(iii) the audit of debit, credit or other payment information.

(8) STATE INSURANCE AUTHORITY.—The term ''State insurance authority'' means, in the case of any person engaged in providing insurance, the State insurance authority of the State in which the person is domiciled.

(9) CONSUMER.—The term ''consumer'' means an individual who obtains, from a financial institution, financial products or services which are to be used primarily for personal, family, or household purposes, and also means the legal representative of such an individual.

(10) JOINT AGREEMENT.—The term ''joint agreement'' means a formal written contract pursuant to which two or more financial institutions jointly offer, endorse, or sponsor a financial product or service, and any payments between the parties are based on business or profit generated.

SEC. 510. EFFECTIVE DATE.

This subtitle shall take effect 6 months after the date on which the rules under section 503 are promulgated, except—

(1) to the extent that a later date is specified in such rules; and

(2) that section 506 shall be effective upon enactment.

Subtitle B—Fraudulent Access to Financial Information

SEC. 521. PRIVACY PROTECTION FOR CUSTOMER INFORMATION OF FINANCIAL INSTITUTIONS.

(a) PROHIBITION ON OBTAINING CUSTOMER INFORMATION BY FALSE PRETENSES.—It shall be a violation of this subtitle for any person to obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed to any person, customer information of a financial institution relating to another person—

(1) by making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial institution;

(2) by making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution; or

(3) by providing any document to an officer, employee, or agent of a financial institution, know-

ing that the document is forged, counterfeit, lost, or stolen, was fraudulently obtained, or contains a false, fictitious, or fraudulent statement or representation.

(b) PROHIBITION ON SOLICITATION OF A PERSON TO OBTAIN CUSTOMER INFORMATION FROM FINANCIAL INSTITUTION UNDER FALSE PRETENSES.—It shall be a violation of this subtitle to request a person to obtain customer information of a financial institution, knowing that the person will obtain, or attempt to obtain, the information from the institution in any manner described in subsection (a).

(c) NONAPPLICABILITY TO LAW ENFORCEMENT AGENCIES.—No provision of this section shall be construed so as to prevent any action by a law enforcement agency, or any officer, employee, or agent of such agency, to obtain customer information of a financial institution in connection with the performance of the official duties of the agency.

(d) NONAPPLICABILITY TO FINANCIAL INSTITUTIONS IN CERTAIN CASES.—No provision of this section shall be construed so as to prevent any financial institution, or any officer, employee, or agent of a financial institution, from obtaining customer information of such financial institution in the course of—

(1) testing the security procedures or systems of such institution for maintaining the confidentiality of customer information;

(2) investigating allegations of misconduct or negligence on the part of any officer, employee, or agent of the financial institution; or

(3) recovering customer information of the financial institution which was obtained or received by another person in any manner described in subsection (a) or (b).

(e) NONAPPLICABILITY TO INSURANCE INSTITUTIONS FOR INVESTIGATION OF INSURANCE FRAUD.—No provision of this section shall be construed so as to prevent any insurance institution, or any officer, employee, or agency of an insurance institution, from obtaining information as part of an insurance investigation into criminal activity, fraud, material misrepresentation, or material nondisclosure that is authorized for such institution under State law, regulation, interpretation, or order.

(f) NONAPPLICABILITY TO CERTAIN TYPES OF CUSTOMER INFORMATION OF FINANCIAL INSTITUTIONS.—No provision of this section shall be construed so as to prevent any person from obtaining customer information of a financial institution that otherwise is available as a public

record filed pursuant to the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934).

(g) NONAPPLICABILITY TO COLLECTION OF CHILD SUPPORT JUDGMENTS.—No provision of this section shall be construed to prevent any State-licensed private investigator, or any officer, employee, or agent of such private investigator, from obtaining customer information of a financial institution, to the extent reasonably necessary to collect child support from a person adjudged to have been delinquent in his or her obligations by a Federal or State court, and to the extent that such action by a State-licensed private investigator is not unlawful under any other Federal or State law or regulation, and has been authorized by an order or judgment of a court of competent jurisdiction.

SEC. 522. ADMINISTRATIVE ENFORCEMENT.

(a) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—Compliance with this subtitle shall be enforced by the Federal Trade Commission in the same manner and with the same power and authority as the Commission has under the title VIII, the Fair Debt Collection Practices Act, to enforce compliance with such title.

(b) NOTICE OF ACTIONS.—The Federal Trade Commission shall—

(1) notify the Securities and Exchange Commission whenever the Federal Trade Commission initiates an investigation with respect to a financial institution subject to regulation by the Securities and Exchange Commission;

(2) notify the Federal banking agency (as defined in section 3(z) of the Federal Deposit Insurance Act) whenever the Commission initiates an investigation with respect to a financial institution subject to regulation by such Federal banking agency; and

(3) notify the appropriate State insurance regulator whenever the Commission initiates an investigation with respect to a financial institution subject to regulation by such regulator.

SEC. 523. CRIMINAL PENALTY.

(a) IN GENERAL.—Whoever knowingly and intentionally violates, or knowingly and intentionally attempts to violate, section 521 shall be fined in accordance with title 18, United States Code, or imprisoned for not more than 5 years, or both.

(b) ENHANCED PENALTY FOR AGGRAVATED CASES.—Whoever violates, or attempts to violate, section 521 while violating another law of the United States or as part of a pattern of any illegal activity involving more

than $100,000 in a 12-month period shall be fined twice the amount provided in subsection (b)(3) or (c)(3) (as the case may be) of section 3571 of title 18, United States Code, imprisoned for not more than 10 years, or both.

SEC. 524. RELATION TO STATE LAWS.

(a) IN GENERAL.—This subtitle 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 provisions of this subtitle, and then only to the extent of the inconsistency.

(b) GREATER PROTECTION UNDER STATE LAW.—For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this subtitle if the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided under this subtitle as determined by the Commission, on its own motion or upon the petition of any interested party.

SEC. 525. AGENCY GUIDANCE.

In furtherance of the objectives of this subtitle, each Federal banking agency (as defined in section 3(z) of the Federal Deposit Insurance Act) and the Securities and Exchange Commission or self-regulatory organizations, as

appropriate, shall review regulations and guidelines applicable to financial institutions under their respective jurisdictions and shall prescribe such revisions to such regulations and guidelines as may be necessary to ensure that such financial institutions have policies, procedures, and controls in place to prevent the unauthorized disclosure of customer financial information and to deter and detect activities proscribed under section 521.

SEC. 526. REPORTS.

(a) REPORT TO THE CONGRESS.—Before the end of the 18-month period beginning on the date of the enactment of this Act, the Comptroller General, in consultation with the Federal Trade Commission, Federal banking agencies, the Securities and Exchange Commission, appropriate Federal law enforcement agencies, and appropriate State insurance regulators, shall submit to the Congress a report on the following:

(1) The efficacy and adequacy of the remedies provided in this subtitle in addressing attempts to obtain financial information by fraudulent means or by false pretenses.

(2) Any recommendations for additional legislative or regulatory action to address threats to the privacy of financial information created by attempts

to obtain information by fraudulent means or false pretenses.

(b) ANNUAL REPORT BY ADMINISTERING AGENCIES.—The Federal Trade Commission and the Attorney General shall submit to Congress an annual report on number and disposition of all enforcement actions taken pursuant to this subtitle.

SEC. 527. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) CUSTOMER.—The term ''customer'' means, with respect to a financial institution, any person (or authorized representative of a person) to whom the financial institution provides a product or service, including that of acting as a fiduciary.

(2) CUSTOMER INFORMATION OF A FINANCIAL INSTITUTION.—The term ''customer information of a financial institution'' means any information maintained by or for a financial institution which is derived from the relationship between the financial institution and a customer of the financial institution and is identified with the customer.

(3) DOCUMENT.—The term ''document'' means any information in any form.

(4) FINANCIAL INSTITUTION.—

(A) IN GENERAL.—The term ''financial institution'' means any institution engaged in the business of providing financial services to customers who maintain a credit, deposit, trust, or other financial account or relationship with the institution.

(B) CERTAIN FINANCIAL INSTITUTIONS SPECIFICALLY INCLUDED.—The term ''financial institution'' includes any depository institution (as defined in section 19(b)(1)(A) of the Federal Reserve Act), any broker or dealer, any investment adviser or investment company, any insurance company, any loan or finance company, any credit card issuer or operator of a credit card system, and any consumer reporting agency that compiles and maintains files on consumers on a nationwide basis (as defined in section 603(p)).

(C) SECURITIES INSTITUTIONS.—For purposes of subparagraph (B)—

(i) the terms ''broker'' and ''dealer'' have the meanings provided in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(ii) the term ''investment adviser'' has the meaning provided in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)); and

(iii) the term ''investment company'' has the meaning provided in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3).

(D) FURTHER DEFINITION BY REGULATION.—The Federal Trade Commission, after consultation with Federal banking agencies and the Securities and Exchange Commission, may prescribe regulations clarifying or describing the types of institutions which shall be treated as financial institutions for purposes of this subtitle.

Passed the House of Representatives July 1, 1999.

Attest: JEFF TRANDAHL,

Clerk.