

# [COMMITTEE PRINT]

June 24, 1999

## [Amendment in the Nature of a Substitute to H.R. 10, As Reported]

Strike out all after the enacting clause and insert the following:

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

3 (a) **SHORT TITLE.**—This Act may be cited as the  
4 “Financial Services Act of 1999”.

5 (b) **PURPOSES.**—The purposes of this Act are as fol-  
6 lows:

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

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

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

15 (4) To avoid duplicative, potentially conflicting,  
16 and overly burdensome regulatory requirements

1 through the creation of a regulatory framework for  
2 financial holding companies that respects the diver-  
3 gent requirements of each of the component busi-  
4 nesses of the holding company, and that is based  
5 upon principles of strong functional regulation and  
6 enhanced regulatory coordination.

7 (5) To reduce and, to the maximum extent  
8 practicable, to eliminate the legal barriers preventing  
9 affiliation among depository institutions, securities  
10 firms, insurance companies, and other financial serv-  
11 ice providers and to provide a prudential framework  
12 for achieving that result.

13 (6) To enhance the availability of financial serv-  
14 ices to citizens of all economic circumstances and in  
15 all geographic areas.

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

18 (8) To ensure compliance by depository institu-  
19 tions with the provisions of the Community Rein-  
20 vestment Act of 1977 and enhance the ability of de-  
21 pository institutions to meet the capital and credit  
22 needs of all citizens and communities, including un-  
23 derserved communities and populations.

24 (c) TABLE OF CONTENTS.—The table of contents for  
25 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.

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.

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.

## 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—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 C—Rental Car Agency Insurance Activities

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

#### Subtitle D—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—Privacy Policy

- Sec. 501. Depository institution privacy policies.
- Sec. 502. Study of current financial privacy laws.

#### 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.

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

6 **Subtitle A—Affiliations**

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

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

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

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

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

19 “(8) shares of any company the activities of  
20 which had been determined by the Board by regula-  
21 tion or order under this paragraph as of the day be-  
22 fore the date of the enactment of the Financial Serv-  
23 ices Act of 1999, to be so closely related to banking  
24 as to be a proper incident thereto (subject to such

1 terms and conditions contained in such regulation or  
2 order, unless modified by the Board);”.

3 (b) CONFORMING CHANGES TO OTHER STATUTES.—

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

10 (2) AMENDMENT TO THE BANK SERVICE COM-  
11 PANY ACT.—Section 4(f) of the Bank Service Com-  
12 pany Act (12 U.S.C. 1864(f)) is amended by strik-  
13 ing the period and adding at the end the following:  
14 “as of the day before the date of enactment of the  
15 Financial Services Act of 1999.”.

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

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

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

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

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

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

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

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

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

20           “(D) The company has filed with the  
21 Board a declaration that the company elects to  
22 be a financial holding company and certifying  
23 that the company meets the requirements of  
24 subparagraphs (A), (B), and (C).

1           “(2) FOREIGN BANKS AND COMPANIES.—For  
2 purposes of paragraph (1), the Board shall establish  
3 and apply comparable capital and other operating  
4 standards to a foreign bank that operates a branch  
5 or agency or owns or controls a bank or commercial  
6 lending company in the United States, and any com-  
7 pany that owns or controls such foreign bank, giving  
8 due regard to the principle of national treatment  
9 and equality of competitive opportunity.

10           “(3) LIMITED EXCLUSIONS FROM COMMUNITY  
11 NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DE-  
12 POSITORY INSTITUTIONS.—Any depository institu-  
13 tion acquired by a bank holding company during the  
14 12-month period preceding the submission of a no-  
15 tice under paragraph (1)(D) and any depository in-  
16 stitution acquired after the submission of such no-  
17 tice may be excluded for purposes of paragraph  
18 (1)(C) during the 12-month period beginning on the  
19 date of such acquisition if—

20           “(A) the bank holding company has sub-  
21 mitted an affirmative plan to the appropriate  
22 Federal banking agency to take such action as  
23 may be necessary in order for such institution  
24 to achieve a rating of ‘satisfactory record of

1 meeting community credit needs', or better, at  
 2 the next examination of the institution; and

3 “(B) the plan has been accepted by such  
 4 agency.

5 “(c) ENGAGING IN ACTIVITIES THAT ARE FINANCIAL  
 6 IN NATURE.—

7 “(1) FINANCIAL ACTIVITIES.—

8 “(A) IN GENERAL.—Notwithstanding sec-  
 9 tion 4(a), a financial holding company may en-  
 10 gage in any activity, and acquire and retain the  
 11 shares of any company engaged in any activity,  
 12 that the Board has determined (by regulation  
 13 or order and in accordance with subparagraph  
 14 (B)) to be—

15 “(i) financial in nature or incidental  
 16 to such financial activities; or

17 “(ii) complementary to activities au-  
 18 thorized under this subsection to the ex-  
 19 tent that the amount of such complemen-  
 20 tary activities remains small.

21 “(B) COORDINATION BETWEEN THE  
 22 BOARD AND THE SECRETARY OF THE TREAS-  
 23 URY.—

24 “(i) PROPOSALS RAISED BEFORE THE  
 25 BOARD.—

1                   “(I)       CONSULTATION.—The  
2                   Board shall notify the Secretary of  
3                   the Treasury of, and consult with the  
4                   Secretary of the Treasury concerning,  
5                   any request, proposal, or application  
6                   under this subsection, including a reg-  
7                   ulation or order proposed under para-  
8                   graph (4), for a determination of  
9                   whether an activity is financial in na-  
10                  ture or incidental to such a financial  
11                  activity.

12                  “(II)   TREASURY   VIEW.—The  
13                  Board shall not determine that any  
14                  activity is financial in nature or inci-  
15                  dental to a financial activity under  
16                  this subsection if the Secretary of the  
17                  Treasury notifies the Board in writ-  
18                  ing, not later than 30 days after the  
19                  date of receipt of the notice described  
20                  in subclause (I) (or such longer period  
21                  as the Board determines to be appro-  
22                  priate in light of the circumstances)  
23                  that the Secretary of the Treasury be-  
24                  lieves that the activity is not financial

1 in nature or incidental to a financial  
2 activity.

3 “(ii) PROPOSALS RAISED BY THE  
4 TREASURY.—

5 “(I) TREASURY RECOMMENDA-  
6 TION.—The Secretary of the Treasury  
7 may, at any time, recommend in writ-  
8 ing that the Board find an activity to  
9 be financial in nature or incidental to  
10 a financial activity.

11 “(II) TIME PERIOD FOR BOARD  
12 ACTION.—Not later than 30 days  
13 after the date of receipt of a written  
14 recommendation from the Secretary of  
15 the Treasury under subclause (I) (or  
16 such longer period as the Secretary of  
17 the Treasury and the Board deter-  
18 mine to be appropriate in light of the  
19 circumstances), the Board shall deter-  
20 mine whether to initiate a public rule-  
21 making proposing that the subject  
22 recommended activity be found to be  
23 financial in nature or incidental to a  
24 financial activity under this sub-  
25 section, and shall notify the Secretary

1 of the Treasury in writing of the de-  
2 termination of the Board and, in the  
3 event that the Board determines not  
4 to seek public comment on the pro-  
5 posal, the reasons for that determina-  
6 tion.

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

11 “(A) the purposes of this Act and the Fi-  
12 nancial Services Act of 1999;

13 “(B) changes or reasonably expected  
14 changes in the marketplace in which bank hold-  
15 ing companies compete;

16 “(C) changes or reasonably expected  
17 changes in the technology for delivering finan-  
18 cial services; and

19 “(D) whether such activity is necessary or  
20 appropriate to allow a bank holding company  
21 and the affiliates of a bank holding company  
22 to—

23 “(i) compete effectively with any com-  
24 pany seeking to provide financial services  
25 in the United States;

1           “(ii) use any available or emerging  
2           technological means, including any applica-  
3           tion necessary to protect the security or ef-  
4           ficacy of systems for the transmission of  
5           data or financial transactions, in providing  
6           financial services; and

7           “(iii) offer customers any available or  
8           emerging technological means for using fi-  
9           nancial services.

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

13           “(A) Lending, exchanging, transferring, in-  
14           vesting for others, or safeguarding money or se-  
15           curities.

16           “(B) Insuring, guaranteeing, or indem-  
17           nifying against loss, harm, damage, illness, dis-  
18           ability, or death, or providing and issuing annu-  
19           ities, and acting as principal, agent, or broker  
20           for purposes of the foregoing.

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

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

4           “(E) Underwriting, dealing in, or making  
5           a market in securities.

6           “(F) Engaging in any activity that the  
7           Board has determined, by order or regulation  
8           that is in effect on the date of enactment of the  
9           Financial Services Act of 1999, to be so closely  
10          related to banking or managing or controlling  
11          banks as to be a proper incident thereto (sub-  
12          ject to the same terms and conditions contained  
13          in such order or regulation, unless modified by  
14          the Board).

15          “(G) Engaging, in the United States, in  
16          any activity that—

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

19                 “(ii) the Board has determined, under  
20                 regulations issued pursuant to section  
21                 4(c)(13) of this Act (as in effect on the  
22                 day before the date of enactment of the Fi-  
23                 nancial Services Act of 1999) to be usual  
24                 in connection with the transaction of bank-  
25                 ing or other financial operations abroad.

1           “(H) Directly or indirectly acquiring or  
2 controlling, whether as principal, on behalf of 1  
3 or more entities (including entities, other than  
4 a depository institution, that the bank holding  
5 company controls) or otherwise, shares, assets,  
6 or ownership interests (including without limita-  
7 tion debt or equity securities, partnership inter-  
8 ests, trust certificates or other instruments rep-  
9 resenting ownership) of a company or other en-  
10 tity, whether or not constituting control of such  
11 company or entity, engaged in any activity not  
12 authorized pursuant to this section if—

13                   “(i) the shares, assets, or ownership  
14 interests are not acquired or held by a de-  
15 pository institution;

16                   “(ii) such shares, assets, or ownership  
17 interests are acquired and held by an affil-  
18 iate of the bank holding company that is a  
19 registered broker or dealer that is engaged  
20 in securities underwriting activities, or an  
21 affiliate of such broker or dealer, as part  
22 of a bona fide underwriting or investment  
23 banking activity, including investment ac-  
24 tivities engaged in for the purpose of ap-

1           preciation and ultimate resale or dispo-  
2           sition of the investment;

3           “(iii) such shares, assets, or owner-  
4           ship interests are held only for such a pe-  
5           riod of time as will permit the sale or dis-  
6           position thereof on a reasonable basis con-  
7           sistent with the nature of the activities de-  
8           scribed in clause (ii); and

9           “(iv) during the period such shares,  
10          assets, or ownership interests are held, the  
11          bank holding company does not actively  
12          participate in the day to day management  
13          or operation of such company or entity, ex-  
14          cept insofar as necessary to achieve the ob-  
15          jectives of clause (ii).

16          “(I) Directly or indirectly acquiring or con-  
17          trolling, whether as principal, on behalf of 1 or  
18          more entities (including entities, other than a  
19          depository institution or subsidiary of a deposit-  
20          ory institution, that the bank holding company  
21          controls) or otherwise, shares, assets, or owner-  
22          ship interests (including without limitation debt  
23          or equity securities, partnership interests, trust  
24          certificates or other instruments representing  
25          ownership) of a company or other entity, wheth-

1 er or not constituting control of such company  
2 or entity, engaged in any activity not authorized  
3 pursuant to this section if—

4 “(i) the shares, assets, or ownership  
5 interests are not acquired or held by a de-  
6 pository institution or a subsidiary of a de-  
7 pository institution;

8 “(ii) such shares, assets, or ownership  
9 interests are acquired and held by an in-  
10 surance company that is predominantly en-  
11 gaged in underwriting life, accident and  
12 health, or property and casualty insurance  
13 (other than credit-related insurance) or  
14 providing and issuing annuities;

15 “(iii) such shares, assets, or owner-  
16 ship interests represent an investment  
17 made in the ordinary course of business of  
18 such insurance company in accordance  
19 with relevant State law governing such in-  
20 vestments; and

21 “(iv) during the period such shares,  
22 assets, or ownership interests are held, the  
23 bank holding company does not directly or  
24 indirectly participate in the day-to-day  
25 management or operation of the company

1           or entity except insofar as necessary to  
2           achieve the objectives of clauses (ii) and  
3           (iii).

4           “(4) AUTHORIZATION OF NEW FINANCIAL AC-  
5           TIVITIES.—The Board shall, by regulation or order  
6           and in accordance with paragraph (1)(B), define,  
7           consistent with the purposes of this Act, the fol-  
8           lowing activities as, and the extent to which such ac-  
9           tivities are, financial in nature or incidental to ac-  
10          tivities which are financial in nature:

11           “(A) Lending, exchanging, transferring, in-  
12          vesting for others, or safeguarding financial as-  
13          sets other than money or securities.

14           “(B) Providing any device or other instru-  
15          mentality for transferring money or other finan-  
16          cial assets.

17           “(C) Arranging, effecting, or facilitating fi-  
18          nancial transactions for the account of third  
19          parties.

20          “(5) POST-CONSUMMATION NOTIFICATION.—

21           “(A) IN GENERAL.—A financial holding  
22          company that acquires any company, or com-  
23          mences any activity, pursuant to this subsection  
24          shall provide written notice to the Board de-  
25          scribing the activity commenced or conducted

1 by the company acquired no later than 30 cal-  
2 endar days after commencing the activity or  
3 consummating the acquisition.

4 “(B) APPROVAL NOT REQUIRED FOR CER-  
5 TAIN FINANCIAL ACTIVITIES.—Except as pro-  
6 vided in section 4(j) with regard to the acqui-  
7 sition of a savings association or in paragraph  
8 (6) of this subsection, a financial holding com-  
9 pany may commence any activity, or acquire  
10 any company, pursuant to paragraph (3) or any  
11 regulation prescribed or order issued under  
12 paragraph (4), without prior approval of the  
13 Board.

14 “(6) NOTICE REQUIRED FOR LARGE COMBINA-  
15 TIONS.—

16 “(A) IN GENERAL.—No financial holding  
17 company shall directly or indirectly acquire, and  
18 no company that becomes a financial holding  
19 company shall directly or indirectly acquire con-  
20 trol of, any company in the United States, in-  
21 cluding through merger, consolidation, or other  
22 type of business combination, that—

23 “(i) is engaged in activities permitted  
24 under this subsection or subsection (g);  
25 and

1                   “(ii) has consolidated total assets in  
2                   excess of \$40,000,000,000,  
3                   unless such holding company has provided no-  
4                   tice to the Board, not later than 60 days prior  
5                   to such proposed acquisition or prior to becom-  
6                   ing a financial holding company, and during  
7                   that time period, or such longer time period not  
8                   exceeding an additional 60 days, as established  
9                   by the Board, the Board has not issued a notice  
10                  disapproving the proposed acquisition or reten-  
11                  tion.

12                  “(B) FACTORS FOR CONSIDERATION.—In  
13                  reviewing any prior notice filed under this para-  
14                  graph, the Board shall take into  
15                  consideration—

16                         “(i) whether the company is in com-  
17                         pliance with all applicable criteria set forth  
18                         in subsection (b) and the provisions of sub-  
19                         section (d);

20                         “(ii) whether the proposed combina-  
21                         tion represents an undue aggregation of  
22                         resources;

23                         “(iii) whether the proposed combina-  
24                         tion poses a risk to the deposit insurance  
25                         system;

1           “(iv) whether the proposed combina-  
2           tion poses a risk to State insurance guar-  
3           anty funds;

4           “(v) whether the proposed combina-  
5           tion can reasonably be expected to be in  
6           the best interests of depositors or policy-  
7           holders of the respective entities;

8           “(vi) whether the proposed trans-  
9           action can reasonably be expected to fur-  
10          ther the purposes of this Act and produce  
11          benefits to the public; and

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

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

22          “(D) SOLICITATION OF VIEWS OF OTHER  
23          SUPERVISORY AGENCIES.—

24          “(i) IN GENERAL.—Upon receiving a  
25          prior notice under this paragraph, in order

1 to provide for the submission of their views  
2 and recommendations, the Board shall give  
3 notice of the proposal to—

4 “(I) the appropriate Federal  
5 banking agency of any bank involved;

6 “(II) the appropriate functional  
7 regulator of any functionally regulated  
8 nondepository institution (as defined  
9 in section 5(c)(1)(C)) involved; and

10 “(III) the Secretary of the Treas-  
11 ury, the Attorney General, and the  
12 Federal Trade Commission.

13 “(ii) TIMING.—The views and rec-  
14 ommendations of any agency provided no-  
15 tice under this paragraph shall be sub-  
16 mitted to the Board not later than 30 cal-  
17 endar days after the date on which notice  
18 to the agency was given, unless the Board  
19 determines that another shorter time pe-  
20 riod is appropriate.

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

23 “(1) IN GENERAL.—If the Board finds, after  
24 notice from or consultation with the appropriate  
25 Federal banking agency, that a financial holding

1 company is not in compliance with the requirements  
2 of subparagraph (A), (B), or (C) of subsection  
3 (b)(1), the Board shall give notice of such finding to  
4 the company.

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

12 “(3) AUTHORITY TO IMPOSE LIMITATIONS.—  
13 Until the conditions described in a notice to a finan-  
14 cial holding company under paragraph (1) are  
15 corrected—

16 “(A) the Board may impose such limita-  
17 tions on the conduct or activities of the com-  
18 pany or any affiliate of the company as the  
19 Board determines to be appropriate under the  
20 circumstances; and

21 “(B) the appropriate Federal banking  
22 agency may impose such limitations on the con-  
23 duct or activities of an affiliated depository in-  
24 stitution or subsidiary of a depository institu-  
25 tion as the appropriate Federal banking agency

1 determines to be appropriate under the cir-  
2 cumstances.

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

6 “(A) execute and implement an agreement  
7 in accordance with paragraph (2);

8 “(B) comply with any limitations imposed  
9 under paragraph (3);

10 “(C) in the case of a notice of failure to  
11 comply with subsection (b)(1)(A), restore each  
12 depository institution subsidiary to well capital-  
13 ized status before the end of the 180-day period  
14 beginning on the date such notice is received by  
15 the company (or such other period permitted by  
16 the Board); or

17 “(D) in the case of a notice of failure to  
18 comply with subparagraph (B) or (C) of sub-  
19 section (b)(1), restore compliance with any such  
20 subparagraph by the date the next examination  
21 of the depository institution subsidiary is com-  
22 pleted or by the end of such other period as the  
23 Board determines to be appropriate,

24 the Board may require such company, under such  
25 terms and conditions as may be imposed by the

1 Board and subject to such extension of time as may  
2 be granted in the Board's discretion, to divest con-  
3 trol of any depository institution subsidiary or, at  
4 the election of the financial holding company, in-  
5 stead to cease to engage in any activity conducted by  
6 such company or its subsidiaries pursuant to this  
7 section.

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

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

13 “(1) the procedures of the holding company for  
14 identifying and managing financial and operational  
15 risks within the company, and the subsidiaries of  
16 such company, adequately protect the subsidiaries of  
17 such company which are insured depository institu-  
18 tions or wholesale financial institution from such  
19 risks;

20 “(2) the holding company has reasonable poli-  
21 cies and procedures to preserve the separate cor-  
22 porate identity and limited liability of such company  
23 and the subsidiaries of such company, for the pro-  
24 tection of the company's subsidiary insured deposi-

1 tory institutions and wholesale financial institutions;  
2 and

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

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

7 “(1) IN GENERAL.—Notwithstanding section  
8 4(a), a company that is not a bank holding company  
9 or a foreign bank (as defined in section 1(b)(7) of  
10 the International Banking Act of 1978) and becomes  
11 a financial holding company after the date of the en-  
12 actment of the Financial Services Act of 1999 may  
13 continue to engage in any activity and retain direct  
14 or indirect ownership or control of shares of a com-  
15 pany engaged in any activity if—

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

19 “(B) the holding company is predomi-  
20 nantly engaged in financial activities as defined  
21 in paragraph (2); and

22 “(C) the company engaged in such activity  
23 continues to engage only in the same activities  
24 that such company conducted on September 30,

1           1997, and other activities permissible under  
2           this Act.

3           “(2) PREDOMINANTLY FINANCIAL.—For pur-  
4           poses of this subsection, a company is predominantly  
5           engaged in financial activities if the annual gross  
6           revenues derived by the holding company and all  
7           subsidiaries of the holding company (excluding reve-  
8           nues derived from subsidiary depository institu-  
9           tions), on a consolidated basis, from engaging in ac-  
10          tivities that are financial in nature or are incidental  
11          to activities that are financial in nature under sub-  
12          section (c) represent at least 85 percent of the con-  
13          solidated annual gross revenues of the company.

14          “(3) NO EXPANSION OF GRANDFATHERED COM-  
15          MERCIAL ACTIVITIES THROUGH MERGER OR CON-  
16          SOLIDATION.—A financial holding company that en-  
17          gages in activities or holds shares pursuant to this  
18          subsection, or a subsidiary of such financial holding  
19          company, may not acquire, in any merger, consolida-  
20          tion, or other type of business combination, assets of  
21          any other company which is engaged in any activity  
22          which the Board has not determined to be financial  
23          in nature or incidental to activities that are financial  
24          in nature under subsection (c).

1           “(4) CONTINUING REVENUE LIMITATION ON  
2           GRANDFATHERED COMMERCIAL ACTIVITIES.—Not-  
3           withstanding any other provision of this subsection,  
4           a financial holding company may continue to engage  
5           in activities or hold shares in companies pursuant to  
6           this subsection only to the extent that the aggregate  
7           annual gross revenues derived from all such activi-  
8           ties and all such companies does not exceed 15 per-  
9           cent of the consolidated annual gross revenues of the  
10          financial holding company (excluding revenues de-  
11          rived from subsidiary depository institutions).

12          “(5) CROSS MARKETING RESTRICTIONS APPLI-  
13          CABLE TO COMMERCIAL ACTIVITIES.—A depository  
14          institution controlled by a financial holding company  
15          shall not—

16                 “(A) offer or market, directly or through  
17                 any arrangement, any product or service of a  
18                 company whose activities are conducted or  
19                 whose shares are owned or controlled by the fi-  
20                 nancial holding company pursuant to this sub-  
21                 section or subparagraph (H) or (I) of sub-  
22                 section (c)(3); or

23                 “(B) permit any of its products or services  
24                 to be offered or marketed, directly or through

1           any arrangement, by or through any company  
2           described in subparagraph (A).

3           “(6) TRANSACTIONS WITH NONFINANCIAL AF-  
4           FILIATES.—A depository institution controlled by a  
5           financial holding company may not engage in a cov-  
6           ered transaction (as defined by section 23A(b)(7) of  
7           the Federal Reserve Act) with any affiliate con-  
8           trolled by the company pursuant to section 10(c),  
9           this subsection, or subparagraph (H) or (I) of sub-  
10          section (c)(3).

11          “(7) SUNSET OF GRANDFATHER.—A financial  
12          holding company engaged in any activity, or retain-  
13          ing direct or indirect ownership or control of shares  
14          of a company, pursuant to this subsection, shall ter-  
15          minate such activity and divest ownership or control  
16          of the shares of such company before the end of the  
17          10-year period beginning on the date of the enact-  
18          ment of the Financial Services Act of 1999. The  
19          Board may, upon application by a financial holding  
20          company, extend such 10-year period by a period not  
21          to exceed an additional 5 years if such extension  
22          would not be detrimental to the public interest.

23          “(g) DEVELOPING ACTIVITIES.—A financial holding  
24          company may engage directly or indirectly, or acquire  
25          shares of any company engaged, in any activity that the

1 Board has not determined to be financial in nature or inci-  
2 dental to financial activities under subsection (c) if—

3 “(1) the holding company reasonably concludes  
4 that the activity is financial in nature or incidental  
5 to financial activities;

6 “(2) the gross revenues from all activities con-  
7 ducted under this subsection represent less than 5  
8 percent of the consolidated gross revenues of the  
9 holding company;

10 “(3) the aggregate total assets of all companies  
11 the shares of which are held under this subsection  
12 do not exceed 5 percent of the holding company’s  
13 consolidated total assets;

14 “(4) the total capital invested in activities con-  
15 ducted under this subsection represents less than 5  
16 percent of the consolidated total capital of the hold-  
17 ing company;

18 “(5) neither the Board nor the Secretary of the  
19 Treasury has determined that the activity is not fi-  
20 nancial in nature or incidental to financial activities  
21 under subsection (c);

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

1           “(7) the holding company provides written noti-  
2           fication to the Board describing the activity com-  
3           menced or conducted by the company acquired no  
4           later than 10 business days after commencing the  
5           activity or consummating the acquisition.”.

6           (b) FACTORS FOR CONSIDERATION IN REVIEWING  
7           APPLICATION BY FINANCIAL HOLDING COMPANY TO AC-  
8           QUIRE BANK.—Section 3(c) of the Bank Holding Com-  
9           pany Act of 1956 (12 U.S.C. 1842(c)) is amended by add-  
10          ing at the end the following new paragraph:

11           “(6) ‘TOO BIG TO FAIL’ FACTOR.—In consid-  
12          ering an acquisition, merger, or consolidation under  
13          this section involving a financial holding company or  
14          a company that would be any such holding company  
15          upon the consummation of the transaction, the  
16          Board shall consider whether, and the extent to  
17          which, the proposed acquisition, merger, or consoli-  
18          dation poses an undue risk to the stability of the fi-  
19          nancial system of the United States.”.

20          (c) TECHNICAL AND CONFORMING AMENDMENTS.—

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

24           “(p) INSURANCE COMPANY.—For purposes of sec-  
25          tions 5, 6, and 10, the term ‘insurance company’ includes

1 any person engaged in the business of insurance to the  
2 extent of such activities.”.

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

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

8 (2) in paragraph (3)—

9 (A) by inserting “, other than any com-  
10plementary activity under section 6(c)(1)(B),”  
11 after “to engage in any activity”; and

12 (B) by inserting “or a company engaged in  
13 any complementary activity under section  
14 6(c)(1)(B)” after “insured depository institu-  
15 tion”.

16 (d) REPORT.—

17 (1) IN GENERAL.—By the end of the 4-year pe-  
18riod beginning on the date of the enactment of this  
19 Act and every 4 years thereafter, the Board of Gov-  
20ernors of the Federal Reserve System and the Sec-  
21retary of the Treasury shall submit a joint report to  
22 the Congress containing a summary of new activities  
23 which are financial in nature, including grand-  
24fathered commercial activities, in which any financial  
25 holding company is engaged pursuant to subsection

1 (c)(1) or (f) of section 6 of the Bank Holding Com-  
2 pany Act of 1956 (as added by subsection (a)).

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

6 (A) A discussion of actions by the Board  
7 of Governors of the Federal Reserve System  
8 and the Secretary of the Treasury, whether by  
9 regulation, order, interpretation, or guideline or  
10 by approval or disapproval of an application,  
11 with regard to activities of financial holding  
12 companies which are incidental to activities fi-  
13 nancial in nature or complementary to such fi-  
14 nancial activities.

15 (B) An analysis and discussion of the risks  
16 posed by commercial activities of financial hold-  
17 ing companies to the safety and soundness of  
18 affiliate depository institutions.

19 (C) An analysis and discussion of the ef-  
20 fect of mergers and acquisitions under section  
21 6 of the Bank Holding Company Act of 1956  
22 on market concentration in the financial serv-  
23 ices industry.

24 (D) An analysis and discussion, by the  
25 Board and the Secretary in consultation with

1 the other Federal banking agencies (as defined  
2 in section 3(z) of the Federal Deposit Insurance  
3 Act), of the impact of the implementation of  
4 this Act, and the amendments made by this  
5 Act, on the extent of meeting community credit  
6 needs and capital availability under the Com-  
7 munity Reinvestment Act of 1977.

8 **SEC. 104. OPERATION OF STATE LAW.**

9 (a) AFFILIATIONS.—

10 (1) IN GENERAL.—Except as provided in para-  
11 graph (2), no State may, by statute, regulation,  
12 order, interpretation, or other action, prevent or re-  
13 strict an insured depository institution or wholesale  
14 financial institution, or a subsidiary or affiliate  
15 thereof, from being affiliated directly or indirectly or  
16 associated with any person or entity, as authorized  
17 or permitted by this Act or any other provision of  
18 Federal law.

19 (2) INSURANCE.—With respect to affiliations  
20 between insured depository institutions or wholesale  
21 financial institutions, or any subsidiary or affiliate  
22 thereof, and persons or entities engaged in the busi-  
23 ness of insurance, paragraph (1) does not prohibit—

24 (A) any State from requiring any person  
25 or entity that proposes to acquire control of an

1           entity that is engaged in the business of insur-  
2           ance and domiciled in that State (hereafter in  
3           this subparagraph referred to as the “insurer”)  
4           to furnish to the insurance regulatory authority  
5           of that State, not later than 60 days before the  
6           effective date of the proposed acquisition—

7                   (i) the name and address of each per-  
8                   son by whom, or on whose behalf, the af-  
9                   filiation referred to in this subparagraph is  
10                  to be effected (hereafter in this subpara-  
11                  graph referred to as the “acquiring  
12                  party”);

13                  (ii) if the acquiring party is an indi-  
14                  vidual, his or her principal occupation and  
15                  all offices and positions held during the 5  
16                  years preceding the date of notification,  
17                  and any conviction of crimes other than  
18                  minor traffic violations during the 10 years  
19                  preceding the date of notification;

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

22                           (I) a report of the nature of its  
23                           business operations during the 5 years  
24                           preceding the date of notification, or  
25                           for such shorter period as such person

1 and any predecessors thereof shall  
2 have been in existence;

3 (II) an informative description of  
4 the business intended to be done by  
5 the acquiring party and any sub-  
6 sidiary thereof; and

7 (III) a list of all individuals who  
8 are, or who have been selected to be-  
9 come, directors or executive officers of  
10 the acquiring party or who perform,  
11 or will perform, functions appropriate  
12 to such positions, including, for each  
13 such individual, the information re-  
14 quired by clause (ii);

15 (iv) the source, nature, and amount of  
16 the consideration used, or to be used, in ef-  
17 fecting the merger or other acquisition of  
18 control, a description of any transaction  
19 wherein funds were, or are to be, obtained  
20 for any such purpose, and the identity of  
21 persons furnishing such consideration, ex-  
22 cept that, if a source of such consideration  
23 is a loan made in the lender's ordinary  
24 course of business, the identity of the lend-

1 er shall remain confidential if the person  
2 filing such statement so requests;

3 (v) fully audited financial information  
4 as to the earnings and financial condition  
5 of each acquiring party for the 5 fiscal  
6 years preceding the date of notification of  
7 each such acquiring party, or for such less-  
8 er period as such acquiring party and any  
9 predecessors thereof shall have been in ex-  
10 istence, and similar unaudited information  
11 as of a date not earlier than 90 days be-  
12 fore the date of notification, except that, in  
13 the case of an acquiring party that is an  
14 insurer actively engaged in the business of  
15 insurance, the financial statements of such  
16 insurer need not be audited, but such audit  
17 may be required if the need therefor is de-  
18 termined by the insurance regulatory au-  
19 thority of the State;

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

1           (vii) the number of shares of any se-  
2           curity of the insurer that each acquiring  
3           party proposes to acquire, the terms of any  
4           offer, request, invitation, agreement, or ac-  
5           quisition, and a statement as to the meth-  
6           od by which the fairness of the proposal  
7           was arrived at;

8           (viii) the amount of each class of any  
9           security of the insurer that is beneficially  
10          owned or concerning which there is a right  
11          to acquire beneficial ownership by each ac-  
12          quiring party;

13          (ix) a full description of any contracts,  
14          arrangements, or understandings with re-  
15          spect to any security of the insurer in  
16          which any acquiring party is involved, in-  
17          cluding transfer of any of the securities,  
18          joint ventures, loan or option arrange-  
19          ments, puts or calls, guarantees of loans,  
20          guarantees against loss or guarantees of  
21          profits, division of losses or profits, or the  
22          giving or withholding of proxies, and iden-  
23          tification of the persons with whom such  
24          contracts, arrangements, or under-  
25          standings have been entered into;

1 (x) a description of the purchase of  
2 any security of the insurer during the 12-  
3 month period preceding the date of notifi-  
4 cation by any acquiring party, including  
5 the dates of purchase, names of the pur-  
6 chasers, and consideration paid, or agreed  
7 to be paid, therefor;

8 (xi) a description of any recommenda-  
9 tions to purchase any security of the in-  
10 surer made during the 12-month period  
11 preceding the date of notification by any  
12 acquiring party or by any person based  
13 upon interviews or at the suggestion of  
14 such acquiring party;

15 (xii) copies of all tender offers for, re-  
16 quests or invitations for tenders of, ex-  
17 change offers for and agreements to ac-  
18 quire or exchange any securities of the in-  
19 surer and, if distributed, of additional so-  
20 liciting material relating thereto; and

21 (xiii) the terms of any agreement,  
22 contract, or understanding made with any  
23 broker-dealer as to solicitation of securities  
24 of the insurer for tender and the amount  
25 of any fees, commissions, or other com-

1           pensation to be paid to broker-dealers with  
2           regard thereto;

3           (B) in the case of a person engaged in the  
4           business of insurance which is the subject of an  
5           acquisition or change or continuation in control,  
6           the State of domicile of such person from re-  
7           viewing or taking action (including approval or  
8           disapproval) with regard to the acquisition or  
9           change or continuation in control, as long as  
10          the State reviews and actions—

11                 (i) are completed by the end of the  
12                 60-day period beginning on the later of the  
13                 date the State received notice of the pro-  
14                 posed action or the date the State received  
15                 the information required under State law  
16                 regarding such acquisition or change or  
17                 continuation in control;

18                 (ii) do not have the effect of discrimi-  
19                 nating, intentionally or unintentionally,  
20                 against an insured depository institution or  
21                 affiliate thereof or against any other per-  
22                 son based upon affiliation with an insured  
23                 depository institution; and

1 (iii) are based on standards or re-  
2 quirements relating to solvency or manage-  
3 rial fitness;

4 (C) any State from requiring an entity  
5 that is acquiring control of an entity that is en-  
6 gaged in the business of insurance and domi-  
7 ciled in that State to maintain or restore the  
8 capital requirements of that insurance entity to  
9 the level required under the capital regulations  
10 of general applicability in that State to avoid  
11 the requirement of preparing and filing with the  
12 insurance regulatory authority of that State a  
13 plan to increase the capital of the entity, except  
14 that any determination by the State insurance  
15 regulatory authority with respect to such re-  
16 quirement shall be made not later than 60 days  
17 after the date of notification under subpara-  
18 graph (A);

19 (D) any State from taking actions with re-  
20 spect to the receivership or conservatorship of  
21 any insurance company;

22 (E) any State from restricting a change in  
23 the ownership of stock in an insurance com-  
24 pany, or a company formed for the purpose of  
25 controlling such insurance company, for a pe-

1           riod of not more than 3 years beginning on the  
2           date of the conversion of such company from  
3           mutual to stock form; or

4           (F) any State from requiring an organiza-  
5           tion which has been eligible at any time since  
6           January 1, 1987, to claim the special deduction  
7           provided by section 833 of the Internal Revenue  
8           Code of 1986 to meet certain conditions in  
9           order to undergo, as determined by the State,  
10          a reorganization, recapitalization, conversion,  
11          merger, consolidation, sale or other disposition  
12          of substantial operating assets, demutualization,  
13          dissolution, or to undertake other similar ac-  
14          tions and which is governed under a State stat-  
15          ute enacted on May 22, 1998, relating to hos-  
16          pital, medical, and dental service corporation  
17          conversions.

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

20           (A) IN GENERAL.—Subject to subsection  
21           (c) and the nondiscrimination provisions con-  
22           tained in such subsection, no provision in para-  
23           graph (1) shall be construed as affecting State  
24           laws, regulations, orders, interpretations, or  
25           other actions of general applicability relating to

1 the governance of corporations, partnerships,  
2 limited liability companies or other business as-  
3 sociations incorporated or formed under the  
4 laws of that State or domiciled in that State, or  
5 the applicability of the antitrust laws of any  
6 State or any State law that is similar to the  
7 antitrust laws.

8 (B) DEFINITION.—The term “antitrust  
9 laws” has the same meaning as in subsection  
10 (a) of the first section of the Clayton Act, and  
11 includes section 5 of the Federal Trade Com-  
12 mission Act to the extent that such section 5  
13 relates to unfair methods of competition.

14 (b) ACTIVITIES.—

15 (1) IN GENERAL.—Except as provided in para-  
16 graph (3), and except with respect to insurance  
17 sales, solicitation, and cross marketing activities,  
18 which shall be governed by paragraph (2), no State  
19 may, by statute, regulation, order, interpretation, or  
20 other action, prevent or restrict an insured deposi-  
21 tory institution, wholesale financial institution, or  
22 subsidiary or affiliate thereof from engaging directly  
23 or indirectly, either by itself or in conjunction with  
24 a subsidiary, affiliate, or any other entity or person,

1 in any activity authorized or permitted under this  
2 Act.

3 (2) INSURANCE SALES.—

4 (A) IN GENERAL.—In accordance with the  
5 legal standards for preemption set forth in the  
6 decision of the Supreme Court of the United  
7 States in *Barnett Bank of Marion County N.A.*  
8 *v. Nelson*, 517 U.S. 25 (1996), no State may,  
9 by statute, regulation, order, interpretation, or  
10 other action, prevent or significantly interfere  
11 with the ability of an insured depository institu-  
12 tion or wholesale financial institution, or a sub-  
13 subsidiary or affiliate thereof, to engage, directly or  
14 indirectly, either by itself or in conjunction with  
15 a subsidiary, affiliate, or any other party, in  
16 any insurance sales, solicitation, or cross-mar-  
17 keting activity.

18 (B) CERTAIN STATE LAWS PRESERVED.—

19 Notwithstanding subparagraph (A), a State  
20 may impose any of the following restrictions, or  
21 restrictions which are substantially the same as  
22 but no more burdensome or restrictive than  
23 those in each of the following clauses:

24 (i) Restrictions prohibiting the rejec-  
25 tion of an insurance policy by an insured

1 depository institution, wholesale financial  
2 institution, or any subsidiary or affiliate  
3 thereof, solely because the policy has been  
4 issued or underwritten by any person who  
5 is not associated with such insured depository  
6 institution or wholesale financial institution,  
7 or any subsidiary or affiliate thereof,  
8 when such insurance is required in connection  
9 with a loan or extension of credit.

10 (ii) Restrictions prohibiting a requirement  
11 for any debtor, insurer, or insurance  
12 agent or broker to pay a separate charge  
13 in connection with the handling of insurance  
14 that is required in connection with a  
15 loan or other extension of credit or the  
16 provision of another traditional banking  
17 product by an insured depository institution,  
18 wholesale financial institution, or any  
19 subsidiary or affiliate thereof, unless such  
20 charge would be required when the insured  
21 depository institution or wholesale financial  
22 institution, or any subsidiary or affiliate  
23 thereof, is the licensed insurance agent or  
24 broker providing the insurance.

1 (iii) Restrictions prohibiting the use of  
2 any advertisement or other insurance pro-  
3 motional material by an insured depository  
4 institution or wholesale financial institu-  
5 tion, or any subsidiary or affiliate thereof,  
6 that would cause a reasonable person to  
7 believe mistakenly that—

8 (I) a State or the Federal Gov-  
9 ernment is responsible for the insur-  
10 ance sales activities of, or stands be-  
11 hind the credit of, the institution, af-  
12 filiate, or subsidiary; or

13 (II) a State, or the Federal Gov-  
14 ernment guarantees any returns on  
15 insurance products, or is a source of  
16 payment on any insurance obligation  
17 of or sold by the institution, affiliate,  
18 or subsidiary;

19 (iv) Restrictions prohibiting the pay-  
20 ment or receipt of any commission or bro-  
21 kerage fee or other valuable consideration  
22 for services as an insurance agent or  
23 broker to or by any person, unless such  
24 person holds a valid State license regard-  
25 ing the applicable class of insurance at the

1 time at which the services are performed,  
2 except that, in this clause, the term “serv-  
3 ices as an insurance agent or broker” does  
4 not include a referral by an unlicensed per-  
5 son of a customer or potential customer to  
6 a licensed insurance agent or broker that  
7 does not include a discussion of specific in-  
8 surance policy terms and conditions.

9 (v) Restrictions prohibiting any com-  
10 pensation paid to or received by any indi-  
11 vidual who is not licensed to sell insurance,  
12 for the referral of a customer that seeks to  
13 purchase, or seeks an opinion or advice on,  
14 any insurance product to a person that  
15 sells or provides opinions or advice on such  
16 product, based on the purchase of insur-  
17 ance by the customer.

18 (vi) Restrictions prohibiting the re-  
19 lease of the insurance information of a cus-  
20 tomer (defined as information concerning  
21 the premiums, terms, and conditions of in-  
22 surance coverage, including expiration  
23 dates and rates, and insurance claims of a  
24 customer contained in the records of the  
25 insured depository institution or wholesale

1 financial institution, or a subsidiary or af-  
2 filiate thereof) to any person or entity  
3 other than an officer, director, employee,  
4 agent, subsidiary, or affiliate of an insured  
5 depository institution or a wholesale finan-  
6 cial institution, for the purpose of soliciting  
7 or selling insurance, without the express  
8 consent of the customer, other than a pro-  
9 vision that prohibits—

10 (I) a transfer of insurance infor-  
11 mation to an unaffiliated insurance  
12 company, agent, or broker in connec-  
13 tion with transferring insurance in  
14 force on existing insureds of the in-  
15 sured depository institution or whole-  
16 sale financial institution, or subsidiary  
17 or affiliate thereof, or in connection  
18 with a merger with or acquisition of  
19 an unaffiliated insurance company,  
20 agent, or broker; or

21 (II) the release of information as  
22 otherwise authorized by State or Fed-  
23 eral law.

24 (vii) Restrictions prohibiting the use  
25 of health information obtained from the in-

1 insurance records of a customer for any pur-  
2 pose, other than for its activities as a li-  
3 censed agent or broker, without the ex-  
4 press consent of the customer.

5 (viii) Restrictions prohibiting the ex-  
6 tension of credit or any product or service  
7 that is equivalent to an extension of credit,  
8 lease or sale of property of any kind, or  
9 furnishing of any services or fixing or vary-  
10 ing the consideration for any of the fore-  
11 going, on the condition or requirement that  
12 the customer obtain insurance from an in-  
13 sured depository institution, wholesale fi-  
14 nancial institution, a subsidiary or affiliate  
15 thereof, or a particular insurer, agent, or  
16 broker, other than a prohibition that would  
17 prevent any insured depository institution  
18 or wholesale financial institution, or any  
19 subsidiary or affiliate thereof—

20 (I) from engaging in any activity  
21 described in this clause that would not  
22 violate section 106 of the Bank Hold-  
23 ing Company Act Amendments of  
24 1970, as interpreted by the Board of

1                   Governors of the Federal Reserve Sys-  
2                   tem; or

3                   (II) from informing a customer  
4                   or prospective customer that insur-  
5                   ance is required in order to obtain a  
6                   loan or credit, that loan or credit ap-  
7                   proval is contingent upon the procure-  
8                   ment by the customer of acceptable  
9                   insurance, or that insurance is avail-  
10                  able from the insured depository insti-  
11                  tution or wholesale financial institu-  
12                  tion, or any subsidiary or affiliate  
13                  thereof.

14                  (ix) Restrictions requiring, when an  
15                  application by a consumer for a loan or  
16                  other extension of credit from an insured  
17                  depository institution or wholesale financial  
18                  institution is pending, and insurance is of-  
19                  fered or sold to the consumer or is re-  
20                  quired in connection with the loan or ex-  
21                  tension of credit by the insured depository  
22                  institution or wholesale financial institu-  
23                  tion or any affiliate or subsidiary thereof,  
24                  that a written disclosure be provided to the  
25                  consumer or prospective customer indi-

1           cating that his or her choice of an insur-  
2           ance provider will not affect the credit de-  
3           cision or credit terms in any way, except  
4           that the insured depository institution or  
5           wholesale financial institution may impose  
6           reasonable requirements concerning the  
7           creditworthiness of the insurance provider  
8           and scope of coverage chosen.

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

14                   (I) is not a deposit;

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

17                   (III) is not guaranteed by the in-  
18                   sured depository institution or whole-  
19                   sale financial institution or, if appro-  
20                   priate, its subsidiaries or affiliates or  
21                   any person soliciting the purchase of  
22                   or selling insurance on the premises  
23                   thereof; and

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

4 (xi) Restrictions requiring that, when  
5 a customer obtains insurance (other than  
6 credit insurance or flood insurance) and  
7 credit from an insured depository institu-  
8 tion or wholesale financial institution, or  
9 its subsidiaries or affiliates, or any person  
10 soliciting the purchase of or selling insur-  
11 ance on the premises thereof, the credit  
12 and insurance transactions be completed  
13 through separate documents.

14 (xii) Restrictions prohibiting, when a  
15 customer obtains insurance (other than  
16 credit insurance or flood insurance) and  
17 credit from an insured depository institu-  
18 tion or wholesale financial institution or its  
19 subsidiaries or affiliates, or any person so-  
20 liciting the purchase of or selling insurance  
21 on the premises thereof, inclusion of the  
22 expense of insurance premiums in the pri-  
23 mary credit transaction without the ex-  
24 press written consent of the customer.

1 (xiii) Restrictions requiring mainte-  
2 nance of separate and distinct books and  
3 records relating to insurance transactions,  
4 including all files relating to and reflecting  
5 consumer complaints, and requiring that  
6 such insurance books and records be made  
7 available to the appropriate State insur-  
8 ance regulator for inspection upon reason-  
9 able notice.

10 (C) LIMITATIONS.—

11 (i) OCC DEFERENCE.—Section 306(e)  
12 does not apply with respect to any State  
13 statute, regulation, order, interpretation,  
14 or other action regarding insurance sales,  
15 solicitation, or cross marketing activities  
16 described in subparagraph (A) that was  
17 issued, adopted, or enacted before Sep-  
18 tember 3, 1998, and that is not described  
19 in subparagraph (B).

20 (ii) NONDISCRIMINATION.—Subsection  
21 (c) does not apply with respect to any  
22 State statute, regulation, order, interpreta-  
23 tion, or other action regarding insurance  
24 sales, solicitation, or cross marketing ac-  
25 tivities described in subparagraph (A) that

1 was issued, adopted, or enacted before  
2 September 3, 1998, and that is not de-  
3 scribed in subparagraph (B).

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

12 (iv) LIMITATION ON INFERENCES.—  
13 Nothing in this paragraph shall be con-  
14 strued to create any inference with respect  
15 to any State statute, regulation, order, in-  
16 terpretation, or other action that is not re-  
17 ferred to or described in this paragraph.

18 (3) INSURANCE ACTIVITIES OTHER THAN  
19 SALES.—State statutes, regulations, interpretations,  
20 orders, and other actions shall not be preempted  
21 under subsection (b)(1) to the extent that they—

22 (A) relate to, or are issued, adopted, or en-  
23 acted for the purpose of regulating the business  
24 of insurance in accordance with the Act of

1 March 9, 1945 (commonly known as the  
2 “McCarran-Ferguson Act”);

3 (B) apply only to persons or entities that  
4 are not insured depository institutions or whole-  
5 sale financial institutions, but that are directly  
6 engaged in the business of insurance (except  
7 that they may apply to depository institutions  
8 engaged in providing savings bank life insur-  
9 ance as principal to the extent of regulating  
10 such insurance);

11 (C) do not relate to or directly or indirectly  
12 regulate insurance sales, solicitations, or cross-  
13 marketing activities; and

14 (D) are not prohibited under subsection  
15 (c).

16 (4) FINANCIAL ACTIVITIES OTHER THAN INSUR-  
17 ANCE.—No State statute, regulation, interpretation,  
18 order, or other action shall be preempted under sub-  
19 section (b)(1) to the extent that—

20 (A) it does not relate to, and is not issued  
21 and adopted, or enacted for the purpose of reg-  
22 ulating, directly or indirectly, insurance sales,  
23 solicitations, or cross marketing activities cov-  
24 ered under paragraph (2);

1 (B) it does not relate to, and is not issued  
2 and adopted, or enacted for the purpose of reg-  
3 ulating, directly or indirectly, the business of in-  
4 surance activities other than sales, solicitations,  
5 or cross marketing activities, covered under  
6 paragraph (3);

7 (C) it does not relate to securities inves-  
8 tigations or enforcement actions referred to in  
9 subsection (d); and

10 (D) it—

11 (i) does not distinguish by its terms  
12 between insured depository institutions,  
13 wholesale financial institutions, and sub-  
14 sidiaries and affiliates thereof engaged in  
15 the activity at issue and other persons or  
16 entities engaged in the same activity in a  
17 manner that is in any way adverse with re-  
18 spect to the conduct of the activity by any  
19 such insured depository institution, whole-  
20 sale financial institution, or subsidiary or  
21 affiliate thereof engaged in the activity at  
22 issue;

23 (ii) as interpreted or applied, does not  
24 have, and will not have, an impact on de-  
25 pository institutions, wholesale financial in-

1           stitutions, or subsidiaries or affiliates  
2           thereof engaged in the activity at issue, or  
3           any person or entity affiliated therewith,  
4           that is substantially more adverse than its  
5           impact on other persons or entities en-  
6           gaged in the same activity that are not in-  
7           sured depository institutions, wholesale fi-  
8           nancial institutions, or subsidiaries or af-  
9           filiates thereof, or persons or entities affli-  
10          ated therewith;

11           (iii) does not effectively prevent a de-  
12          pository institution, wholesale financial in-  
13          stitution, or subsidiary or affiliate thereof  
14          from engaging in activities authorized or  
15          permitted by this Act or any other provi-  
16          sion of Federal law; and

17           (iv) does not conflict with the intent  
18          of this Act generally to permit affiliations  
19          that are authorized or permitted by Fed-  
20          eral law.

21          (c) NONDISCRIMINATION.—Except as provided in any  
22          restrictions described in subsection (b)(2)(B), no State  
23          may, by statute, regulation, order, interpretation, or other  
24          action, regulate the insurance activities authorized or per-  
25          mitted under this Act or any other provision of Federal

1 law of an insured depository institution or wholesale finan-  
2 cial institution, or subsidiary or affiliate thereof, to the  
3 extent that such statute, regulation, order, interpretation,  
4 or other action—

5           (1) distinguishes by its terms between insured  
6 depository institutions or wholesale financial institu-  
7 tions, or subsidiaries or affiliates thereof, and other  
8 persons or entities engaged in such activities, in a  
9 manner that is in any way adverse to any such in-  
10 sured depository institution or wholesale financial in-  
11 stitution, or subsidiary or affiliate thereof;

12           (2) as interpreted or applied, has or will have  
13 an impact on depository institutions or wholesale fi-  
14 nancial institutions, or subsidiaries or affiliates  
15 thereof, that is substantially more adverse than its  
16 impact on other persons or entities providing the  
17 same products or services or engaged in the same  
18 activities that are not insured depository institu-  
19 tions, wholesale financial institutions, or subsidiaries  
20 or affiliates thereof, or persons or entities affiliated  
21 therewith;

22           (3) effectively prevents a depository institution  
23 or wholesale financial institution, or subsidiary or af-  
24 filiate thereof, from engaging in insurance activities

1 authorized or permitted by this Act or any other  
2 provision of Federal law; or

3 (4) conflicts with the intent of this Act gen-  
4 erally to permit affiliations that are authorized or  
5 permitted by Federal law between insured depository  
6 institutions or wholesale financial institutions, or  
7 subsidiaries or affiliates thereof, and persons and en-  
8 tities engaged in the business of insurance.

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

13 (1) to investigate and bring enforcement ac-  
14 tions, consistent with section 18(c) of the Securities  
15 Act of 1933, with respect to fraud or deceit or un-  
16 lawful conduct by any person, in connection with se-  
17 curities or securities transactions; or

18 (2) to require the registration of securities or  
19 the licensure or registration of brokers, dealers, or  
20 investment advisers (consistent with section 203A of  
21 the Investment Advisers Act of 1940), or the associ-  
22 ated persons of a broker, dealer, or investment ad-  
23 viser (consistent with such section 203A).

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

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

5           (2) STATE.—The term “State” means any  
6 State of the United States, the District of Columbia,  
7 any territory of the United States, Puerto Rico,  
8 Guam, American Samoa, the Trust Territory of the  
9 Pacific Islands, the Virgin Islands, and the Northern  
10 Mariana Islands.

11 **SEC. 105. MUTUAL BANK HOLDING COMPANIES AUTHOR-**  
12 **IZED.**

13           Section 3(g)(2) of the Bank Holding Company Act  
14 of 1956 (12 U.S.C. 1842(g)(2)) is amended to read as  
15 follows:

16           “(2) REGULATIONS.—A bank holding company  
17 organized as a mutual holding company shall be reg-  
18 ulated on terms, and shall be subject to limitations,  
19 comparable to those applicable to any other bank  
20 holding company.”.

21 **SEC. 105A. PUBLIC MEETINGS FOR LARGE BANK ACQUISI-**  
22 **TIONS AND MERGERS.**

23           (a) BANK HOLDING COMPANY ACT OF 1956.—Sec-  
24 tion 3(c)(2) of the Bank Holding Company Act of 1956  
25 (12 U.S.C. 1842(c)(2)) is amended—

1           (1) by striking “FACTORS.—In every case” and  
2           inserting “FACTORS.—

3                   “(A) IN GENERAL.—In every case”; and

4           (2) by adding at the end the following new sub-  
5           paragraph:

6                   “(B) PUBLIC MEETINGS.—In each case in-  
7           volving 1 or more insured depository institu-  
8           tions each of which has total assets of  
9           \$1,000,000,000 or more, the Board shall, as  
10          necessary and on a timely basis, conduct public  
11          meetings in 1 or more areas where the Board  
12          believes, in the sole discretion of the Board,  
13          there will be a substantial public impact.”.

14          (b) FEDERAL DEPOSIT INSURANCE ACT.—Section  
15          18(c) of the Federal Deposit Insurance Act (12 U.S.C.  
16          1828(c)) is amended by adding at the end the following  
17          new paragraph:

18                 “(12) PUBLIC MEETINGS.—In each merger trans-  
19          action involving 1 or more insured depository institutions  
20          each of which has total assets of \$1,000,000,000 or more,  
21          the responsible agency shall, as necessary and on a timely  
22          basis, conduct public meetings in 1 or more areas where  
23          the agency believes, in the sole discretion of the agency,  
24          there will be a substantial public impact.”.



1 **SEC. 106. PROHIBITION ON DEPOSIT PRODUCTION OF-**  
2 **FICES.**

3 (a) IN GENERAL.—Section 109(d) of the Riegle-Neal  
4 Interstate Banking and Branching Efficiency Act of 1994  
5 (12 U.S.C. 1835a(d)) is amended—

6 (1) by inserting “, the Financial Services Act of  
7 1999,” after “pursuant to this title”; and

8 (2) by inserting “or such Act” after “made by  
9 this title”.

10 (b) TECHNICAL AND CONFORMING AMENDMENT.—  
11 Section 109(e)(4) of the Riegle-Neal Interstate Banking  
12 and Branching Efficiency Act of 1994 (12 U.S.C.  
13 1835a(e)(4)) is amended by inserting “and any branch of  
14 a bank controlled by an out-of-State bank holding com-  
15 pany (as defined in section 2(o)(7) of the Bank Holding  
16 Company Act of 1956)” before the period.

17 **SEC. 107. CLARIFICATION OF BRANCH CLOSURE REQUIRE-**  
18 **MENTS.**

19 Section 42(d)(4)(A) of the Federal Deposit Insurance  
20 Act (12 U.S.C. 1831r-1(d)(4)(A)) is amended by inserting  
21 “and any bank controlled by an out-of-State bank holding  
22 company (as defined in section 2(o)(7) of the Bank Hold-  
23 ing Company Act of 1956)” before the period.

1 **SEC. 108. AMENDMENTS RELATING TO LIMITED PURPOSE**  
2 **BANKS.**

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

5 (1) in paragraph (2)(A)(ii)—

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

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

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

12 “(XI) assets that are derived  
13 from, or are incidental to, consumer  
14 lending activities in which institutions  
15 described in subparagraph (F) or (H)  
16 of section 2(c)(2) are permitted to en-  
17 gage,”;

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

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

25 “(C) any bank subsidiary of such company  
26 both—

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

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

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

18          (3) by striking paragraphs (3) and (4) and in-  
19          serting the following new paragraphs:

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

23                 “(A) such overdraft results from an inad-  
24                 vertent computer or accounting error that is be-

1           yond the control of both the bank and the affil-  
2           iate;

3           “(B) such overdraft—

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

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

17          “(C) such overdraft—

18          “(i) is incurred on behalf of an affil-  
19          iate solely in connection with an activity  
20          that is so closely related to banking, or  
21          managing or controlling banks, as to be a  
22          proper incident thereto, to the extent the  
23          bank incurring the overdraft and the affil-  
24          iate on whose behalf the overdraft is in-

1           curred each document that the overdraft is  
2           incurred for such purpose; and

3           “(ii) does not cause the bank to vio-  
4           late any provision of section 23A or 23B of  
5           the Federal Reserve Act, either directly, in  
6           the case of a member bank, or by virtue of  
7           section 18(j) of the Federal Deposit Insur-  
8           ance Act, in the case of a nonmember  
9           bank.

10           “(4) DIVESTITURE IN CASE OF LOSS OF EX-  
11           EMPTION.—If any company described in paragraph  
12           (1) fails to qualify for the exemption provided under  
13           such paragraph by operation of paragraph (2), such  
14           exemption shall cease to apply to such company and  
15           such company shall divest control of each bank it  
16           controls before the end of the 180-day period begin-  
17           ning on the date that the company receives notice  
18           from the Board that the company has failed to con-  
19           tinue to qualify for such exemption, unless before  
20           the end of such 180-day period, the company has—

21           “(A) corrected the condition or ceased the  
22           activity that caused the company to fail to con-  
23           tinue to qualify for the exemption; and



1 (b) REPORTS TO THE CONGRESS.—

2 (1) IN GENERAL.—The Comptroller General of  
3 the United States shall submit reports to the Con-  
4 gress, at the times required under paragraph (2),  
5 containing the findings and conclusions of the  
6 Comptroller General with regard to the study re-  
7 quired under subsection (a) and such recommenda-  
8 tions for legislative or administrative action as the  
9 Comptroller General may determine to be appro-  
10 priate.

11 (2) TIMING OF REPORTS.—The Comptroller  
12 General shall submit—

13 (A) an interim report before the end of the  
14 6-month period beginning after the date of the  
15 enactment of this Act;

16 (B) another interim report before the end  
17 of the next 6-month period; and

18 (C) a final report before the end of the 1-  
19 year period after such second 6-month period.”

20 **SEC. 110. RESPONSIVENESS TO COMMUNITY NEEDS FOR FI-**  
21 **NANCIAL SERVICES.**

22 (a) STUDY.—The Secretary of the Treasury, in con-  
23 sultation with the Federal banking agencies (as defined  
24 in section 3(z) of the Federal Deposit Insurance Act),  
25 shall conduct a study of the extent to which adequate serv-

1 ices are being provided as intended by the Community Re-  
 2 investment Act of 1977, including services in low- and  
 3 moderate-income neighborhoods and for persons of modest  
 4 means, as a result of the enactment of this Act.

5 (b) REPORT.—Before the end of the 2-year period be-  
 6 ginning on the date of the enactment of this Act, the Sec-  
 7 retary of the Treasury, in consultation with the Federal  
 8 banking agencies, shall submit a report to the Congress  
 9 on the study conducted pursuant to subsection (a) and  
 10 shall include such recommendations as the Secretary de-  
 11 termines to be appropriate for administrative and legisla-  
 12 tive action with respect to institutions covered under the  
 13 Community Reinvestment Act of 1977.

14 **Subtitle B—Streamlining Super-**  
 15 **vision of Financial Holding**  
 16 **Companies**

17 **SEC. 111. STREAMLINING FINANCIAL HOLDING COMPANY**  
 18 **SUPERVISION.**

19 Section 5(c) of the Bank Holding Company Act of  
 20 1956 (12 U.S.C. 1844(c)) is amended to read as follows:

21 “(c) REPORTS AND EXAMINATIONS.—

22 “(1) REPORTS.—

23 “(A) IN GENERAL.—The Board from time  
 24 to time may require any bank holding company  
 25 and any subsidiary of such company to submit

1 reports under oath to keep the Board informed  
2 as to—

3 “(i) its financial condition, systems  
4 for monitoring and controlling financial  
5 and operating risks, and transactions with  
6 depository institution subsidiaries of the  
7 holding company; and

8 “(ii) compliance by the company or  
9 subsidiary with applicable provisions of  
10 this Act.

11 “(B) USE OF EXISTING REPORTS.—

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

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

1           “(iii) REQUIRED USE OF PUBLICLY  
2 REPORTED INFORMATION.—The Board  
3 shall, to the fullest extent possible, accept  
4 in fulfillment of any reporting or record-  
5 keeping requirements under this Act infor-  
6 mation that is otherwise required to be re-  
7 ported publicly and externally audited fi-  
8 nancial statements.

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

1           “(C) DEFINITION.—For purposes of this  
2 subsection, the term ‘functionally regulated  
3 nondepository institution’ means—

4           “(i) a broker or dealer registered  
5 under the Securities Exchange Act of  
6 1934;

7           “(ii) an investment adviser registered  
8 under the Investment Advisers Act of  
9 1940, or with any State, with respect to  
10 the investment advisory activities of such  
11 investment adviser and activities incidental  
12 to such investment advisory activities;

13           “(iii) an insurance company subject to  
14 supervision by a State insurance commis-  
15 sion, agency, or similar authority; and

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

21           “(2) EXAMINATIONS.—

22           “(A) EXAMINATION AUTHORITY.—

23           “(i) IN GENERAL.—The Board may  
24 make examinations of each bank holding

1 company and each subsidiary of a bank  
2 holding company.

3 “(ii) FUNCTIONALLY REGULATED  
4 NONDEPOSITORY INSTITUTION SUBSIDI-  
5 ARIES.—Notwithstanding clause (i), the  
6 Board may make examinations of a func-  
7 tionally regulated nondepository institution  
8 subsidiary of a bank holding company only  
9 if—

10 “(I) the Board has reasonable  
11 cause to believe that such subsidiary  
12 is engaged in activities that pose a  
13 material risk to an affiliated depository  
14 institution, or

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

1           “(B) LIMITATIONS ON EXAMINATION AU-  
2           THORITY FOR BANK HOLDING COMPANIES AND  
3           SUBSIDIARIES.—Subject to subparagraph  
4           (A)(ii), the Board may make examinations  
5           under subparagraph (A)(i) of each bank holding  
6           company and each subsidiary of such holding  
7           company in order to—

8                   “(i) inform the Board of the nature of  
9                   the operations and financial condition of  
10                  the holding company and such subsidiaries;

11                  “(ii) inform the Board of—

12                          “(I) the financial and operational  
13                          risks within the holding company sys-  
14                          tem that may pose a threat to the  
15                          safety and soundness of any sub-  
16                          sidiary depository institution of such  
17                          holding company; and

18                          “(II) the systems for monitoring  
19                          and controlling such risks; and

20                          “(iii) monitor compliance with the  
21                          provisions of this Act and those governing  
22                          transactions and relationships between any  
23                          subsidiary depository institution and its af-  
24                          filiates.

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

5                   “(i) the bank holding company; and

6                   “(ii) any subsidiary of the holding  
7           company that, because of—

8                           “(I) the size, condition, or activi-  
9                           ties of the subsidiary; or

10                           “(II) the nature or size of trans-  
11                           actions between such subsidiary and  
12                           any depository institution which is  
13                           also a subsidiary of such holding com-  
14                           pany,

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

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

1           “(E) DEFERENCE TO OTHER EXAMINA-  
2           TIONS.—The Board shall, to the fullest extent  
3           possible, address the circumstances which might  
4           otherwise permit or require an examination by  
5           the Board by forgoing an examination and in-  
6           stead reviewing the reports of examination  
7           made of—

8                   “(i) any registered broker or dealer by  
9                   or on behalf of the Securities and Ex-  
10                  change Commission;

11                  “(ii) any investment adviser registered  
12                  by or on behalf of either the Securities and  
13                  Exchange Commission or any State, which-  
14                  ever is required by law;

15                  “(iii) any licensed insurance company  
16                  by or on behalf of any state regulatory au-  
17                  thority responsible for the supervision of  
18                  insurance companies; and

19                  “(iv) any other subsidiary that the  
20                  Board finds to be comprehensively super-  
21                  vised by a Federal or State authority.

22           “(3) CAPITAL.—

23                   “(A) IN GENERAL.—The Board shall not,  
24                   by regulation, guideline, order or otherwise, pre-  
25                   scribe or impose any capital or capital adequacy

1 rules, guidelines, standards, or requirements on  
2 any subsidiary of a financial holding company  
3 that is not a depository institution and—

4 “(i) is in compliance with applicable  
5 capital requirements of another Federal  
6 regulatory authority (including the Securi-  
7 ties and Exchange Commission) or State  
8 insurance authority;

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

13 “(iii) is licensed as an insurance agent  
14 with the appropriate State insurance au-  
15 thority.

16 “(B) RULE OF CONSTRUCTION.—Subpara-  
17 graph (A) shall not be construed as preventing  
18 the Board from imposing capital or capital ade-  
19 quacy rules, guidelines, standards, or require-  
20 ments with respect to—

21 “(i) activities of a registered invest-  
22 ment adviser other than investment advi-  
23 sory activities or activities incidental to in-  
24 vestment advisory activities; or

1           “(ii) activities of a licensed insurance  
2           agent other than insurance agency activi-  
3           ties or activities incidental to insurance  
4           agency activities.

5           “(C) LIMITATIONS ON INDIRECT AC-  
6           TION.—In developing, establishing, or assessing  
7           holding company capital or capital adequacy  
8           rules, guidelines, standards, or requirements for  
9           purposes of this paragraph, the Board shall not  
10          take into account the activities, operations, or  
11          investments of an affiliated investment company  
12          registered under the Investment Company Act  
13          of 1940, unless the investment company is—

14                 “(i) a bank holding company; or

15                 “(ii) controlled by a bank holding  
16                 company by reason of ownership by the  
17                 bank holding company (including through  
18                 all of its affiliates) of 25 percent or more  
19                 of the shares of the investment company,  
20                 and the shares owned by the bank holding  
21                 company have a market value equal to  
22                 more than \$1,000,000.

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

1           “(A) IN GENERAL.—In the case of any  
2 bank holding company which is not significantly  
3 engaged in nonbanking activities, the Board, in  
4 consultation with the appropriate Federal bank-  
5 ing agency, may designate the appropriate Fed-  
6 eral banking agency of the lead insured deposi-  
7 tory institution subsidiary of such holding com-  
8 pany as the appropriate Federal banking agen-  
9 cy for the bank holding company.

10           “(B) AUTHORITY TRANSFERRED.—An  
11 agency designated by the Board under subpara-  
12 graph (A) shall have the same authority as the  
13 Board under this Act to—

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

18           “(ii) approve or disapprove applica-  
19 tions or transactions under section 3;

20           “(iii) take actions and impose pen-  
21 alties under subsections (e) and (f) of sec-  
22 tion 5 and section 8; and

23           “(iv) take actions regarding the hold-  
24 ing company, any affiliate of the holding  
25 company (other than a depository institu-

1           tion), or any institution-affiliated party of  
2           such company or affiliate under the Fed-  
3           eral Deposit Insurance Act and any other  
4           statute which the Board may designate.

5           “(C) AGENCY ORDERS.—Section 9 of this  
6           Act and section 105 of the Bank Holding Com-  
7           pany Act Amendments of 1970 shall apply to  
8           orders issued by an agency designated under  
9           subparagraph (A) in the same manner such sec-  
10          tions apply to orders issued by the Board.

11          “(5) FUNCTIONAL REGULATION OF SECURITIES  
12          AND INSURANCE ACTIVITIES.—The Board shall defer  
13          to—

14                 “(A) the Securities and Exchange Commis-  
15                 sion with regard to all interpretations of, and  
16                 the enforcement of, applicable Federal securi-  
17                 ties laws (and rules, regulations, orders, and  
18                 other directives issued thereunder) relating to  
19                 the activities, conduct, and operations of reg-  
20                 istered brokers, dealers, investment advisers,  
21                 and investment companies;

22                 “(B) the relevant State securities authori-  
23                 ties with regard to all interpretations of, and  
24                 the enforcement of, applicable State securities  
25                 laws (and rules, regulations, orders, and other

1 directives issued thereunder) relating to the ac-  
2 tivities, conduct, and operations of brokers,  
3 dealers, and investment advisers required to be  
4 registered under State law; and

5 “(C) the relevant State insurance authori-  
6 ties with regard to all interpretations of, and  
7 the enforcement of, applicable State insurance  
8 laws (and rules, regulations, orders, and other  
9 directives issued thereunder) relating to the ac-  
10 tivities, conduct, and operations of insurance  
11 companies and insurance agents.”.

12 **SEC. 112. ELIMINATION OF APPLICATION REQUIREMENT**  
13 **FOR FINANCIAL HOLDING COMPANIES.**

14 (a) PREVENTION OF DUPLICATIVE FILINGS.—Sec-  
15 tion 5(a) of the Bank Holding Company Act of 1956 (12  
16 U.S.C. 1844(a)) is amended by adding the following new  
17 sentence at the end: “A declaration filed in accordance  
18 with section 6(b)(1)(D) shall satisfy the requirements of  
19 this subsection with regard to the registration of a bank  
20 holding company but not any requirement to file an appli-  
21 cation to acquire a bank pursuant to section 3.”.

22 (b) DIVESTITURE PROCEDURES.—Section 5(e)(1) of  
23 the Bank Holding Company Act of 1956 (12 U.S.C.  
24 1844(e)(1)) is amended—



1 is amended by adding at the end the following new sub-  
2 section:

3 “(g) AUTHORITY OF STATE INSURANCE REGULATOR  
4 AND THE SECURITIES AND EXCHANGE COMMISSION.—

5 “(1) IN GENERAL.—Notwithstanding any other  
6 provision of law, any regulation, order, or other ac-  
7 tion of the Board which requires a bank holding  
8 company to provide funds or other assets to a sub-  
9 sidiary insured depository institution shall not be ef-  
10 fective nor enforceable with respect to an entity de-  
11 scribed in subparagraph (A) if—

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

14 “(i) a bank holding company that is  
15 an insurance company, a broker or dealer  
16 registered under the Securities Exchange  
17 Act of 1934, an investment company reg-  
18 istered under the Investment Company Act  
19 of 1940, or an investment adviser reg-  
20 istered by or on behalf of either the Securi-  
21 ties and Exchange Commission or any  
22 State; or

23 “(ii) an affiliate of the depository in-  
24 stitution which is an insurance company or  
25 a broker or dealer registered under the Se-

1 securities Exchange Act of 1934, an invest-  
2 ment company registered under the Invest-  
3 ment Company Act of 1940, or an invest-  
4 ment adviser registered by or on behalf of  
5 either the Securities and Exchange Com-  
6 mission or any State ; and

7 “(B) the State insurance authority for the  
8 insurance company or the Securities and Ex-  
9 change Commission for the registered broker,  
10 dealer, investment adviser (solely with respect  
11 to investment advisory activities or activities in-  
12 cidental thereto), or investment company, as  
13 the case may be, determines in writing sent to  
14 the holding company and the Board that the  
15 holding company shall not provide such funds  
16 or assets because such action would have a ma-  
17 terial adverse effect on the financial condition  
18 of the insurance company or the broker, dealer,  
19 investment company, or investment adviser, as  
20 the case may be.

21 “(2) NOTICE TO STATE INSURANCE AUTHORITY  
22 OR SEC REQUIRED.—If the Board requires a bank  
23 holding company, or an affiliate of a bank holding  
24 company, which is an insurance company or a  
25 broker, dealer, investment company, or investment

1       adviser described in paragraph (1)(A) to provide  
2       funds or assets to an insured depository institution  
3       subsidiary of the holding company pursuant to any  
4       regulation, order, or other action of the Board re-  
5       ferred to in paragraph (1), the Board shall promptly  
6       notify the State insurance authority for the insur-  
7       ance company, the Securities and Exchange Com-  
8       mission, or State securities regulator, as the case  
9       may be, of such requirement.

10       “(3) DIVESTITURE IN LIEU OF OTHER AC-  
11       TION.—If the Board receives a notice described in  
12       paragraph (1)(B) from a State insurance authority  
13       or the Securities and Exchange Commission with re-  
14       gard to a bank holding company or affiliate referred  
15       to in that paragraph, the Board may order the bank  
16       holding company to divest the insured depository in-  
17       stitution not later than 180 days after receiving the  
18       notice, or such longer period as the Board deter-  
19       mines consistent with the safe and sound operation  
20       of the insured depository institution.

21       “(4) CONDITIONS BEFORE DIVESTITURE.—Dur-  
22       ing the period beginning on the date an order to di-  
23       vest is issued by the Board under paragraph (3) to  
24       a bank holding company and ending on the date the  
25       divestiture is completed, the Board may impose any

1 conditions or restrictions on the holding company's  
2 ownership or operation of the insured depository in-  
3 stitution, including restricting or prohibiting trans-  
4 actions between the insured depository institution  
5 and any affiliate of the institution, as are appro-  
6 priate under the circumstances.”.

7 (b) SUBSIDIARIES OF DEPOSITORY INSTITUTIONS.—  
8 The Federal Deposit Insurance Act (12 U.S.C. 1811 et  
9 seq.) is amended by adding at the end the following new  
10 section:

11 **“SEC. 45. AUTHORITY OF STATE INSURANCE REGULATOR**  
12 **AND SECURITIES AND EXCHANGE COMMIS-**  
13 **SION.**

14 “(a) IN GENERAL.—Notwithstanding any other pro-  
15 vision of law, any regulation, order, or other action of the  
16 appropriate Federal banking agency which requires a sub-  
17 sidiary to provide funds or other assets to an insured de-  
18 pository institution shall not be effective nor enforceable  
19 with respect to an entity described in paragraph (1) if—

20 “(1) such funds or assets are to be provided by  
21 a subsidiary which is an insurance company, a  
22 broker or dealer registered under the Securities Ex-  
23 change Act of 1934, an investment company reg-  
24 istered under the Investment Company Act of 1940,  
25 or an investment adviser registered by or on behalf

1 of either the Securities and Exchange Commission  
2 or any State; and

3 “(2) the State insurance authority for the in-  
4 surance company or the Securities and Exchange  
5 Commission for the registered broker or dealer, the  
6 investment company, or the investment adviser, as  
7 the case may be, determines in writing sent to the  
8 insured depository institution and the appropriate  
9 Federal banking agency that the subsidiary shall not  
10 provide such funds or assets because such action  
11 would have a material adverse effect on the financial  
12 condition of the insurance company or the broker,  
13 dealer, investment company, or investment adviser,  
14 as the case may be.

15 “(b) NOTICE TO STATE INSURANCE AUTHORITY OR  
16 SEC REQUIRED.—If the appropriate Federal banking  
17 agency requires a subsidiary, which is an insurance com-  
18 pany, a broker or dealer, an investment company, or an  
19 investment adviser (solely with respect to investment advi-  
20 sory activities or activities incidental thereto) described in  
21 subsection (a)(1) to provide funds or assets to an insured  
22 depository institution pursuant to any regulation, order,  
23 or other action of the appropriate Federal banking agency  
24 referred to in subsection (a), the appropriate Federal  
25 banking agency shall promptly notify the State insurance

1 authority for the insurance company, the Securities and  
2 Exchange Commission, or State securities regulator, as  
3 the case may be, of such requirement.

4       “(c) DIVESTITURE IN LIEU OF OTHER ACTION.—If  
5 the appropriate Federal banking agency receives a notice  
6 described in subsection (a)(2) from a State insurance au-  
7 thority or the Securities and Exchange Commission with  
8 regard to a subsidiary referred to in that subsection, the  
9 appropriate Federal banking agency may order the in-  
10 sured depository institution to divest the subsidiary not  
11 later than 180 days after receiving the notice, or such  
12 longer period as the appropriate Federal banking agency  
13 determines consistent with the safe and sound operation  
14 of the insured depository institution.

15       “(d) CONDITIONS BEFORE DIVESTITURE.—During  
16 the period beginning on the date an order to divest is  
17 issued by the appropriate Federal banking agency under  
18 subsection (c) to an insured depository institution and  
19 ending on the date the divestiture is complete, the appro-  
20 priate Federal banking agency may impose any conditions  
21 or restrictions on the insured depository institution’s own-  
22 ership of the subsidiary including restricting or prohibiting  
23 transactions between the insured depository institution  
24 and the subsidiary, as are appropriate under the cir-  
25 cumstances.”.

1 **SEC. 114. PRUDENTIAL SAFEGUARDS.**

2 (a) COMPTROLLER OF THE CURRENCY.—

3 (1) IN GENERAL.—The Comptroller of the Cur-  
4 rency may, by regulation or order, impose restric-  
5 tions or requirements on relationships or trans-  
6 actions between a national bank and a subsidiary of  
7 the national bank which the Comptroller finds are  
8 consistent with the public interest, the purposes of  
9 this Act, title LXII of the Revised Statutes of the  
10 United States, and other Federal law applicable to  
11 national banks, and the standards in paragraph (2).

12 (2) STANDARDS.—The Comptroller of the Cur-  
13 rency may exercise authority under paragraph (1) if  
14 the Comptroller finds that such action will have any  
15 of the following effects:

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

19 (B) Enhance the financial stability of  
20 banks.

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

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

1           (E) Promote the application of national  
2           treatment and equality of competitive oppor-  
3           tunity between subsidiaries owned or controlled  
4           by domestic banks and subsidiaries owned or  
5           controlled by foreign banks operating in the  
6           United States.

7           (3) REVIEW.—The Comptroller of the Currency  
8           shall regularly—

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

15           (B) modify or eliminate any restriction or  
16           requirement the Comptroller finds is no longer  
17           required for such purposes.

18           (b) BOARD OF GOVERNORS OF THE FEDERAL RE-  
19           SERVE SYSTEM.—

20           (1) IN GENERAL.—The Board of Governors of  
21           the Federal Reserve System may, by regulation or  
22           order, impose restrictions or requirements on rela-  
23           tionships or transactions—

24           (A) between a depository institution sub-  
25           sidiary of a bank holding company and any af-

1           filiate of such depository institution (other than  
2           a subsidiary of such institution); or

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

5           which the Board finds are consistent with the public  
6           interest, the purposes of this Act, the Bank Holding  
7           Company Act of 1956, the Federal Reserve Act, and  
8           other Federal law applicable to depository institution  
9           subsidiaries of bank holding companies or State  
10          banks (as the case may be), and the standards in  
11          paragraph (2).

12                   (2) STANDARDS.—The Board of Governors of  
13          the Federal Reserve System may exercise authority  
14          under paragraph (1) if the Board finds that such ac-  
15          tion will have any of the following effects:

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

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

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

23                           (D) Enhance the privacy of customers of  
24                           the State member bank or any subsidiary of the  
25                           bank.

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

7           (3) REVIEW.—The Board of Governors of the  
8 Federal Reserve System shall regularly—

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

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

18           (4) FOREIGN BANKS.—

19           (A) IN GENERAL.—The Board may, by  
20 regulation or order, impose restrictions or re-  
21 quirements on relationships or transactions be-  
22 tween a branch, agency, or commercial lending  
23 company of a foreign bank in the United States  
24 and any affiliate in the United States of such  
25 foreign bank that the Board finds are con-

1           sistent with the public interest, the purposes of  
2           this Act, the Bank Holding Company Act of  
3           1956, the Federal Reserve Act, and other Fed-  
4           eral law applicable to foreign banks and their  
5           affiliates in the United States, and the stand-  
6           ards in paragraphs (2) and (3).

7           (B) EVASION.—In the event that the  
8           Board determines that there may be cir-  
9           cumstances that would result in an evasion of  
10          this paragraph, the Board may also impose re-  
11          strictions or requirements on relationships or  
12          transactions between operations of a foreign  
13          bank outside the United States and any affiliate  
14          in the United States of such foreign bank that  
15          are consistent with national treatment and  
16          equality of competitive opportunity.

17       (c) FEDERAL DEPOSIT INSURANCE CORPORATION.—

18           (1) IN GENERAL.—The Federal Deposit Insur-  
19          ance Corporation may, by regulation or order, im-  
20          pose restrictions or requirements on relationships or  
21          transactions between a State nonmember bank (as  
22          defined in section 3 of the Federal Deposit Insur-  
23          ance Act) and a subsidiary of the State nonmember  
24          bank which the Corporation finds are consistent with  
25          the public interest, the purposes of this Act, the

1 Federal Deposit Insurance Act, or other Federal law  
2 applicable to State nonmember banks and the stand-  
3 ards in paragraph (2).

4 (2) STANDARDS.—The Federal Deposit Insur-  
5 ance Corporation may exercise authority under para-  
6 graph (1) if the Corporation finds that such action  
7 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  
12 banks.

13 (C) Avoid conflicts of interest or other  
14 abuses.

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

18 (E) Promote the application of national  
19 treatment and equality of competitive oppor-  
20 tunity between subsidiaries owned or controlled  
21 by domestic banks and subsidiaries owned or  
22 controlled by foreign banks operating in the  
23 United States.

24 (3) REVIEW.—The Federal Deposit Insurance  
25 Corporation shall regularly—

1 (A) review all restrictions or requirements  
2 established pursuant to paragraph (1) to deter-  
3 mine whether there is a continuing need for any  
4 such restriction or requirement to carry out the  
5 purposes of the Act, including any purpose de-  
6 scribed in paragraph (2); and

7 (B) modify or eliminate any restriction or  
8 requirement the Corporation finds is no longer  
9 required for such purposes.

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

11 (a) EXCLUSIVE COMMISSION AUTHORITY.—

12 (1) IN GENERAL.—Except as provided in para-  
13 graph (3), the Commission shall be the sole Federal  
14 agency with authority to inspect and examine any  
15 registered investment company that is not a bank  
16 holding company or a savings and loan holding com-  
17 pany.

18 (2) PROHIBITION ON BANKING AGENCIES.—Ex-  
19 cept as provided in paragraph (3), a Federal bank-  
20 ing agency may not inspect or examine any reg-  
21 istered investment company that is not a bank hold-  
22 ing company or a savings and loan holding company.

23 (3) CERTAIN EXAMINATIONS AUTHORIZED.—  
24 Nothing in this subsection prevents the Federal De-  
25 posit Insurance Corporation, if the Corporation finds

1 it necessary to determine the condition of an insured  
2 depository institution for insurance purposes, from  
3 examining an affiliate of any insured depository in-  
4 stitution, pursuant to its authority under section  
5 10(b)(4) of the Federal Deposit Insurance Act, as  
6 may be necessary to disclose fully the relationship  
7 between the depository institution and the affiliate,  
8 and the effect of such relationship on the depository  
9 institution.

10 (b) EXAMINATION RESULTS AND OTHER INFORMA-  
11 TION.—The Commission shall provide to any Federal  
12 banking agency, upon request, the results of any examina-  
13 tion, reports, records, or other information with respect  
14 to any registered investment company to the extent nec-  
15 essary for the agency to carry out its statutory responsibil-  
16 ities.

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

19 (1) BANK HOLDING COMPANY.—The term  
20 “bank holding company” has the same meaning as  
21 in section 2 of the Bank Holding Company Act of  
22 1956.

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

1           (3) FEDERAL BANKING AGENCY.—The term  
2           “Federal banking agency” has the same meaning as  
3           in section 3(z) of the Federal Deposit Insurance Act.

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

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

12 **SEC. 116. LIMITATION ON RULEMAKING, PRUDENTIAL, SU-**  
13                           **PERVISORY, AND ENFORCEMENT AUTHORITY**  
14                           **OF THE BOARD.**

15          The Bank Holding Company Act of 1956 (12 U.S.C.  
16 1841 et seq.) is amended by inserting after section 10 the  
17 following new section:

18 **“SEC. 10A. LIMITATION ON RULEMAKING, PRUDENTIAL, SU-**  
19                           **PERVISORY, AND ENFORCEMENT AUTHORITY**  
20                           **OF THE BOARD.**

21          “(a) LIMITATION ON DIRECT ACTION.—

22               “(1) IN GENERAL.—The Board may not pre-  
23               scribe regulations, issue or seek entry of orders, im-  
24               pose restraints, restrictions, guidelines, require-  
25               ments, safeguards, or standards, or otherwise take

1 any action under or pursuant to any provision of  
2 this Act or section 8 of the Federal Deposit Insur-  
3 ance Act against or with respect to a regulated sub-  
4 sidiary of a bank holding company unless the action  
5 is necessary to prevent or redress an unsafe or un-  
6 sound practice or breach of fiduciary duty by such  
7 subsidiary that poses a material risk to—

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

10 or

11 “(B) the domestic or international pay-  
12 ment system.

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

20 “(b) LIMITATION ON INDIRECT ACTION.—The Board  
21 may not prescribe regulations, issue or seek entry of or-  
22 ders, impose restraints, restrictions, guidelines, require-  
23 ments, safeguards, or standards, or otherwise take any ac-  
24 tion under or pursuant to any provision of this Act or sec-  
25 tion 8 of the Federal Deposit Insurance Act against or

1 with respect to a financial holding company or a wholesale  
2 financial holding company where the purpose or effect of  
3 doing so would be to take action indirectly against or with  
4 respect to a regulated subsidiary that may not be taken  
5 directly against or with respect to such subsidiary in ac-  
6 cordance with subsection (a).

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

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

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

19 “(2) an investment adviser registered by or on  
20 behalf of either the Securities and Exchange Com-  
21 mission or any State, whichever is required by law,  
22 with respect to the investment advisory activities of  
23 such investment adviser and activities incidental to  
24 such investment advisory activities;

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

3           “(4) an insurance company or an insurance  
4 agency, with respect to the insurance activities and  
5 activities incidental to such insurance activities, sub-  
6 ject to supervision by a State insurance commission,  
7 agency, or similar authority; or

8           “(5) an entity subject to regulation by the Com-  
9 modity Futures Trading Commission, with respect  
10 to the commodities activities of such entity and ac-  
11 tivities incidental to such commodities activities.”.

12 **SEC. 117. EQUIVALENT REGULATION AND SUPERVISION.**

13       (a) IN GENERAL.—Notwithstanding any other provi-  
14 sion of law, the provisions of—

15           (1) section 5(c) of the Bank Holding Company  
16 Act of 1956 (as amended by this Act) that limit the  
17 authority of the Board of Governors of the Federal  
18 Reserve System to require reports from, to make ex-  
19 aminations of, or to impose capital requirements on  
20 bank holding companies and their nonbank subsidi-  
21 aries or that require deference to other regulators;  
22 and

23           (2) section 10A of the Bank Holding Company  
24 Act of 1956 (as added by this Act) that limit what-  
25 ever authority the Board might otherwise have to

1 take direct or indirect action with respect to bank  
2 holding companies and their nonbank subsidiaries,  
3 shall also limit whatever authority that a Federal banking  
4 agency (as defined in section 3(z) of the Federal Deposit  
5 Insurance Act) might otherwise have under any statute  
6 to require reports, make examinations, impose capital re-  
7 quirements or take any other direct or indirect action with  
8 respect to bank holding companies and their nonbank sub-  
9 sidiaries (including nonbank subsidiaries of depository in-  
10 stitutions), subject to the same standards and require-  
11 ments as are applicable to the Board under such provi-  
12 sions.

13 (b) CERTAIN EXAMINATIONS AUTHORIZED.—No pro-  
14 vision of this section shall be construed as preventing the  
15 Federal Deposit Insurance Corporation, if the Corporation  
16 finds it necessary to determine the condition of an insured  
17 depository institution for insurance purposes, from exam-  
18 ining an affiliate of any insured depository institution,  
19 pursuant to its authority under section 10(b)(4) of the  
20 Federal Deposit Insurance Act, as may be necessary to  
21 disclose fully the relationship between the depository insti-  
22 tution and the affiliate, and the effect of such relationship  
23 on the depository institution.

1 **SEC. 118. PROHIBITION ON FDIC ASSISTANCE TO AFFILI-**  
 2 **ATES AND SUBSIDIARIES.**

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

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

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

13 “(f) [Repealed].”

14 **SEC. 120. TECHNICAL AMENDMENT.**

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

18 **Subtitle C—Subsidiaries of**  
 19 **National Banks**

20 **SEC. 121. PERMISSIBLE ACTIVITIES FOR SUBSIDIARIES OF**  
 21 **NATIONAL BANKS.**

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

25 (1) by redesignating section 5136A as section  
 26 5136C; and

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

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

4           “(a) SUBSIDIARIES OF NATIONAL BANKS AUTHOR-  
5    IZED TO ENGAGE IN FINANCIAL ACTIVITIES.—

6           “(1) EXCLUSIVE AUTHORITY.—No provision of  
7           section 5136 or any other provision of this title  
8           LXII of the Revised Statutes of the United States  
9           shall be construed as authorizing a subsidiary of a  
10          national bank to engage in, or own any share of or  
11          any other interest in any company engaged in, any  
12          activity that—

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

15                 “(B) is conducted under terms or condi-  
16                 tions other than those that would govern the  
17                 conduct of such activity by a national bank,

18           unless a national bank is specifically authorized by  
19           the express terms of a Federal statute and not by  
20           implication or interpretation to acquire shares of or  
21           an interest in, or to control, such subsidiary, such as  
22           by paragraph (2) of this subsection and section 25A  
23           of the Federal Reserve Act.

24                 “(2) SPECIFIC AUTHORIZATION TO CONDUCT  
25           ACTIVITIES WHICH ARE FINANCIAL IN NATURE.—

1 Subject to paragraphs (3) and (4), a national bank  
2 may control a financial subsidiary, or hold an inter-  
3 est in a financial subsidiary, that is controlled by in-  
4 sured depository institutions or subsidiaries thereof.

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

8 “(A) the national bank and all depository  
9 institution affiliates of the national bank are  
10 well capitalized;

11 “(B) the national bank and all depository  
12 institution affiliates of the national bank are  
13 well managed;

14 “(C) the national bank and all depository  
15 institution affiliates of such national bank have  
16 achieved a rating of ‘satisfactory record of  
17 meeting community credit needs’, or better, at  
18 the most recent examination of each such bank  
19 or institution; and

20 “(D) the bank has received the approval of  
21 the Comptroller of the Currency.

22 “(4) ACTIVITY LIMITATIONS.—In addition to  
23 any other limitation imposed on the activity of sub-  
24 sidiaries of national banks, a subsidiary of a na-  
25 tional bank may not, pursuant to paragraph (2)—

1           “(A) engage as principal in insuring, guar-  
2           anteeing, or indemnifying against loss, harm,  
3           damage, illness, disability, or death (other than  
4           in connection with credit-related insurance) or  
5           in providing or issuing annuities;

6           “(B) engage in real estate investment or  
7           development activities; or

8           “(C) engage in any activity permissible for  
9           a financial holding company under paragraph  
10          (3)(I) of section 6(c) of the Bank Holding Com-  
11          pany Act of 1956 (relating to insurance com-  
12          pany investments).

13          “(5) SIZE FACTOR WITH REGARD TO FREE-  
14          STANDING NATIONAL BANKS.—Notwithstanding  
15          paragraph (2), a national bank which has total as-  
16          sets of \$10,000,000,000 or more may not control a  
17          subsidiary engaged in financial activities pursuant to  
18          such paragraph unless such national bank is a sub-  
19          sidiary of a bank holding company.

20          “(6) LIMITED EXCLUSIONS FROM COMMUNITY  
21          NEEDS REQUIREMENTS FOR NEWLY AFFILIATED DE-  
22          POSITORY INSTITUTIONS.—Any depository institu-  
23          tion which becomes an affiliate of a national bank  
24          during the 12-month period preceding the date of an  
25          approval by the Comptroller of the Currency under

1 paragraph (3)(D) for such bank, and any depository  
2 institution which becomes an affiliate of the national  
3 bank after such date, may be excluded for purposes  
4 of paragraph (3)(C) during the 12-month period be-  
5 ginning on the date of such affiliation if—

6 “(A) the national bank or such depository  
7 institution has submitted an affirmative plan to  
8 the appropriate Federal banking agency to take  
9 such action as may be necessary in order for  
10 such institution to achieve a rating of ‘satisfac-  
11 tory record of meeting community credit needs’,  
12 or better, at the next examination of the insti-  
13 tution; and

14 “(B) the plan has been accepted by such  
15 agency.

16 “(7) DEFINITIONS.—For purposes of this sec-  
17 tion, the following definitions shall apply:

18 “(A) COMPANY; CONTROL; AFFILIATE;  
19 SUBSIDIARY.—The terms ‘company’, ‘control’,  
20 ‘affiliate’, and ‘subsidiary’ have the same mean-  
21 ings as in section 2 of the Bank Holding Com-  
22 pany Act of 1956.

23 “(B) FINANCIAL SUBSIDIARY.—The term  
24 ‘financial subsidiary’ means a company which is  
25 a subsidiary of an insured bank and is engaged

1 in financial activities that have been determined  
2 to be financial in nature or incidental to such  
3 financial activities in accordance with sub-  
4 section (b) or permitted in accordance with sub-  
5 section (b)(4), other than activities that are  
6 permissible for a national bank to engage in di-  
7 rectly or that are authorized under the Bank  
8 Service Company Act, section 25 or 25A of the  
9 Federal Reserve Act, or any other Federal stat-  
10 ute (other than this section) that specifically  
11 authorizes the conduct of such activities by its  
12 express terms and not by implication or inter-  
13 pretation.

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

20 “(D) WELL MANAGED.—The term ‘well  
21 managed’ means—

22 “(i) in the case of a depository insti-  
23 tution that has been examined, unless oth-  
24 erwise determined in writing by the appro-  
25 priate Federal banking agency—

1                   “(I) the achievement of a com-  
2                   posite rating of 1 or 2 under the Uni-  
3                   form Financial Institutions Rating  
4                   System (or an equivalent rating under  
5                   an equivalent rating system) in con-  
6                   nection with the most recent examina-  
7                   tion or subsequent review of the de-  
8                   pository institution; and

9                   “(II) at least a rating of 2 for  
10                  management, if that rating is given;  
11                  or

12                  “(ii) in the case of any depository in-  
13                  stitution that has not been examined, the  
14                  existence and use of managerial resources  
15                  that the appropriate Federal banking agen-  
16                  cy determines are satisfactory.

17                  “(E) INCORPORATED DEFINITIONS.—The  
18                  terms ‘appropriate Federal banking agency’ and  
19                  ‘depository institution’ have the same meanings  
20                  as in section 3 of the Federal Deposit Insur-  
21                  ance Act.

22                  “(b) ACTIVITIES THAT ARE FINANCIAL IN NA-  
23                  TURE.—

24                  “(1) FINANCIAL ACTIVITIES.—

1           “(A) IN GENERAL.—For purposes of sub-  
2 section (a)(7)(B), an activity shall be consid-  
3 ered to have been determined to be financial in  
4 nature or incidental to such financial activities  
5 only if—

6           “(i) such activity is permitted for a fi-  
7 nancial holding company pursuant to sec-  
8 tion 6(c)(3) of the Bank Holding Company  
9 Act of 1956 (to the extent such activity is  
10 not otherwise prohibited under this section  
11 or any other provision of law for a sub-  
12 sidiary of a national bank engaged in ac-  
13 tivities pursuant to subsection (a)(2)); or

14           “(ii) the Secretary of the Treasury de-  
15 termines the activity to be financial in na-  
16 ture or incidental to such financial activi-  
17 ties in accordance with subparagraph (B)  
18 or paragraph (3).

19           “(B) COORDINATION BETWEEN THE  
20 BOARD AND THE SECRETARY OF THE TREAS-  
21 URY.—

22           “(i) PROPOSALS RAISED BEFORE THE  
23 SECRETARY OF THE TREASURY.—

24           “(I) CONSULTATION.—The Sec-  
25 retary of the Treasury shall notify the

1 Board of, and consult with the Board  
2 concerning, any request, proposal, or  
3 application under this subsection, in-  
4 cluding any regulation or order pro-  
5 posed under paragraph (3), for a de-  
6 termination of whether an activity is  
7 financial in nature or incidental to  
8 such a financial activity.

9 “(II) BOARD VIEW.—The Sec-  
10 retary of the Treasury shall not deter-  
11 mine that any activity is financial in  
12 nature or incidental to a financial ac-  
13 tivity under this subsection if the  
14 Board notifies the Secretary in writ-  
15 ing, not later than 30 days after the  
16 date of receipt of the notice described  
17 in subclause (I) (or such longer period  
18 as the Secretary determines to be ap-  
19 propriate in light of the cir-  
20 cumstances) that the Board believes  
21 that the activity is not financial in na-  
22 ture or incidental to a financial activ-  
23 ity.

24 “(ii) PROPOSALS RAISED BY THE  
25 BOARD.—

1           “(I) BOARD RECOMMENDA-  
2           TION.—The Board may, at any time,  
3           recommend in writing that the Sec-  
4           retary of the Treasury find an activity  
5           to be financial in nature or incidental  
6           to a financial activity (other than an  
7           activity which the Board has sole au-  
8           thority to regulate under subpara-  
9           graph (C)).

10           “(II) TIME PERIOD FOR SECRE-  
11           TARIAL ACTION.—Not later than 30  
12           days after the date of receipt of a  
13           written recommendation from the  
14           Board under subclause (I) (or such  
15           longer period as the Secretary of the  
16           Treasury and the Board determine to  
17           be appropriate in light of the cir-  
18           cumstances), the Secretary shall de-  
19           termine whether to initiate a public  
20           rulemaking proposing that the subject  
21           recommended activity be found to be  
22           financial in nature or incidental to a  
23           financial activity under this sub-  
24           section, and shall notify the Board in  
25           writing of the determination of the

1 Secretary and, in the event that the  
2 Secretary determines not to seek pub-  
3 lic comment on the proposal, the rea-  
4 sons for that determination.

5 “(C) AUTHORITY OVER MERCHANT BANK-  
6 ING.—The Board shall have sole authority to  
7 prescribe regulations and issue interpretations  
8 to implement this paragraph with respect to ac-  
9 tivities described in section 6(e)(3)(H) of the  
10 Bank Holding Company Act of 1956.

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

15 “(A) the purposes of this Act and the Fi-  
16 nancial Services Act of 1999;

17 “(B) changes or reasonably expected  
18 changes in the marketplace in which banks  
19 compete;

20 “(C) changes or reasonably expected  
21 changes in the technology for delivering finan-  
22 cial services; and

23 “(D) whether such activity is necessary or  
24 appropriate to allow a bank and the subsidiaries  
25 of a bank to—

1           “(i) compete effectively with any com-  
2           pany seeking to provide financial services  
3           in the United States;

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

10           “(iii) offer customers any available or  
11           emerging technological means for using fi-  
12           nancial services.

13           “(3) AUTHORIZATION OF NEW FINANCIAL AC-  
14           TIVITIES.—The Secretary of the Treasury shall, by  
15           regulation or order and in accordance with para-  
16           graph (1)(B), define, consistent with the purposes of  
17           this Act, the following activities as, and the extent  
18           to which such activities are, financial in nature or  
19           incidental to activities which are financial in nature:

20           “(A) Lending, exchanging, transferring, in-  
21           vesting for others, or safeguarding financial as-  
22           sets other than money or securities.

23           “(B) Providing any device or other instru-  
24           mentality for transferring money or other finan-  
25           cial assets.

1           “(C) Arranging, effecting, or facilitating fi-  
2           nancial transactions for the account of third  
3           parties.

4           “(4) DEVELOPING ACTIVITIES.—Subject to sub-  
5           section (a)(2), a financial subsidiary of a national  
6           bank may engage directly or indirectly, or acquire  
7           shares of any company engaged, in any activity that  
8           the Secretary has not determined to be financial in  
9           nature or incidental to financial activities under this  
10          subsection if—

11           “(A) the subsidiary reasonably concludes  
12           that the activity is financial in nature or inci-  
13           dental to financial activities;

14           “(B) the gross revenues from all activities  
15           conducted under this paragraph represent less  
16           than 5 percent of the consolidated gross reve-  
17           nues of the national bank;

18           “(C) the aggregate total assets of all com-  
19           panies the shares of which are held under this  
20           paragraph do not exceed 5 percent of the na-  
21           tional bank’s consolidated total assets;

22           “(D) the total capital invested in activities  
23           conducted under this paragraph represents less  
24           than 5 percent of the consolidated total capital  
25           of the national bank;

1           “(E) neither the Secretary of the Treasury  
2           nor the Board has determined that the activity  
3           is not financial in nature or incidental to finan-  
4           cial activities under this subsection; and

5           “(F) the national bank provides written  
6           notice to the Secretary of the Treasury describ-  
7           ing the activity commenced by the subsidiary or  
8           conducted by the company acquired no later  
9           than 10 business days after commencing the ac-  
10          tivity or consummating the acquisition.

11          “(c) PROVISIONS APPLICABLE TO NATIONAL BANKS  
12          THAT FAIL TO MEET REQUIREMENTS.—

13           “(1) IN GENERAL.—If a national bank or de-  
14           pository institution affiliate is not in compliance  
15           with the requirements of subparagraph (A), (B), or  
16           (C) of subsection (a)(3), the appropriate Federal  
17           banking agency shall notify the Comptroller of the  
18           Currency, who shall give notice of such finding to  
19           the national bank.

20           “(2) AGREEMENT TO CORRECT CONDITIONS RE-  
21           QUIRED.—Not later than 45 days after receipt by a  
22           national bank of a notice given under paragraph (1)  
23           (or such additional period as the Comptroller of the  
24           Currency may permit), the national bank and any  
25           relevant affiliated depository institution shall execute

1 an agreement acceptable to the Comptroller of the  
2 Currency and the other appropriate Federal banking  
3 agencies, if any, to comply with the requirements ap-  
4 plicable under subsection (a)(3).

5 “(3) COMPTROLLER OF THE CURRENCY MAY  
6 IMPOSE LIMITATIONS.—Until the conditions de-  
7 scribed in a notice to a national bank under para-  
8 graph (1) are corrected—

9 “(A) the Comptroller of the Currency may  
10 impose such limitations on the conduct or ac-  
11 tivities of the national bank or any subsidiary  
12 of the bank as the Comptroller of the Currency  
13 determines to be appropriate under the cir-  
14 cumstances; and

15 “(B) the appropriate Federal banking  
16 agency may impose such limitations on the con-  
17 duct or activities of an affiliated depository in-  
18 stitution or any subsidiary of the depository in-  
19 stitution as such agency determines to be ap-  
20 propriate under the circumstances.

21 “(4) FAILURE TO CORRECT.—If, after receiving  
22 a notice under paragraph (1), a national bank and  
23 other affiliated depository institutions do not—

24 “(A) execute and implement an agreement  
25 in accordance with paragraph (2);

1           “(B) comply with any limitations imposed  
2           under paragraph (3);

3           “(C) in the case of a notice of failure to  
4           comply with subsection (a)(3)(A), restore the  
5           national bank or any depository institution af-  
6           filiate of the bank to well capitalized status be-  
7           fore the end of the 180-day period beginning on  
8           the date such notice is received by the national  
9           bank (or such other period permitted by the  
10          Comptroller of the Currency); or

11          “(D) in the case of a notice of failure to  
12          comply with subparagraph (B) or (C) of sub-  
13          section (a)(3), restore compliance with any such  
14          subparagraph on or before the date on which  
15          the next examination of the depository institu-  
16          tion subsidiary is completed or by the end of  
17          such other period as the Comptroller of the  
18          Currency determines to be appropriate,

19          the Comptroller of the Currency may require such  
20          national bank, under such terms and conditions as  
21          may be imposed by the Comptroller of the Currency  
22          and subject to such extension of time as may be  
23          granted in the Comptroller of the Currency’s discre-  
24          tion, to divest control of any subsidiary engaged in  
25          activities pursuant to subsection (a)(2) or, at the

1 election of the national bank, instead to cease to en-  
 2 gage in any activity conducted by a subsidiary of the  
 3 national bank pursuant to subsection (a)(2).

4 “(5) CONSULTATION.—In taking any action  
 5 under this subsection, the Comptroller of the Cur-  
 6 rency shall consult with all relevant Federal and  
 7 State regulatory agencies.”.

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

11 (1) by redesignating the item relating to section  
 12 5136A as section 5136C; and

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

“5136A. Subsidiaries of national banks.”.

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

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

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

20 (2) to apply to any transaction between the  
 21 bank and the financial subsidiary (including a loan,  
 22 extension of credit, guarantee, or purchase of as-  
 23 sets), other than an equity investment, the same re-  
 24 strictions and requirements as would apply if the fi-

1 financial subsidiary were a subsidiary of a bank hold-  
 2 ing company having control of the bank; and

3 (3) to apply to any equity investment of the  
 4 bank in the financial subsidiary restrictions and re-  
 5 quirements equivalent to those that would apply if—

6 (A) the bank paid a dividend in the same  
 7 dollar amount to a bank holding company hav-  
 8 ing control of the bank; and

9 (B) the bank holding company used the  
 10 proceeds of the dividend to make an equity in-  
 11 vestment in a subsidiary that was engaged in  
 12 the same activities as the financial subsidiary of  
 13 the bank.

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

19 **“SEC. 46. SAFETY AND SOUNDNESS FIREWALLS APPLICA-**  
 20 **BLE TO SUBSIDIARIES OF BANKS.**

21 **“(a) LIMITING THE EQUITY INVESTMENT OF A BANK**  
 22 **IN A SUBSIDIARY.—**

23 **“(1) CAPITAL DEDUCTION.—**In determining  
 24 whether an insured bank complies with applicable  
 25 regulatory capital standards—

1           “(A) the appropriate Federal banking  
2           agency shall deduct from the assets and tan-  
3           gible equity of the bank the aggregate amount  
4           of the outstanding equity investments of the  
5           bank in financial subsidiaries of the bank; and

6           “(B) the assets and liabilities of such fi-  
7           nancial subsidiaries shall not be consolidated  
8           with those of the bank.

9           “(2) INVESTMENT LIMITATION.—An insured  
10          bank shall not, without the prior approval of the ap-  
11          propriate Federal banking agency, make any equity  
12          investment in a financial subsidiary of the bank if  
13          that investment would, when made, exceed the  
14          amount that the bank could pay as a dividend with-  
15          out obtaining prior regulatory approval.

16          “(3) TREATMENT OF RETAINED EARNINGS.—  
17          The amount of any net earnings retained by a finan-  
18          cial subsidiary of an insured depository institution  
19          shall be treated as an outstanding equity investment  
20          of the bank in the subsidiary for purposes of para-  
21          graph (1).

22          “(b) OPERATIONAL AND FINANCIAL SAFEGUARDS  
23          FOR THE BANK.—An insured bank that has a financial  
24          subsidiary shall maintain procedures for identifying and

1 managing any financial and operational risks posed by the  
2 financial subsidiary.

3 “(c) MAINTENANCE OF SEPARATE CORPORATE  
4 IDENTITY AND SEPARATE LEGAL STATUS.—

5 “(1) IN GENERAL.—Each insured bank shall  
6 ensure that the bank maintains and complies with  
7 reasonable policies and procedures to preserve the  
8 separate corporate identity and legal status of the  
9 bank and any financial subsidiary or affiliate of the  
10 bank.

11 “(2) EXAMINATIONS.—The appropriate Federal  
12 banking agency, as part of each examination, shall  
13 review whether an insured bank is observing the sep-  
14 arate corporate identity and separate legal status of  
15 any subsidiaries and affiliates of the bank.

16 “(d) FINANCIAL SUBSIDIARY DEFINED.—For pur-  
17 poses of this section, the term ‘financial subsidiary’ has  
18 the meaning given to such term in section 5136A(a)(7)(B)  
19 of the Revised Statutes of the United States.

20 “(e) REGULATIONS.—The appropriate Federal bank-  
21 ing agencies shall jointly prescribe regulations imple-  
22 menting this section.”.

23 (c) TRANSACTIONS BETWEEN FINANCIAL SUBSIDI-  
24 ARIES AND OTHER AFFILIATES.—Section 23A of the Fed-  
25 eral Reserve Act (12 U.S.C. 371c) is amended—

1           (1) by redesignating subsection (e) as sub-  
2           section (f); and

3           (2) by inserting after subsection (d), the fol-  
4           lowing new subsection:

5           “(e) RULES RELATING TO BANKS WITH FINANCIAL  
6           SUBSIDIARIES.—

7           “(1) FINANCIAL SUBSIDIARY DEFINED.—For  
8           purposes of this section and section 23B, the term  
9           ‘financial subsidiary’ means a company which is a  
10          subsidiary of a bank and is engaged in activities that  
11          are financial in nature or incidental to such financial  
12          activities pursuant to subsection (a)(2) or (b)(4) of  
13          section 5136A of the Revised Statutes of the United  
14          States.

15          “(2) APPLICATION TO TRANSACTIONS BETWEEN  
16          A FINANCIAL SUBSIDIARY OF A BANK AND THE  
17          BANK.—For purposes of applying this section and  
18          section 23B to a transaction between a financial  
19          subsidiary of a bank and the bank (or between such  
20          financial subsidiary and any other subsidiary of the  
21          bank which is not a financial subsidiary) and not-  
22          withstanding subsection (b)(2) and section  
23          23B(d)(1), the financial subsidiary of the bank—

1           “(A) shall be an affiliate of the bank and  
2           any other subsidiary of the bank which is not  
3           a financial subsidiary; and

4           “(B) shall not be treated as a subsidiary of  
5           the bank.

6           “(3) APPLICATION TO TRANSACTIONS BETWEEN  
7           FINANCIAL SUBSIDIARY AND NONBANK AFFILI-  
8           ATES.—

9           “(A) IN GENERAL.—A transaction between  
10          a financial subsidiary and an affiliate of the fi-  
11          nancial subsidiary shall not be deemed to be a  
12          transaction between a subsidiary of a national  
13          bank and an affiliate of the bank for purposes  
14          of section 23A or section 23B of the Federal  
15          Reserve Act.

16          “(B) CERTAIN AFFILIATES EXCLUDED.—  
17          For purposes of subparagraph (A) and notwith-  
18          standing paragraph (4), the term ‘affiliate’  
19          shall not include a bank, or a subsidiary of a  
20          bank, which is engaged exclusively in activities  
21          permissible for a national bank to engage in di-  
22          rectly or which are authorized by any Federal  
23          law other than section 5136A of the Revised  
24          Statutes of the United States.

1           “(4) EQUITY INVESTMENTS EXCLUDED SUB-  
2           JECT TO THE APPROVAL OF THE BANKING AGEN-  
3           CY.—Subsection (a)(1) shall not apply so as to limit  
4           the equity investment of a bank in a financial sub-  
5           sidiary of such bank, except that any investment  
6           that exceeds the amount of a dividend that the bank  
7           could pay at the time of the investment without ob-  
8           taining prior approval of the appropriate Federal  
9           banking agency and is in excess of the limitation  
10          which would apply under subsection (a)(1), but for  
11          this paragraph, may be made only with the approval  
12          of the appropriate Federal banking agency (as de-  
13          fined in section 3(q) of the Federal Deposit Insur-  
14          ance Act) with respect to such bank.”.

15          (d) ANTITYING.—Section 106(a) of the Bank Hold-  
16          ing Company Act Amendments of 1970 is amended by  
17          adding at the end the following new sentence: “For pur-  
18          poses of this section, a subsidiary of a national bank which  
19          engages in activities pursuant to subsection (a)(2) or  
20          (b)(4) of section 5136A of the Revised Statutes of the  
21          United States shall be deemed to be a subsidiary of a bank  
22          holding company, and not a subsidiary of a bank.”.

1 **SEC. 123. MISREPRESENTATIONS REGARDING DEPOSITORY**  
2 **INSTITUTION LIABILITY FOR OBLIGATIONS**  
3 **OF AFFILIATES.**

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

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

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

15 “(b) CRIMINAL PENALTY.—Whoever violates sub-  
16 section (a) shall be fined under this title, imprisoned for  
17 not more than 5 years, or both.

18 “(c) INSTITUTION-AFFILIATED PARTY DEFINED.—  
19 For purposes of this section, the term ‘institution-affili-  
20 ated party’ has the same meaning as in section 3 of the  
21 Federal Deposit Insurance Act and any reference in that  
22 section shall also be deemed to refer to a subsidiary or  
23 affiliate of an insured depository institution.

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

1 tion’, and ‘subsidiary’ have same meanings as in section  
2 3 of the Federal Deposit Insurance Act.”.

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

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

7 **SEC. 124. REPEAL OF STOCK LOAN LIMIT IN FEDERAL RE-**  
8 **SERVE ACT.**

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

12 **Subtitle D—Wholesale Financial**  
13 **Holding Companies; Wholesale**  
14 **Financial Institutions**

15 **CHAPTER 1—WHOLESALE FINANCIAL**  
16 **HOLDING COMPANIES**

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

19 Section 10 of the Bank Holding Company Act of  
20 1956 (12 U.S.C. 1841 et seq.) is amended to read as fol-  
21 lows:

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

23 **“(a) COMPANIES THAT CONTROL WHOLESALE FI-**  
24 **NANCIAL INSTITUTIONS.—**

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

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

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

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

10                   “(D) does not control—

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

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

16                           “(iii) a savings association; and

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

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

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

4 “(b) SUPERVISION BY THE BOARD.—

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

9 “(2) REPORTS.—

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

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

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

25 “(B) USE OF EXISTING REPORTS.—

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

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

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

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

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

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

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

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

20           “(3) EXAMINATIONS.—

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

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

5           “(ii) inform the Board regarding—

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

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

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

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

1           “(i) the holding company; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 “(4) CAPITAL ADEQUACY GUIDELINES.—

4 “(A) CAPITAL ADEQUACY PROVISIONS.—

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

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

13 “(i) FOCUS ON DOUBLE LEVERAGE.—

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

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

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

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

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

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

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

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

4           “(v) LIMITATIONS ON INDIRECT AC-  
5           TION.—In developing, establishing, or as-  
6           sessing holding company capital or capital  
7           adequacy rules, guidelines, standards, or  
8           requirements for purposes of this para-  
9           graph, the Board shall not take into ac-  
10          count the activities, operations, or invest-  
11          ments of an affiliated investment company  
12          registered under the Investment Company  
13          Act of 1940, unless the investment com-  
14          pany is—

15                   “(I) a bank holding company; or

16                   “(II) controlled by a bank hold-  
17                   ing company by reason of ownership  
18                   by the bank holding company (includ-  
19                   ing through all of its affiliates) of 25  
20                   percent or more of the shares of the  
21                   investment company, and the shares  
22                   owned by the bank holding company  
23                   have a market value equal to more  
24                   than \$1,000,000.

1 “(vi) APPROPRIATE EXCLUSIONS.—

2 The Board shall take full account of—

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

8 “(II) industry norms for capital-  
9 ization of a company’s unregulated  
10 subsidiaries and activities.

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

21 “(c) NONFINANCIAL ACTIVITIES AND INVEST-  
22 MENTS.—

23 “(1) GRANDFATHERED ACTIVITIES.—

24 “(A) IN GENERAL.—Notwithstanding sec-  
25 tion 4(a), a company that becomes a wholesale

1 financial holding company may continue to en-  
2 gage, directly or indirectly, in any activity and  
3 may retain ownership and control of shares of  
4 a company engaged in any activity if—

5 “(i) on the date of the enactment of  
6 the Financial Services Act of 1999, such  
7 wholesale financial holding company was  
8 lawfully engaged in that nonfinancial activ-  
9 ity, held the shares of such company, or  
10 had entered into a contract to acquire  
11 shares of any company engaged in such ac-  
12 tivity; and

13 “(ii) the company engaged in such ac-  
14 tivity continues to engage only in the same  
15 activities that such company conducted on  
16 the date of the enactment of the Financial  
17 Services Act of 1999, and other activities  
18 permissible under this Act.

19 “(B) NO EXPANSION OF GRANDFATHERED  
20 COMMERCIAL ACTIVITIES THROUGH MERGER OR  
21 CONSOLIDATION.—A wholesale financial holding  
22 company that engages in activities or holds  
23 shares pursuant to this paragraph, or a sub-  
24 sidiary of such wholesale financial holding com-  
25 pany, may not acquire, in any merger, consoli-

1            dation, or other type of business combination,  
2            assets of any other company which is engaged  
3            in any activity which the Board has not deter-  
4            mined to be financial in nature or incidental to  
5            activities that are financial in nature under sec-  
6            tion 6(c).

7            “(C) LIMITATION TO SINGLE EXEMP-  
8            TION.—No company that engages in any activ-  
9            ity or controls any shares under subsection (f)  
10           of section 6 may engage in any activity or own  
11           any shares pursuant to this paragraph.

12           “(2) COMMODITIES.—

13           “(A) IN GENERAL.—Notwithstanding sec-  
14           tion 4(a), a wholesale financial holding company  
15           which was predominately engaged as of Janu-  
16           ary 1, 1997, in financial activities in the United  
17           States (or any successor to any such company)  
18           may engage in, or directly or indirectly own or  
19           control shares of a company engaged in, activi-  
20           ties related to the trading, sale, or investment  
21           in commodities and underlying physical prop-  
22           erties that were not permissible for bank hold-  
23           ing companies to conduct in the United States  
24           as of January 1, 1997, if such wholesale finan-  
25           cial holding company, or any subsidiary of such

1 holding company, was engaged directly, indi-  
2 rectly, or through any such company in any of  
3 such activities as of January 1, 1997, in the  
4 United States.

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

18 “(3) CROSS MARKETING RESTRICTIONS.—A  
19 wholesale financial holding company shall not  
20 permit—

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

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

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

8           “(1) IN GENERAL.—Any foreign bank, or any  
9           company that owns or controls a foreign bank, that  
10          operates a branch, agency, or commercial lending  
11          company in the United States, including a foreign  
12          bank or company that owns or controls a wholesale  
13          financial institution, may request a determination  
14          from the Board that such bank or company be treat-  
15          ed as a wholesale financial holding company other  
16          than for purposes of subsection (c), subject to such  
17          conditions as the Board considers appropriate, giv-  
18          ing due regard to the principle of national treatment  
19          and equality of competitive opportunity and the re-  
20          quirements imposed on domestic banks and compa-  
21          nies.

22          “(2) CONDITIONS FOR TREATMENT AS A  
23          WHOLESALE FINANCIAL HOLDING COMPANY.—A for-  
24          eign bank and a company that owns or controls a  
25          foreign bank may not be treated as a wholesale fi-

1 nancial holding company unless the bank and com-  
2 pany meet and continue to meet the following cri-  
3 teria:

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

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

16 “(C) TRANSACTION WITH AFFILIATES.—  
17 Transactions between a branch, agency, or com-  
18 mercial lending company subsidiary of the for-  
19 eign bank in the United States, and any securi-  
20 ties affiliate or company in which the foreign  
21 bank (or any company that owns or controls  
22 such foreign bank) has invested, directly or in-  
23 directly, and which engages in any activity pur-  
24 suant to subsection (c) or (g) of section 6, com-  
25 ply with the provisions of sections 23A and 23B

1 of the Federal Reserve Act in the same manner  
2 and to the same extent as such transactions  
3 would be required to comply with such sections  
4 if the bank were a member bank.

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

19 “(4) SUPERVISION OF FOREIGN BANK WHICH  
20 MAINTAINS NO BANKING PRESENCE OTHER THAN  
21 CONTROL OF A WHOLESALE FINANCIAL INSTITU-  
22 TION.—A foreign bank that owns or controls a  
23 wholesale financial institution but does not operate  
24 a branch, agency, or commercial lending company in  
25 the United States (and any company that owns or

1 controls such foreign bank) may request a deter-  
2 mination from the Board that such bank or com-  
3 pany be treated as a wholesale financial holding  
4 company, except that such bank or company shall be  
5 subject to the restrictions of paragraphs (2)(A) and  
6 (3) of this subsection.

7 “(5) NO EFFECT ON OTHER PROVISIONS.—This  
8 section shall not be construed as limiting the author-  
9 ity of the Board under the International Banking  
10 Act of 1978 with respect to the regulation, super-  
11 vision, or examination of foreign banks and their of-  
12 fices and affiliates in the United States.

13 “(6) APPLICABILITY OF COMMUNITY REINVEST-  
14 MENT ACT OF 1977.—The branches in the United  
15 States of a foreign bank that is, or is affiliated with  
16 a company that is, treated as a wholesale financial  
17 holding company shall be subject to section  
18 9B(b)(11) of the Federal Reserve Act as if the for-  
19 eign bank were a wholesale financial institution  
20 under such section. The Board and the Comptroller  
21 of the Currency shall apply the provisions of sections  
22 803(2), 804, and 807(1) of the Community Rein-  
23 vestment Act of 1977 to branches of foreign banks  
24 which receive only such deposits as are permissible  
25 for receipt by a corporation organized under section

1       25A of the Federal Reserve Act, in the same manner  
2       and to the same extent such sections apply to such  
3       a corporation.”.

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

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

17      (b) COMMODITY FUTURES TRADING COMMISSION.—  
18      The Right to Financial Privacy Act of 1978 (12 U.S.C.  
19      3401 et seq.) is amended—

20              (1) in section 1101(7) of the (12 U.S.C.  
21      3401(7))—

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

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

3 “(G) the Commodity Futures Trading  
4 Commission; or”; and

5 (2) in section 1112(e), by striking “and the Se-  
6 curities and Exchange Commission” and inserting “,  
7 the Securities and Exchange Commission, and the  
8 Commodity Futures Trading Commission”.

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

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

11 (1) DEFINITIONS.—Section 2 of the Bank  
12 Holding Company Act of 1956 (12 U.S.C. 1841) is  
13 amended by inserting after subsection (p) (as added  
14 by section 103(b)(1)) the following new subsections:

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

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

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

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

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

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

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

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

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

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

20                     “(A) any State member insured bank (ex-  
21                     cept a District bank) and any wholesale finan-  
22                     cial institution subject to section 9B of the Fed-  
23                     eral Reserve Act;”.

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

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

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

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

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

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

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

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

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

“5136B. National wholesale financial institutions.”.

10       (b) WHOLESALE FINANCIAL INSTITUTIONS.—The  
11 Federal Reserve Act (12 U.S.C. 221 et seq.) is amended  
12 by inserting after section 9A the following new section:  
13 **“SEC. 9B. WHOLESALE FINANCIAL INSTITUTIONS.**

14       “(a) APPLICATION FOR MEMBERSHIP AS WHOLE-  
15 SALE FINANCIAL INSTITUTION.—

16           “(1) APPLICATION REQUIRED.—

17           “(A) IN GENERAL.—Any bank may apply  
18 to the Board of Governors of the Federal Re-  
19 serve System to become a State wholesale fi-  
20 nancial institution, or to the Comptroller of the  
21 Currency to become a national wholesale finan-  
22 cial institution, and, as a wholesale financial in-  
23 stitution, to subscribe to the stock of the Fed-  
24 eral reserve bank organized within the district  
25 where the applying bank is located.

1           “(B) TREATMENT AS MEMBER BANK.—

2           Any application under subparagraph (A) shall  
3           be treated as an application under, and shall be  
4           subject to the provisions of, section 9.

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

11          “(b) GENERAL REQUIREMENTS APPLICABLE TO  
12          WHOLESALE FINANCIAL INSTITUTIONS.—

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

24           “(2) PROMPT CORRECTIVE ACTION.—A whole-  
25           sale financial institution shall be deemed to be an in-

1       sured depository institution for purposes of section  
2       38 of the Federal Deposit Insurance Act except  
3       that—

4               “(A) the relevant capital levels and capital  
5               measures for each capital category shall be the  
6               levels specified by the Board for wholesale fi-  
7               nancial institutions;

8               “(B) subject to subparagraph (A), all ref-  
9               erences to the appropriate Federal banking  
10              agency or to the Corporation in that section  
11              shall be deemed to be references to the Comp-  
12              troller of the Currency, in the case of a national  
13              wholesale financial institution, and to the  
14              Board, in the case of all other wholesale finan-  
15              cial institutions; and

16              “(C) in the case of wholesale financial in-  
17              stitutions, the purpose of prompt corrective ac-  
18              tion shall be to protect taxpayers and the finan-  
19              cial system from the risks associated with the  
20              operation and activities of wholesale financial  
21              institutions.

22              “(3) ENFORCEMENT AUTHORITY.—Section  
23              3(u), subsections (j) and (k) of section 7, sub-  
24              sections (b) through (n), (s), (u), and (v) of section  
25              8, and section 19 of the Federal Deposit Insurance

1 Act shall apply to a wholesale financial institution in  
2 the same manner and to the same extent as such  
3 provisions apply to State member insured banks or  
4 national banks, as the case may be, and any ref-  
5 erence in such sections to an insured depository in-  
6 stitution shall be deemed to include a reference to a  
7 wholesale financial institution.

8 “(4) CERTAIN OTHER STATUTES APPLICA-  
9 BLE.—A wholesale financial institution shall be  
10 deemed to be a banking institution, and the Board  
11 shall be the appropriate Federal banking agency for  
12 such bank and all such bank’s affiliates, for pur-  
13 poses of the International Lending Supervision Act.

14 “(5) BANK MERGER ACT.—A wholesale finan-  
15 cial institution shall be subject to sections 18(c) and  
16 44 of the Federal Deposit Insurance Act in the same  
17 manner and to the same extent the wholesale finan-  
18 cial institution would be subject to such sections if  
19 the institution were a State member insured bank or  
20 a national bank.

21 “(6) BRANCHING.—Notwithstanding any other  
22 provision of law, a wholesale financial institution  
23 may establish and operate a branch at any location  
24 on such terms and conditions as established by, and  
25 with the approval of—

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

3           “(B) the Comptroller of the Currency, in  
4 the case of a national bank wholesale financial  
5 institution.

6           “(7) ACTIVITIES OF OUT-OF-STATE BRANCHES  
7 OF WHOLESALE FINANCIAL INSTITUTIONS.—A  
8 State-chartered wholesale financial institution shall  
9 be deemed to be a State bank and an insured State  
10 bank for purposes of paragraphs (1), (2), and (3) of  
11 section 24(j) of the Federal Deposit Insurance Act.

12           “(8) DISCRIMINATION REGARDING INTEREST  
13 RATES.—Section 27 of the Federal Deposit Insur-  
14 ance Act shall apply to State-chartered wholesale fi-  
15 nancial institutions in the same manner and to the  
16 same extent as such provisions apply to State mem-  
17 ber insured banks and any reference in such section  
18 to a State-chartered insured depository institution  
19 shall be deemed to include a reference to a State-  
20 chartered wholesale financial institution.

21           “(9) PREEMPTION OF STATE LAWS REQUIRING  
22 DEPOSIT INSURANCE FOR WHOLESALE FINANCIAL  
23 INSTITUTIONS.—The appropriate State banking au-  
24 thority may grant a charter to a wholesale financial  
25 institution notwithstanding any State constitution or

1 statute requiring that the institution obtain insur-  
2 ance of its deposits and any such State constitution  
3 or statute is hereby preempted solely for purposes of  
4 this paragraph.

5 “(10) PARITY FOR WHOLESALE FINANCIAL IN-  
6 STITUTIONS.—A State bank that is a wholesale fi-  
7 nancial institution under this section shall have all  
8 of the rights, powers, privileges, and immunities (in-  
9 cluding those derived from status as a federally  
10 chartered institution) of and as if it were a national  
11 bank, subject to such terms and conditions as estab-  
12 lished by the Board.

13 “(11) COMMUNITY REINVESTMENT ACT OF  
14 1977.—A State wholesale financial institution shall  
15 be subject to the Community Reinvestment Act of  
16 1977.

17 “(c) SPECIFIC REQUIREMENTS APPLICABLE TO  
18 WHOLESALE FINANCIAL INSTITUTIONS.—

19 “(1) LIMITATIONS ON DEPOSITS.—

20 “(A) MINIMUM AMOUNT.—

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

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

7           “(B) NO DEPOSIT INSURANCE.—Except as  
8           otherwise provided in section 8A(f) of the Fed-  
9           eral Deposit Insurance Act, no deposits held by  
10          a wholesale financial institution shall be insured  
11          deposits under the Federal Deposit Insurance  
12          Act.

13          “(C) ADVERTISING AND DISCLOSURE.—  
14          The Board and the Comptroller of the Currency  
15          shall prescribe jointly regulations pertaining to  
16          advertising and disclosure by wholesale financial  
17          institutions to ensure that each depositor is no-  
18          tified that deposits at the wholesale financial in-  
19          stitution are not federally insured or otherwise  
20          guaranteed by the United States Government.

21          “(2) MINIMUM CAPITAL LEVELS APPLICABLE  
22          TO WHOLESALE FINANCIAL INSTITUTIONS.—The  
23          Board shall, by regulation, adopt capital require-  
24          ments for wholesale financial institutions—

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

5           “(B) to provide for the safe and sound op-  
6 eration of the wholesale financial institution  
7 without undue risk to creditors or other per-  
8 sons, including Federal reserve banks, engaged  
9 in transactions with the bank.

10           “(3) ADDITIONAL REQUIREMENTS APPLICABLE  
11 TO WHOLESale FINANCIAL INSTITUTIONS.—In addi-  
12 tion to any requirement otherwise applicable to State  
13 member insured banks or applicable, under this sec-  
14 tion, to wholesale financial institutions, the Board  
15 may impose, by regulation or order, upon wholesale  
16 financial institutions—

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

19           “(i) the transfer of risk to the deposit  
20 insurance funds; or

21           “(ii) an affiliate from gaining access  
22 to, or the benefits of, credit from a Federal  
23 reserve bank, including overdrafts at a  
24 Federal reserve bank;

1           “(B) special clearing balance requirements;  
2           and

3           “(C) any additional requirements that the  
4           Board determines to be appropriate or nec-  
5           essary to—

6                   “(i) promote the safety and soundness  
7                   of the wholesale financial institution or any  
8                   insured depository institution affiliate of  
9                   the wholesale financial institution;

10                   “(ii) prevent the transfer of risk to  
11                   the deposit insurance funds; or

12                   “(iii) protect creditors and other per-  
13                   sons, including Federal reserve banks, en-  
14                   gaged in transactions with the wholesale fi-  
15                   nancial institution.

16           “(4) EXEMPTIONS FOR WHOLESAL FINANCIAL  
17           INSTITUTIONS.—The Board may, by regulation or  
18           order, exempt any wholesale financial institution  
19           from any provision applicable to a member bank  
20           that is not a wholesale financial institution, if the  
21           Board finds that such exemption is consistent  
22           with—

23                   “(A) the promotion of the safety and  
24                   soundness of the wholesale financial institution

1 or any insured depository institution affiliate of  
2 the wholesale financial institution;

3 “(B) the protection of the deposit insur-  
4 ance funds; and

5 “(C) the protection of creditors and other  
6 persons, including Federal reserve banks, en-  
7 gaged in transactions with the wholesale finan-  
8 cial institution.

9 “(5) LIMITATION ON TRANSACTIONS BETWEEN  
10 A WHOLESALE FINANCIAL INSTITUTION AND AN IN-  
11 SURED BANK.—For purposes of section 23A(d)(1) of  
12 the Federal Reserve Act, a wholesale financial insti-  
13 tution that is affiliated with an insured bank shall  
14 not be a bank.

15 “(6) NO EFFECT ON OTHER PROVISIONS.—This  
16 section shall not be construed as limiting the  
17 Board’s authority over member banks or the author-  
18 ity of the Comptroller of the Currency over national  
19 banks under any other provision of law, or to create  
20 any obligation for any Federal Reserve bank to  
21 make, increase, renew, or extend any advance or dis-  
22 count under this Act to any member bank or other  
23 depository institution.

24 “(d) CAPITAL AND MANAGERIAL REQUIREMENTS.—

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

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

8           “(3) AGREEMENT TO RESTORE INSTITUTION.—  
9           Not later than 45 days after the date of receipt of  
10          a notice under paragraph (2) (or such additional pe-  
11          riod not to exceed 90 days as the Board may per-  
12          mit), the company shall execute an agreement ac-  
13          ceptable to the Board to restore the wholesale finan-  
14          cial institution to compliance with all of the require-  
15          ments of paragraph (1).

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

23          “(5) FAILURE TO RESTORE.—If the company  
24          does not execute and implement an agreement in ac-  
25          cordance with paragraph (3), comply with any limi-

1 tation imposed under paragraph (4), restore the  
2 wholesale financial institution to well capitalized sta-  
3 tus not later than 180 days after the date of receipt  
4 by the company of the notice described in paragraph  
5 (2), or restore the wholesale financial institution to  
6 well managed status within such period as the Board  
7 may permit, the company shall, under such terms  
8 and conditions as may be imposed by the Board sub-  
9 ject to such extension of time as may be granted in  
10 the discretion of the Board, divest control of its sub-  
11 sidiary depository institutions.

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

16 “(e) RESOLUTION OF WHOLESALE FINANCIAL INSTI-  
17 TUTIONS.—

18 “(1) CONSERVATORSHIP OR RECEIVERSHIP.—

19 “(A) APPOINTMENT.—The Board may ap-  
20 point a conservator or receiver to take posses-  
21 sion and control of a wholesale financial institu-  
22 tion to the same extent and in the same manner  
23 as the Comptroller of the Currency may appoint  
24 a conservator or receiver for a national bank.

1           “(B) POWERS.—The conservator or re-  
2           ceiver for a wholesale financial institution shall  
3           exercise the same powers, functions, and duties,  
4           subject to the same limitations, as a conser-  
5           vator or receiver for a national bank.

6           “(2) BOARD AUTHORITY.—The Board shall  
7           have the same authority with respect to any conser-  
8           vator or receiver appointed under paragraph (1),  
9           and the wholesale financial institution for which it  
10          has been appointed, as the Comptroller of the Cur-  
11          rency has with respect to a conservator or receiver  
12          for a national bank and the national bank for which  
13          the conservator or receiver has been appointed.

14          “(3) BANKRUPTCY PROCEEDINGS.—The Comp-  
15          troller of the Currency (in the case of a national  
16          wholesale financial institution) or the Board may di-  
17          rect the conservator or receiver of a wholesale finan-  
18          cial institution to file a petition pursuant to title 11,  
19          United States Code, in which case, title 11, United  
20          States Code, shall apply to the wholesale financial  
21          institution in lieu of otherwise applicable Federal or  
22          State insolvency law.

23          “(f) BOARD BACKUP AUTHORITY.—

24                 “(1) NOTICE TO THE COMPTROLLER.—Before  
25          taking any action under section 8 of the Federal De-

1       posit Insurance Act involving a wholesale financial  
2       institution that is chartered as a national bank, the  
3       Board shall notify the Comptroller and recommend  
4       that the Comptroller take appropriate action. If the  
5       Comptroller fails to take the recommended action or  
6       to provide an acceptable plan for addressing the con-  
7       cerns of the Board before the close of the 30-day pe-  
8       riod beginning on the date of receipt of the formal  
9       recommendation from the Board, the Board may  
10      take such action.

11           “(2) EXIGENT CIRCUMSTANCES.—Notwith-  
12      standing paragraph (1), the Board may exercise its  
13      authority without regard to the time period set forth  
14      in paragraph (1) where the Board finds that exigent  
15      circumstances exist and the Board notifies the  
16      Comptroller of the Board’s action and of the exigent  
17      circumstances.

18           “(g) EXCLUSIVE JURISDICTION.—Subsections (c)  
19      and (e) of section 43 of the Federal Deposit Insurance  
20      Act shall not apply to any wholesale financial institution.”.

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

23           (1) SECTION 8 DESIGNATIONS.—Section 8(a) of  
24      the Federal Deposit Insurance Act (12 U.S.C.  
25      1818(a)) is amended—

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

2 (B) by redesignating paragraphs (2)  
3 through (10) as paragraphs (1) through (9), re-  
4 spectively.

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

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

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

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

18 “(A) to the Corporation and the Board of  
19 Governors of the Federal Reserve System, in  
20 the case of an insured State bank, or to the  
21 Corporation and the Comptroller of the Cur-  
22 rency, in the case of an insured national bank  
23 authorized to operate as a wholesale financial  
24 institution, not less than 6 months before the  
25 effective date of such termination; and

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

4           “(2) either—

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

14           “(B) the Corporation and the Board of  
15 Governors of the Federal Reserve System, in  
16 the case of an insured State bank, or the Cor-  
17 poration and the Comptroller of the Currency,  
18 in the case of an insured national bank author-  
19 ized to operate as a wholesale financial institu-  
20 tion, has approved the termination of the  
21 bank’s insured status and the bank pays an exit  
22 fee in accordance with subsection (e).

23           “(b) EXCEPTION.—Subsection (a) shall not apply  
24 with respect to—

25           “(1) an insured savings association; or

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

4           “(c) ELIGIBILITY FOR INSURANCE TERMINATED.—  
5 Any bank that voluntarily elects to terminate the bank’s  
6 insured status under subsection (a) shall not be eligible  
7 for insurance on any deposits or any assistance authorized  
8 under this Act after the period specified in subsection  
9 (f)(1).

10          “(d) INSTITUTION MUST BECOME WHOLESALE FI-  
11 NANCIAL INSTITUTION OR TERMINATE DEPOSIT-TAKING  
12 ACTIVITIES.—Any depository institution which voluntarily  
13 terminates such institution’s status as an insured deposi-  
14 tory institution under this section may not, upon termi-  
15 nation of insurance, accept any deposits unless the institu-  
16 tion is a wholesale financial institution subject to section  
17 9B of the Federal Reserve Act.

18          “(e) EXIT FEES.—

19           “(1) IN GENERAL.—Any bank that voluntarily  
20 terminates such bank’s status as an insured deposi-  
21 tory institution under this section shall pay an exit  
22 fee in an amount that the Corporation determines is  
23 sufficient to account for the institution’s pro rata  
24 share of the amount (if any) which would be re-  
25 quired to restore the relevant deposit insurance fund

1 to the fund's designated reserve ratio as of the date  
2 the bank provides a written notice under subsection  
3 (a)(1).

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

7 “(f) TEMPORARY INSURANCE OF DEPOSITS INSURED  
8 AS OF TERMINATION.—

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

21 “(2) TEMPORARY ASSESSMENTS; OBLIGATIONS  
22 AND DUTIES.—During the period specified in para-  
23 graph (1) with respect to any bank, the bank shall  
24 continue to pay assessments under section 7 as if  
25 the bank were an insured depository institution. The

1 bank shall, in all other respects, be subject to the  
2 authority of the Corporation and the duties and obli-  
3 gations of an insured depository institution under  
4 this Act during such period, and in the event that  
5 the bank is closed due to an inability to meet the de-  
6 mands of the bank's depositors during such period,  
7 the Corporation shall have the same powers and  
8 rights with respect to such bank as in the case of  
9 an insured depository institution.

10 “(g) ADVERTISEMENTS.—

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

21 “(2) CERTIFICATES OF DEPOSIT, OBLIGATIONS,  
22 AND SECURITIES.—Any certificate of deposit or  
23 other obligation or security issued by a State bank  
24 or a national bank after the effective date of the vol-  
25 untary termination of the bank's insured status

1 under this section shall be accompanied by a con-  
2 spicuous, prominently displayed notice that such cer-  
3 tificate of deposit or other obligation or security is  
4 not insured under this Act.

5 “(h) NOTICE REQUIREMENTS.—

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

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

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

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

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

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

23 (1) BANKRUPTCY CODE DEBTORS.—Section  
24 109(b)(2) of title 11, United States Code, is amend-

1 ed by striking “; or” and inserting the following: “,  
2 except that—

3 “(A) a wholesale financial institution es-  
4 tablished under section 5136B of the Revised  
5 Statutes of the United States or section 9B of  
6 the Federal Reserve Act may be a debtor if a  
7 petition is filed at the direction of the Comp-  
8 troller of the Currency (in the case of a whole-  
9 sale financial institution established under sec-  
10 tion 5136B of the Revised Statutes of the  
11 United States) or the Board of Governors of  
12 the Federal Reserve System (in the case of any  
13 wholesale financial institution); and

14 “(B) a corporation organized under section  
15 25A of the Federal Reserve Act may be a debt-  
16 or if a petition is filed at the direction of the  
17 Board of Governors of the Federal Reserve Sys-  
18 tem; or”.

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

22 “(d) Only a railroad and a person that may be a debt-  
23 or under chapter 7 of this title, except that a stockbroker,  
24 a wholesale financial institution established under section  
25 5136B of the Revised Statutes of the United States or

1 section 9B of the Federal Reserve Act, a corporation orga-  
2 nized under section 25A of the Federal Reserve Act, or  
3 a commodity broker, may be a debtor under chapter 11  
4 of this title.”.

5 (3) DEFINITION OF FINANCIAL INSTITUTION.—

6 Section 101(22) of title 11, United States Code, is  
7 amended to read as follows:

8 “(22) ‘financial institution’ means a person that  
9 is a commercial or savings bank, industrial savings  
10 bank, savings and loan association, trust company,  
11 wholesale financial institution established under sec-  
12 tion 5136B of the Revised Statutes of the United  
13 States or section 9B of the Federal Reserve Act, or  
14 corporation organized under section 25A of the Fed-  
15 eral Reserve Act and, when any such person is act-  
16 ing as agent or custodian for a customer in connec-  
17 tion with a securities contract, as defined in section  
18 741 of this title, such customer,”.

19 (4) SUBCHAPTER V OF CHAPTER 7.—

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

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

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

3 “(e) Subchapter V of chapter 7 of this title applies  
4 only in a case under such chapter concerning the liquida-  
5 tion of a wholesale financial institution established under  
6 section 5136B of the Revised Statutes of the United  
7 States or section 9B of the Federal Reserve Act, or a cor-  
8 poration organized under section 25A of the Federal Re-  
9 serve Act.”.

10 (B) WHOLESALE BANK LIQUIDATION.—

11 Chapter 7 of title 11, United States Code, is  
12 amended by adding at the end the following:

13 “SUBCHAPTER V—WHOLESALE BANK  
14 LIQUIDATION

15 “§ 781. **Definitions for subchapter**

16 “In this subchapter—

17 “(1) the term ‘Board’ means the Board of Gov-  
18 ernors of the Federal Reserve System;

19 “(2) the term ‘depository institution’ has the  
20 same meaning as in section 3 of the Federal Deposit  
21 Insurance Act, and includes any wholesale bank;

22 “(3) the term ‘national wholesale financial insti-  
23 tution’ means a wholesale financial institution estab-  
24 lished under section 5136B of the Revised Statutes  
25 of the United States; and

1           “(4) the term ‘wholesale bank’ means a na-  
2           tional wholesale financial institution, a wholesale fi-  
3           nancial institution established under section 9B of  
4           the Federal Reserve Act, or a corporation organized  
5           under section 25A of the Federal Reserve Act.

6           **“§ 782. Selection of trustee**

7           “(a) Notwithstanding any other provision of this title,  
8           the conservator or receiver who files the petition shall be  
9           the trustee under this chapter, unless the Comptroller of  
10          the Currency (in the case of a national wholesale financial  
11          institution for which it appointed the conservator or re-  
12          ceiver) or the Board (in the case of any wholesale bank  
13          for which it appointed the conservator or receiver) des-  
14          ignates an alternative trustee. The Comptroller of the Cur-  
15          rency or the Board (as applicable) may designate a suc-  
16          cessor trustee, if required.

17          “(b) Whenever the Comptroller of the Currency or  
18          the Board appoints or designates a trustee, chapter 3 and  
19          sections 704 and 705 of this title shall apply to the Comp-  
20          troller or the Board, as applicable, in the same way and  
21          to the same extent that they apply to a United States  
22          trustee.

23          **“§ 783. Additional powers of trustee**

24          “(a) The trustee under this subchapter has power to  
25          distribute property not of the estate, including distribu-

1 tions to customers that are mandated by subchapters III  
2 and Iv of this chapter.

3 “(b) The trustee under this subchapter may, after no-  
4 tice and a hearing—

5 “(1) sell the wholesale bank to a depository in-  
6 stitution or consortium of depository institutions  
7 (which consortium may agree on the allocation of  
8 the wholesale bank among the consortium);

9 “(2) merge the wholesale bank with a depository  
10 tory institution;

11 “(3) transfer contracts to the same extent as  
12 could a receiver for a depository institution under  
13 paragraphs (9) and (10) of section 11(e) of the Fed-  
14 eral Deposit Insurance Act;

15 “(4) transfer assets or liabilities to a depository  
16 institution;

17 “(5) transfer assets and liabilities to a bridge  
18 bank as provided in paragraphs (1), (3)(A), (5), (6),  
19 and (9) through (13), and subparagraphs (A)  
20 through (H) and (K) of paragraph (4) of section  
21 11(n) of the Federal Deposit Insurance Act, except  
22 that—

23 “(A) the bridge bank shall be treated as a  
24 wholesale bank for the purpose of this sub-  
25 section; and

1           “(B) any references in any such provision  
 2           of law to the Federal Deposit Insurance Cor-  
 3           poration shall be construed to be references to  
 4           the appointing agency and that references to  
 5           deposit insurance shall be omitted.

6           “(c) Any reference in this section to transfers of li-  
 7           abilities includes a ratable transfer of liabilities within a  
 8           priority class.

9           **“§ 784. Right to be heard**

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

16                   (C)    CONFORMING    AMENDMENT.—The  
 17                   table of sections for chapter 7 of title 11,  
 18                   United States Code, is amended by adding at  
 19                   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.”.

20           (e)   RESOLUTION OF EDGE CORPORATIONS.—The  
 21           16th undesignated paragraph of section 25A of the Fed-

1 eral Reserve Act (12 U.S.C. 624) is amended to read as  
2 follows:

3           “(16) APPOINTMENT OF RECEIVER OR CONSER-  
4           VATOR.—

5           “(A) IN GENERAL.—The Board may ap-  
6           point a conservator or receiver for a corporation  
7           organized under the provisions of this section to  
8           the same extent and in the same manner as the  
9           Comptroller of the Currency may appoint a con-  
10          servator or receiver for a national bank, and the  
11          conservator or receiver for such corporation  
12          shall exercise the same powers, functions, and  
13          duties, subject to the same limitations, as a  
14          conservator or receiver for a national bank.

15          “(B) EQUIVALENT AUTHORITY.—The  
16          Board shall have the same authority with re-  
17          spect to any conservator or receiver appointed  
18          for a corporation organized under the provisions  
19          of this section under this paragraph and any  
20          such corporation as the Comptroller of the Cur-  
21          rency has with respect to a conservator or re-  
22          ceiver of a national bank and the national bank  
23          for which a conservator or receiver has been ap-  
24          pointed.

1           “(C) TITLE 11 PETITIONS.—The Board  
 2           may direct the conservator or receiver of a cor-  
 3           poration organized under the provisions of this  
 4           section to file a petition pursuant to title 11,  
 5           United States Code, in which case, title 11,  
 6           United States Code, shall apply to the corpora-  
 7           tion in lieu of otherwise applicable Federal or  
 8           State insolvency law.”.

9           **Subtitle E—Preservation of FTC**  
 10           **Authority**

11       **SEC. 141. AMENDMENT TO THE BANK HOLDING COMPANY**  
 12                       **ACT OF 1956 TO MODIFY NOTIFICATION AND**  
 13                       **POST-APPROVAL WAITING PERIOD FOR SEC-**  
 14                       **TION 3 TRANSACTIONS.**

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

21       **SEC. 142. INTERAGENCY DATA SHARING.**

22           To the extent not prohibited by other law, the Comp-  
 23 troller of the Currency, the Director of the Office of Thrift  
 24 Supervision, the Federal Deposit Insurance Corporation,  
 25 and the Board of Governors of the Federal Reserve Sys-

1 tem shall make available to the Attorney General and the  
2 Federal Trade Commission any data in the possession of  
3 any such banking agency that the antitrust agency deems  
4 necessary for antitrust review of any transaction requiring  
5 notice to any such antitrust agency or the approval of such  
6 agency under section 3, 4, or 6 of the Bank Holding Com-  
7 pany Act of 1956, section 18(e) of the Federal Deposit  
8 Insurance Act, the National Bank Consolidation and  
9 Merger Act, section 10 of the Home Owners' Loan Act,  
10 or the antitrust laws.

11 **SEC. 143. CLARIFICATION OF STATUS OF SUBSIDIARIES**  
12 **AND AFFILIATES.**

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

23 (b) SAVINGS PROVISION.—No provision of this sec-  
24 tion shall be construed as restricting the authority of any  
25 Federal banking agency (as defined in section 3 of the

1 Federal Deposit Insurance Act) under any Federal bank-  
2 ing law, including section 8 of the Federal Deposit Insur-  
3 ance Act.

4 (c) HART-SCOTT-RODINO AMENDMENTS.—

5 (1) BANKS.—Section 7A(c)(7) of the Clayton  
6 Act (15 U.S.C. 18a(c)(7)) is amended by inserting  
7 before the semicolon at the end the following: “, ex-  
8 cept that a portion of a transaction is not exempt  
9 under this paragraph if such portion of the trans-  
10 action (A) is subject to section 6 of the Bank Hold-  
11 ing Company Act of 1956; and (B) does not require  
12 agency approval under section 3 of the Bank Hold-  
13 ing Company Act of 1956”.

14 (2) BANK HOLDING COMPANIES.—Section  
15 7A(c)(8) of the Clayton Act (15 U.S.C. 18a(c)(8)) is  
16 amended by inserting before the semicolon at the  
17 end the following: “, except that a portion of a  
18 transaction is not exempt under this paragraph if  
19 such portion of the transaction (A) is subject to sec-  
20 tion 6 of the Bank Holding Company Act of 1956;  
21 and (B) does not require agency approval under sec-  
22 tion 4 of the Bank Holding Company Act of 1956”.

23 **SEC. 144. ANNUAL GAO REPORT.**

24 (a) IN GENERAL.—By the end of the 1-year period  
25 beginning on the date of the enactment of this Act and

1 annually thereafter, the Comptroller General of the United  
2 States shall submit a report to the Congress on market  
3 concentration in the financial services industry and its im-  
4 pact on consumers.

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

7 (1) the positive and negative effects of affili-  
8 ations between various types of financial companies,  
9 and of acquisitions pursuant to this Act and the  
10 amendments made by this Act to other provisions of  
11 law, including any positive or negative effects on  
12 consumers, area markets, and submarkets thereof or  
13 on registered securities brokers and dealers which  
14 have been purchased by depository institutions or  
15 depository institution holding companies;

16 (2) the changes in business practices and the  
17 effects of any such changes on the availability of  
18 venture capital, consumer credit, and other financial  
19 services or products and the availability of capital  
20 and credit for small businesses; and

21 (3) the acquisition patterns among depository  
22 institutions, depository institution holding compa-  
23 nies, securities firms, and insurance companies in-  
24 cluding acquisitions among the largest 20 percent of

1 firms and acquisitions within regions or other lim-  
 2 ited geographical areas.

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

## 6 **Subtitle F—National Treatment**

### 7 **SEC. 151. FOREIGN BANKS THAT ARE FINANCIAL HOLDING** 8 **COMPANIES.**

9 Section 8(c) of the International Banking Act of  
 10 1978 (12 U.S.C. 3106(c)) is amended by adding at the  
 11 end the following new paragraph:

12 “(3) TERMINATION OF GRANDFATHERED  
 13 RIGHTS.—

14 “(A) IN GENERAL.—If any foreign bank or  
 15 foreign company files a declaration under sec-  
 16 tion 6(b)(1)(D) or receives a determination  
 17 under section 10(d)(1) of the Bank Holding  
 18 Company Act of 1956, any authority conferred  
 19 by this subsection on any foreign bank or com-  
 20 pany to engage in any activity which the Board  
 21 has determined to be permissible for financial  
 22 holding companies under section 6 of such Act  
 23 shall terminate immediately.

24 “(B) RESTRICTIONS AND REQUIREMENTS  
 25 AUTHORIZED.—If a foreign bank or company

1 that engages, directly or through an affiliate  
2 pursuant to paragraph (1), in an activity which  
3 the Board has determined to be permissible for  
4 financial holding companies under section 6 of  
5 the Bank Holding Company Act of 1956 has  
6 not filed a declaration with the Board of its sta-  
7 tus as a financial holding company under such  
8 section or received a determination under sec-  
9 tion 10(d)(1) by the end of the 2-year period  
10 beginning on the date of enactment of the Fi-  
11 nancial Services Act of 1999, the Board, giving  
12 due regard to the principle of national treat-  
13 ment and equality of competitive opportunity,  
14 may impose such restrictions and requirements  
15 on the conduct of such activities by such foreign  
16 bank or company as are comparable to those  
17 imposed on a financial holding company orga-  
18 nized under the laws of the United States, in-  
19 cluding a requirement to conduct such activities  
20 in compliance with any prudential safeguards  
21 established under section 114 of the Financial  
22 Services Act.”.

1 **SEC. 152. FOREIGN BANKS AND FOREIGN FINANCIAL INSTI-**  
2 **TUTIONS THAT ARE WHOLESALE FINANCIAL**  
3 **INSTITUTIONS.**

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

7 “(i) VOLUNTARY TERMINATION OF DEPOSIT INSUR-  
8 ANCE.—The provisions on voluntary termination of insur-  
9 ance in this section shall apply to an insured branch of  
10 a foreign bank (including a Federal branch) in the same  
11 manner and to the same extent as they apply to an insured  
12 State bank or a national bank.”.

13 **SEC. 153. REPRESENTATIVE OFFICES.**

14 (a) DEFINITION OF “REPRESENTATIVE OFFICE”.—  
15 Section 1(b)(15) of the International Banking Act of 1978  
16 (12 U.S.C. 3101(15)) is amended by striking “State agen-  
17 cy, or subsidiary of a foreign bank” and inserting “or  
18 State agency”.

19 (b) EXAMINATIONS.—Section 10(c) of the Inter-  
20 national Banking Act of 1978 (12 U.S.C. 3107(c)) is  
21 amended by adding at the end the following: “The Board  
22 may also make examinations of any affiliate of a foreign  
23 bank conducting business in any State if the Board deems  
24 it necessary to determine and enforce compliance with this  
25 Act, the Bank Holding Company Act of 1956 (12 U.S.C.  
26 1841 et seq.), or other applicable Federal banking law.”.

1 **SEC. 154. RECIPROcity.**

2 (a) NATIONAL TREATMENT REPORTS.—

3 (1) REPORT REQUIRED IN THE EVENT OF CER-  
4 TAIN ACQUISITIONS.—

5 (A) IN GENERAL.—Whenever a person  
6 from a foreign country announces its intention  
7 to acquire or acquires a bank, a securities un-  
8 derwriter, broker, or dealer, an investment ad-  
9 viser, or insurance company that ranks within  
10 the top 50 firms in that line of business in the  
11 United States, the Secretary of Commerce, in  
12 the case of an insurance company, or the Sec-  
13 retary of the Treasury, in the case of a bank,  
14 a securities underwriter, broker, or dealer, or  
15 an investment adviser, shall, within the earlier  
16 of 6 months of such announcement or such ac-  
17 quisition and in consultation with other appro-  
18 priate Federal and State agencies, prepare and  
19 submit to the Congress a report on whether a  
20 United States person would be able, de facto or  
21 de jure, to acquire an equivalent sized firm in  
22 the country in which such person from a foreign  
23 country is located.

24 (B) ANALYSIS AND RECOMMENDATIONS.—  
25 If a report submitted under subparagraph (A)  
26 states that the equivalent treatment referred to

1 in such subparagraph, de facto and de jure, is  
2 not provided in the country which is the subject  
3 of the report, the Secretary of Commerce or the  
4 Secretary of the Treasury, as the case may be  
5 and in consultation with other appropriate Fed-  
6 eral and State agencies, shall include in the re-  
7 port analysis and recommendations as to how  
8 that country's laws and regulations would need  
9 to be changed so that reciprocal treatment  
10 would exist.

11 (2) REPORT REQUIRED BEFORE FINANCIAL  
12 SERVICES NEGOTIATIONS COMMENCE.—The Sec-  
13 retary of Commerce, with respect to insurance com-  
14 panies, and the Secretary of the Treasury, with re-  
15 spect to banks, securities underwriters, brokers,  
16 dealers, and investment advisers, shall, not less than  
17 6 months before the commencement of the financial  
18 services negotiations of the World Trade Organiza-  
19 tion and in consultation with other appropriate Fed-  
20 eral and State agencies, prepare and submit to the  
21 Congress a report containing—

22 (A) an assessment of the 30 largest finan-  
23 cial services markets with regard to whether re-  
24 ciprocal access is available in such markets to  
25 United States financial services providers; and

1 (B) with respect to any such financial serv-  
2 ices markets in which reciprocal access is not  
3 available to United States financial services  
4 providers, an analysis and recommendations as  
5 to what legislative, regulatory, or enforcement  
6 changes would be required to ensure full reci-  
7 procity for such providers.

8 (3) PERSON OF A FOREIGN COUNTRY DE-  
9 FINED.—For purposes of this subsection, the term  
10 “person of a foreign country” means a person, or a  
11 person which directly or indirectly owns or controls  
12 that person, that is a resident of that country, is or-  
13 ganized under the laws of that country, or has its  
14 principal place of business in that country.

15 (b) PROVISIONS APPLICABLE TO SUBMISSIONS.—

16 (1) NOTICE.—Before preparing any report re-  
17 quired under subsection (a), the Secretary of Com-  
18 merce or the Secretary of the Treasury, as the case  
19 may be, shall publish notice that a report is in prep-  
20 aration and seek comment from United States per-  
21 sons.

22 (2) PRIVILEGED SUBMISSIONS.—Upon the re-  
23 quest of the submitting person, any comments or re-  
24 lated communications received by the Secretary of  
25 Commerce or the Secretary of the Treasury, as the

1 case may be, with regard to the report shall, for the  
2 purposes of section 552 of title 5, of the United  
3 States Code, be treated as commercial information  
4 obtained from a person that is privileged or con-  
5 fidential, regardless of the medium in which the in-  
6 formation is obtained. This confidential information  
7 shall be the property of the Secretary and shall be  
8 privileged from disclosure to any other person. How-  
9 ever, this privilege shall not be construed as pre-  
10 venting access to that confidential information by  
11 the Congress.

12 (3) PROHIBITION OF UNAUTHORIZED DISCLO-  
13 SURES.—No person in possession of confidential in-  
14 formation, provided under this section may disclose  
15 that information, in whole or in part, except for dis-  
16 closure made in published statistical material that  
17 does not disclose, either directly or when used in  
18 conjunction with publicly available information, the  
19 confidential information of any person.

20 **Subtitle G—Federal Home Loan**  
21 **Bank System Modernization**

22 **SEC. 161. SHORT TITLE.**

23 This subtitle may be cited as the “Federal Home  
24 Loan Bank System Modernization Act of 1999”.

1 **SEC. 162. DEFINITIONS.**

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

4 (1) in paragraph (1), by striking “term ‘Board’  
5 means” and inserting “terms ‘Finance Board’ and  
6 ‘Board’ mean”;

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

9 “(3) STATE.—The term ‘State’, in addition to  
10 the States of the United States, includes the District  
11 of Columbia, Guam, Puerto Rico, the United States  
12 Virgin Islands, American Samoa, and the Common-  
13 wealth of the Northern Mariana Islands.”; and

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

16 “(13) COMMUNITY FINANCIAL INSTITUTION.—

17 “(A) IN GENERAL.—The term ‘community  
18 financial institution’ means a member—

19 “(i) the deposits of which are insured  
20 under the Federal Deposit Insurance Act;  
21 and

22 “(ii) that has, as of the date of the  
23 transaction at issue, less than  
24 \$500,000,000 in average total assets,  
25 based on an average of total assets over  
26 the 3 years preceding that date.

1           “(B) ADJUSTMENTS.—The \$500,000,000  
2           limit referred to in subparagraph (A)(ii) shall  
3           be adjusted annually by the Finance Board,  
4           based on the annual percentage increase, if any,  
5           in the Consumer Price Index for all urban con-  
6           sumers, as published by the Department of  
7           Labor.”.

8 **SEC. 163. SAVINGS ASSOCIATION MEMBERSHIP.**

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

11           “(f) FEDERAL HOME LOAN BANK MEMBERSHIP.—  
12 On and after January 1, 1999, a Federal savings associa-  
13 tion may become a member of the Federal Home Loan  
14 Bank System, and shall qualify for such membership in  
15 the manner provided by the Federal Home Loan Bank  
16 Act.”.

17 **SEC. 164. ADVANCES TO MEMBERS; COLLATERAL.**

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

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

23           (2) by striking “(a) Each” and inserting the  
24           following:

25           “(a) IN GENERAL.—

1           “(1) ALL ADVANCES.—Each”;

2           (3) by striking the 2d sentence and inserting  
3 the following:

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

6                 “(A) providing funds to any member for  
7 residential housing finance; and

8                 “(B) providing funds to any community fi-  
9 nancial institution for small business, agricul-  
10 tural, rural development, or low-income commu-  
11 nity development lending.”;

12           (4) by striking “A Bank” and inserting the fol-  
13 lowing:

14           “(3) COLLATERAL.—A Bank”;

15           (5) in paragraph (3) (as so designated by para-  
16 graph (4) of this subsection)—

17                 (A) in subparagraph (C) (as so redesign-  
18 dated by paragraph (1) of this subsection) by  
19 striking “Deposits” and inserting “Cash or de-  
20 posits”;

21                 (B) in subparagraph (D) (as so redesign-  
22 dated by paragraph (1) of this subsection), by  
23 striking the 2d sentence; and

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

4 “(E) Secured loans for small business, ag-  
5 riculture, rural development, or low-income  
6 community development, or securities rep-  
7 resenting a whole interest in such secured  
8 loans, in the case of any community financial  
9 institution.”;

10 (6) in paragraph (5)—

11 (A) in the 2d sentence, by striking “and  
12 the Board”;

13 (B) in the 3d sentence, by striking  
14 “Board” and inserting “Federal home loan  
15 bank”; and

16 (C) by striking “(5) Paragraphs (1)  
17 through (4)” and inserting the following:

18 “(4) ADDITIONAL BANK AUTHORITY.—Subpara-  
19 graphs (A) through (E) of paragraph (3)”;

20 (7) by adding at the end the following:

21 “(5) REVIEW OF CERTAIN COLLATERAL STAND-  
22 ARDS.—The Board may review the collateral stand-  
23 ards applicable to each Federal home loan bank for  
24 the classes of collateral described in subparagraphs  
25 (D) and (E) of paragraph (3), and may, if necessary

1 for safety and soundness purposes, require an in-  
2 crease in the collateral standards for any or all of  
3 those classes of collateral.

4 “(6) DEFINITIONS.—For purposes of this sub-  
5 section, the terms ‘small business’, ‘agriculture’,  
6 ‘rural development’, and ‘low-income community de-  
7 velopment’ shall have the meanings given those  
8 terms by rule or regulation of the Finance Board.”.

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

12 **“SEC. 10. ADVANCES TO MEMBERS.”.**

13 (c) CONFORMING AMENDMENTS RELATING TO MEM-  
14 BERS WHICH ARE NOT QUALIFIED THRIFT LENDERS—  
15 The 1st of the 2 subsections designated as subsection (e)  
16 of section 10 of the Federal Home Loan Bank Act (12  
17 U.S.C. 1430(e)(1)) is amended—

18 (1) in the last sentence of paragraph (1), by in-  
19 serting “or, in the case of any community financial  
20 institution, for the purposes described in subsection  
21 (a)(2)” before the period; and

22 (2) in paragraph (5)(C), by inserting “except  
23 that, in determining the actual thrift investment per-  
24 centage of any community financial institution for  
25 purposes of this subsection, the total investment of

1 such member in loans for small business, agri-  
2 culture, rural development, or low-income commu-  
3 nity development, or securities representing a whole  
4 interest in such loans, shall be treated as a qualified  
5 thrift investment (as defined in such section 10(m))”  
6 before the period.

7 **SEC. 165. ELIGIBILITY CRITERIA.**

8 Section 4(a) of the Federal Home Loan Bank Act  
9 (12 U.S.C. 1424(a)) is amended—

10 (1) in paragraph (2)(A), by inserting, “(other  
11 than a community financial institution)” after “in-  
12 stitution”; and

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

15 “(3) LIMITED EXEMPTION FOR COMMUNITY FI-  
16 NANCIAL INSTITUTIONS.—A community financial in-  
17 stitution that otherwise meets the requirements of  
18 paragraph (2) may become a member without regard  
19 to the percentage of its total assets that is rep-  
20 resented by residential mortgage loans, as described  
21 in subparagraph (A) of paragraph (2).”.

22 **SEC. 166. MANAGEMENT OF BANKS.**

23 (a) BOARD OF DIRECTORS.—Section 7(d) of the Fed-  
24 eral Home Loan Bank Act (12 U.S.C. 1427(d)) is  
25 amended—

1           (1) by striking “(d) The term” and inserting  
2           the following:

3           “(d) TERMS OF OFFICE.—The term”; and

4           (2) by striking “shall be two years”.

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

8           (c) REPEAL OF SECTIONS 22A AND 27.—The Fed-  
9 eral Home Loan Bank Act (12 U.S.C. 1421 et seq.) is  
10 amended by striking sections 22A (12 U.S.C. 1442a) and  
11 27 (12 U.S.C. 1447).

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

14           (1) in subsection (a)—

15               (A) by striking “, but, except” and all that  
16 follows through “ten years”;

17               (B) by striking “subject to the approval of  
18 the Board” the first place that term appears;

19               (C) by striking “and, by its Board of direc-  
20 tors,” and all that follows through “agent of  
21 such bank,” and inserting “and, by the board  
22 of directors of the bank, to prescribe, amend,  
23 and repeal by-laws governing the manner in  
24 which its affairs may be administered, con-  
25 sistent with applicable laws and regulations, as

1 administered by the Finance Board. No officer,  
2 employee, attorney, or agent of a Federal home  
3 loan bank”; and

4 (D) by striking “Board of directors” where  
5 such term appears in the penultimate sentence  
6 and inserting “board of directors”; and

7 (2) in subsection (b), by striking “loans banks”  
8 and inserting “loan banks”.

9 (e) POWERS AND DUTIES OF FEDERAL HOUSING FI-  
10 NANCE BOARD.—

11 (1) ISSUANCE OF NOTICES OF VIOLATIONS.—

12 Section 2B(a) of the Federal Home Loan Bank Act  
13 (12 U.S.C. 1422b(a)) is amended by adding at the  
14 end the following new paragraphs:

15 “(5) To issue and serve a notice of charges  
16 upon a Federal home loan bank or upon any execu-  
17 tive officer or director of a Federal home loan bank  
18 if, in the determination of the Finance Board, the  
19 bank, executive officer, or director is engaging or  
20 has engaged in, or the Finance Board has reason-  
21 able cause to believe that the bank, executive officer,  
22 or director is about to engage in, any conduct that  
23 violates any provision of this Act or any law, order,  
24 rule, or regulation or any condition imposed in writ-  
25 ing by the Finance Board in connection with the

1       granting of any application or other request by the  
2       bank, or any written agreement entered into by the  
3       bank with the agency, in accordance with the proce-  
4       dures provided in section 1371(c) of the Federal  
5       Housing Enterprises Financial Safety and Sound-  
6       ness Act of 1992. Such authority includes the same  
7       authority to take affirmative action to correct condi-  
8       tions resulting from violations or practices or to  
9       limit activities of a bank or any executive officer or  
10      director of a bank as appropriate Federal banking  
11      agencies have to take with respect to insured deposi-  
12      tory institutions under paragraphs (6) and (7) of  
13      section 8(b) of the Federal Deposit Insurance Act,  
14      and to have all other powers, rights, and duties to  
15      enforce this Act with respect to the Federal home  
16      loan banks and their executive officers and directors  
17      as the Office of Federal Housing Enterprise Over-  
18      sight has to enforce the Federal Housing Enter-  
19      prises Financial Safety and Soundness Act of 1992,  
20      the Federal National Mortgage Association Charter  
21      Act, or the Federal Home Loan Mortgage Corpora-  
22      tion Act with respect to the Federal housing enter-  
23      prises under the Federal Housing Enterprises Fi-  
24      nancial Safety and Soundness Act of 1992.

1           “(6) To address any insufficiencies in capital  
2 levels resulting from the application of section 5(f)  
3 of the Home Owners’ Loan Act.

4           “(7) To sue and be sued, by and through its  
5 own attorneys.”.

6           (2) TECHNICAL AMENDMENT.—Section 111 of  
7 Public Law 93–495 (12 U.S.C. 250) is amended by  
8 striking “Federal Home Loan Bank Board,” and in-  
9 serting “Director of the Office of Thrift Supervision,  
10 “the Federal Housing Finance Board,”.

11 (f) ELIGIBILITY TO SECURE ADVANCES.—

12           (1) SECTION 9.—Section 9 of the Federal  
13 Home Loan Bank Act (12 U.S.C. 1429) is  
14 amended—

15           (A) in the 2d sentence, by striking “with  
16 the approval of the Board”; and

17           (B) in the 3d sentence, by striking “, sub-  
18 ject to the approval of the Board,”.

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

22           (A) in subsection (c)—

23           (i) in the 1st sentence, by striking  
24 “Board” and inserting “Federal home loan  
25 bank”; and

1 (ii) by striking the 2d sentence;

2 (B) in subsection (d)—

3 (i) in the 1st sentence, by striking  
4 “and the approval of the Board”; and

5 (ii) by striking “Subject to the ap-  
6 proval of the Board, any” and inserting  
7 “Any”; and

8 (C) in subsection (j)(1)—

9 (i) by striking “to subsidize the inter-  
10 est rate on advances” and inserting “to  
11 provide subsidies, including subsidized in-  
12 terest rates on advances”;

13 (ii) by striking “Pursuant” and in-  
14 serting the following:

15 “(A) ESTABLISHMENT.—Pursuant”; and

16 (iii) by adding at the end the fol-  
17 lowing new subparagraph:

18 “(B) NONDELEGATION OF APPROVAL AU-  
19 THORITY.—Subject to such regulations as the  
20 Finance Board may prescribe, the board of di-  
21 rectors of each Federal home loan bank may  
22 approve or disapprove requests from members  
23 for Affordable Housing Program subsidies, and  
24 may not delegate such authority.”.

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

3 (1) in the 3d sentence—

4 (A) by striking “net earnings” and insert-  
5 ing “previously retained earnings or current net  
6 earnings”; and

7 (B) by striking “, and then only with the  
8 approval of the Federal Housing Finance  
9 Board”; and

10 (2) by striking the 4th sentence.

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

14 **SEC. 167. RESOLUTION FUNDING CORPORATION.**

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

18 “(C) PAYMENTS BY FEDERAL HOME LOAN  
19 BANKS.—

20 “(i) IN GENERAL.—To the extent that  
21 the amounts available pursuant to sub-  
22 paragraphs (A) and (B) are insufficient to  
23 cover the amount of interest payments,  
24 each Federal home loan bank shall pay to  
25 the Funding Corporation in each calendar

1 year, 20.75 percent of the net earnings of  
2 that bank (after deducting expenses relat-  
3 ing to section 10(j) and operating ex-  
4 penses).

5 “(ii) ANNUAL DETERMINATION.—The  
6 Board annually shall determine the extent  
7 to which the value of the aggregate  
8 amounts paid by the Federal home loan  
9 banks exceeds or falls short of the value of  
10 an annuity of \$300,000,000 per year that  
11 commences on the issuance date and ends  
12 on the final scheduled maturity date of the  
13 obligations, and shall select appropriate  
14 present value factors for making such de-  
15 terminations.

16 “(iii) PAYMENT TERM ALTER-  
17 ATIONS.—The Board shall extend or short-  
18 en the term of the payment obligations of  
19 a Federal home loan bank under this sub-  
20 paragraph as necessary to ensure that the  
21 value of all payments made by the banks  
22 is equivalent to the value of an annuity re-  
23 ferred to in clause (ii).

24 “(iv) TERM BEYOND MATURITY.—If  
25 the Board extends the term of payments

1           beyond the final scheduled maturity date  
2           for the obligations, each Federal home loan  
3           bank shall continue to pay 20.75 percent  
4           of its net earnings (after deducting ex-  
5           penses relating to section 10(j) and oper-  
6           ating expenses) to the Treasury of the  
7           United States until the value of all such  
8           payments by the Federal home loan banks  
9           is equivalent to the value of an annuity re-  
10          ferred to in clause (ii). In the final year in  
11          which the Federal home loan banks are re-  
12          quired to make any payment to the Treas-  
13          ury under this subparagraph, if the dollar  
14          amount represented by 20.75 percent of  
15          the net earnings of the Federal home loan  
16          banks exceeds the remaining obligation of  
17          the banks to the Treasury, the Finance  
18          Board shall reduce the percentage pro rata  
19          to a level sufficient to pay the remaining  
20          obligation.”.

21          (b) **EFFECTIVE DATE.**—The amendment made by  
22          subsection (a) shall become effective on January 1, 1999.  
23          Payments made by a Federal home loan bank before that  
24          effective date shall be counted toward the total obligation

1 of that bank under section 21B(f)(2)(C) of the Federal  
2 Home Loan Bank Act, as amended by this section.

3 **SEC. 168. CAPITAL STRUCTURE OF FEDERAL HOME LOAN**  
4 **BANKS.**

5 Section 6 of the Federal Home Loan Bank Act (12  
6 U.S.C. 1426) is amended to read as follows:

7 **“SEC. 6. CAPITAL STRUCTURE OF FEDERAL HOME LOAN**  
8 **BANKS.**

9 “(a) REGULATIONS.—

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

16 “(A) the leverage requirement specified in  
17 paragraph (2); and

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

20 “(2) LEVERAGE REQUIREMENT.—

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

1           “(B) TREATMENT OF STOCK AND RE-  
2 TAINED EARNINGS.—In determining compliance  
3 with the minimum leverage ratio established  
4 under subparagraph (A), the paid-in value of  
5 the outstanding Class B stock shall be multi-  
6 plied by 1.5, the paid-in value of the out-  
7 standing Class C stock and the amount of re-  
8 tained earnings shall be multiplied by 2.0, and  
9 such higher amounts shall be deemed to be cap-  
10 ital for purposes of meeting the 5 percent min-  
11 imum leverage ratio.

12           “(3) RISK-BASED CAPITAL STANDARDS.—

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

18                   “(i) the credit risk to which the Fed-  
19 eral home loan bank is subject; and

20                   “(ii) the market risk, including inter-  
21 est rate risk, to which the Federal home  
22 loan bank is subject, based on a stress test  
23 established by the Finance Board that rig-  
24 orously tests for changes in market vari-  
25 ables, including changes in interest rates,

1 rate volatility, and changes in the shape of  
2 the yield curve.

3 “(B) CONSIDERATION OF OTHER RISK-  
4 BASED STANDARDS.—In establishing the risk-  
5 based standard under subparagraph (A)(ii), the  
6 Finance Board shall take due consideration of  
7 any risk-based capital test established pursuant  
8 to section 1361 of the Federal Housing Enter-  
9 prises Financial Safety and Soundness Act of  
10 1992 (12 U.S.C. 4611) for the enterprises (as  
11 defined in that Act), with such modifications as  
12 the Finance Board determines to be appro-  
13 priate to reflect differences in operations be-  
14 tween the Federal home loan banks and those  
15 enterprises.

16 “(4) OTHER REGULATORY REQUIREMENTS.—  
17 The regulations issued by the Finance Board under  
18 paragraph (1) shall—

19 “(A) permit each Federal home loan bank  
20 to issue, with such rights, terms, and pref-  
21 erences, not inconsistent with this Act and the  
22 regulations issued hereunder, as the board of  
23 directors of that bank may approve, any 1 or  
24 more of—

1           “(i) Class A stock, which shall be re-  
2           deemable in cash and at par 6 months fol-  
3           lowing submission by a member of a writ-  
4           ten notice of its intent to redeem such  
5           shares;

6           “(ii) Class B stock, which shall be re-  
7           deemable in cash and at par 5 years fol-  
8           lowing submission by a member of a writ-  
9           ten notice of its intent to redeem such  
10          shares; and

11          “(iii) Class C stock, which shall be  
12          nonredeemable;

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

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

21          “(D) provide the manner of disposition of  
22          outstanding stock held by, and the liquidation  
23          of any claims of the Federal home loan bank  
24          against, an institution that ceases to be a mem-  
25          ber of the bank, through merger or otherwise,

1 or that provides notice of intention to withdraw  
2 from membership in the bank.

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

6 “(A) permanent capital of a Federal home  
7 loan bank shall include (as determined in ac-  
8 cordance with generally accepted accounting  
9 principles)—

10 “(i) the amounts paid for the Class C  
11 stock and any other nonredeemable stock  
12 approved by the Finance Board;

13 “(ii) the amounts paid for the Class B  
14 stock, in an amount not to exceed 1 per-  
15 cent of the total assets of the bank; and

16 “(iii) the retained earnings of the  
17 bank; and

18 “(B) total capital of a Federal home loan  
19 bank shall include—

20 “(i) permanent capital;

21 “(ii) the amounts paid for the Class A  
22 stock, Class B stock (excluding any  
23 amount treated as permanent capital  
24 under subparagraph (5)(A)(ii)), or any

1 other class of redeemable stock approved  
2 by the Finance Board;

3 “(iii) consistent with generally accept-  
4 ed accounting principles, and subject to the  
5 regulation of the Finance Board, a general  
6 allowance for losses, which may not include  
7 any reserves or allowances made or held  
8 against specific assets; and

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

14 “(6) TRANSITION PERIOD.—Notwithstanding  
15 any other provisions of this Act, the requirements  
16 relating to purchase and retention of capital stock of  
17 a Federal home loan bank by any member thereof in  
18 effect on the day before the date of enactment of the  
19 Federal Home Loan Bank System Modernization  
20 Act of 1999, shall continue in effect with respect to  
21 each Federal home loan bank until the regulations  
22 required by this subsection have taken effect and the  
23 capital structure plan required by subsection (b) has  
24 been approved by the Finance Board and imple-  
25 mented by such bank.

1 “(b) CAPITAL STRUCTURE PLAN.—

2 “(1) APPROVAL OF PLANS.—Not later than 270  
3 days after the date of publication by the Finance  
4 Board of final regulations in accordance with sub-  
5 section (a), the board of directors of each Federal  
6 home loan bank shall submit for Finance Board ap-  
7 proval a plan establishing and implementing a cap-  
8 ital structure for such bank that—

9 “(A) the board of directors determines is  
10 best suited for the condition and operation of  
11 the bank and the interests of the members of  
12 the bank;

13 “(B) meets the requirements of subsection  
14 (c); and

15 “(C) meets the minimum capital standards  
16 and requirements established under subsection  
17 (a) and other regulations prescribed by the Fi-  
18 nance Board.

19 “(2) APPROVAL OF MODIFICATIONS.—The  
20 board of directors of a Federal home loan bank shall  
21 submit to the Finance Board for approval any modi-  
22 fications that the bank proposes to make to an ap-  
23 proved capital structure plan.

1       “(c) CONTENTS OF PLAN.—The capital structure  
2 plan of each Federal home loan bank shall contain provi-  
3 sions addressing each of the following:

4           “(1) MINIMUM INVESTMENT.—

5               “(A) IN GENERAL.—Each capital structure  
6 plan of a Federal home loan bank shall require  
7 each member of the bank to maintain a min-  
8 imum investment in the stock of the bank, the  
9 amount of which shall be determined in a man-  
10 ner to be prescribed by the board of directors  
11 of each bank and to be included as part of the  
12 plan.

13           “(B) INVESTMENT ALTERNATIVES.—

14               “(i) IN GENERAL.—In establishing the  
15 minimum investment required for each  
16 member under subparagraph (A), a Fed-  
17 eral home loan bank may, in its discretion,  
18 include any 1 or more of the requirements  
19 referred to in clause (ii), or any other pro-  
20 visions approved by the Finance Board.

21               “(ii) AUTHORIZED REQUIREMENTS.—

22           A requirement is referred to in this clause  
23 if it is a requirement for—

1                   “(I) a stock purchase based on a  
2                   percentage of the total assets of a  
3                   member; or

4                   “(II) a stock purchase based on a  
5                   percentage of the outstanding ad-  
6                   vances from the bank to the member.

7                   “(C) MINIMUM AMOUNT.—Each capital  
8                   structure plan of a Federal home loan bank  
9                   shall require that the minimum stock invest-  
10                  ment established for members shall be set at a  
11                  level that is sufficient for the bank to meet the  
12                  minimum capital requirements established by  
13                  the Finance Board under subsection (a).

14                  “(D) ADJUSTMENTS TO MINIMUM RE-  
15                  QUIRED INVESTMENT.—The capital structure  
16                  plan of each Federal home loan bank shall im-  
17                  pose a continuing obligation on the board of di-  
18                  rectors of the bank to review and adjust the  
19                  minimum investment required of each member  
20                  of that bank, as necessary to ensure that the  
21                  bank remains in compliance with applicable  
22                  minimum capital levels established by the Fi-  
23                  nance Board, and shall require each member to  
24                  comply promptly with any adjustments to the  
25                  required minimum investment.

1           “(2) TRANSITION RULE.—

2                   “(A) IN GENERAL.—The capital structure  
3 plan of each Federal home loan bank shall  
4 specify the date on which it shall take effect,  
5 and may provide for a transition period of not  
6 longer than 3 years to allow the bank to come  
7 into compliance with the capital requirements  
8 prescribed under subsection (a), and to allow  
9 any institution that was a member of the bank  
10 on the date of enactment of the Financial Serv-  
11 ices Act of 1999, to come into compliance with  
12 the minimum investment required pursuant to  
13 the plan.

14                   “(B) INTERIM PURCHASE REQUIRE-  
15 MENTS.—The capital structure plan of a Fed-  
16 eral home loan bank may allow any member re-  
17 ferred to in subparagraph (A) that would be re-  
18 quired by the terms of the capital structure  
19 plan to increase its investment in the stock of  
20 the bank to do so in periodic installments dur-  
21 ing the transition period.

22                   “(3) DISPOSITION OF SHARES.—The capital  
23 structure plan of a Federal home loan bank shall  
24 provide for the manner of disposition of any stock  
25 held by a member of that bank that terminates its

1 membership or that provides notice of its intention  
2 to withdraw from membership in that bank.

3 “(4) CLASSES OF STOCK.—

4 “(A) IN GENERAL.—The capital structure  
5 plan of a Federal home loan bank shall afford  
6 each member of that bank the option of main-  
7 taining its required investment in the bank  
8 through the purchase of any combination of  
9 classes of stock authorized by the board of di-  
10 rectors of the bank and approved by the Fi-  
11 nance Board in accordance with its regulations.

12 “(B) RIGHTS REQUIREMENT.—A Federal  
13 home loan bank shall include in its capital  
14 structure plan provisions establishing terms,  
15 rights, and preferences, including minimum in-  
16 vestment, dividends, voting, and liquidation  
17 preferences of each class of stock issued by the  
18 bank, consistent with Finance Board regula-  
19 tions and market requirements.

20 “(C) REDUCED MINIMUM INVESTMENT.—  
21 The capital structure plan of a Federal home  
22 loan bank may provide for a reduced minimum  
23 stock investment for any member of that bank  
24 that elects to purchase Class B, Class C, or any  
25 other class of nonredeemable stock, in a manner

1 that is consistent with meeting the minimum  
2 capital requirements of the bank, as established  
3 by the Finance Board.

4 “(D) LIQUIDATION OF CLAIMS.—The cap-  
5 ital structure plan of a Federal home loan bank  
6 shall provide for the liquidation in an orderly  
7 manner, as determined by the bank, of any  
8 claim of that bank against a member, including  
9 claims for any applicable prepayment fees or  
10 penalties resulting from prepayment of ad-  
11 vances prior to stated maturity.

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

15 “(A) provide that—

16 “(i) any stock issued by that bank  
17 shall be available only to, held only by, and  
18 tradable only among members of that bank  
19 and between that bank and its members;  
20 and

21 “(ii) a bank has no obligation to re-  
22 purchase its outstanding Class C stock but  
23 may do so, provided it is consistent with  
24 Finance Board regulations and is at a

1 price that is mutually agreeable to the  
2 bank and the member; and

3 “(B) establish standards, criteria, and re-  
4 quirements for the issuance, purchase, transfer,  
5 retirement, and redemption of stock issued by  
6 that bank.

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

11 “(A) an independent certified public ac-  
12 countant, to ensure, to the extent possible, that  
13 implementation of the plan would not result in  
14 any write-down of the redeemable bank stock  
15 investment of its members; and

16 “(B) at least 1 major credit rating agency,  
17 to determine, to the extent possible, whether  
18 implementation of the plan would have any ma-  
19 terial effect on the credit ratings of the bank.

20 “(d) TERMINATION OF MEMBERSHIP.—

21 “(1) VOLUNTARY WITHDRAWAL.—Any member  
22 may withdraw from a Federal home loan bank by  
23 providing written notice to the bank of its intent to  
24 do so. The applicable stock redemption notice peri-  
25 ods shall commence upon receipt of the notice by the

1 bank. Upon the expiration of the applicable notice  
2 period for each class of redeemable stock, the mem-  
3 ber may surrender such stock to the bank, and shall  
4 be entitled to receive in cash the par value of the  
5 stock. During the applicable notice periods, the  
6 member shall be entitled to dividends and other  
7 membership rights commensurate with continuing  
8 stock ownership.

9 “(2) INVOLUNTARY WITHDRAWAL.—

10 “(A) IN GENERAL.—The board of directors  
11 of a Federal home loan bank may terminate the  
12 membership of any institution if, subject to Fi-  
13 nance Board regulations, it determines that—

14 “(i) the member has failed to comply  
15 with a provision of this Act or any regula-  
16 tion prescribed under this Act; or

17 “(ii) the member has been determined  
18 to be insolvent, or otherwise subject to the  
19 appointment of a conservator, receiver, or  
20 other legal custodian, by a State or Fed-  
21 eral authority with regulatory and super-  
22 visory responsibility for the member.

23 “(B) STOCK DISPOSITION.—An institution,  
24 the membership of which is terminated in ac-  
25 cordance with subparagraph (A)—

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

6           “(ii) shall receive any dividends de-  
7           clared on its redeemable stock, during the  
8           applicable notice period under subsection  
9           (a)(4)(A); and

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

13           “(C) COMMENCEMENT OF NOTICE PE-  
14           RIOD.—With respect to an institution, the  
15           membership of which is terminated in accord-  
16           ance with subparagraph (A), the applicable no-  
17           tice period under subsection (a)(4) for each  
18           class of redeemable stock shall commence on  
19           the earlier of—

20           “(i) the date of such termination; or

21           “(ii) the date on which the member  
22           has provided notice of its intent to redeem  
23           such stock.

24           “(3) LIQUIDATION OF INDEBTEDNESS.—Upon  
25           the termination of the membership of an institution

1 for any reason, the outstanding indebtedness of the  
2 member to the bank shall be liquidated in an orderly  
3 manner, as determined by the bank and, upon the  
4 extinguishment of all such indebtedness, the bank  
5 shall return to the member all collateral pledged to  
6 secure the indebtedness.

7 “(e) REDEMPTION OF EXCESS STOCK.—

8 “(1) IN GENERAL.—A Federal home loan bank,  
9 in its sole discretion, may redeem or repurchase, as  
10 appropriate, any shares of Class A or Class B stock  
11 issued by the bank and held by a member that are  
12 in excess of the minimum stock investment required  
13 of that member.

14 “(2) EXCESS STOCK.—Shares of stock held by  
15 a member shall not be deemed to be ‘excess stock’  
16 for purposes of this subsection by virtue of a mem-  
17 ber’s submission of a notice of intent to withdraw  
18 from membership or termination of its membership  
19 in any other manner.

20 “(3) PRIORITY.—A Federal home loan bank  
21 may not redeem any excess Class B stock prior to  
22 the end of the 5-year notice period, unless the mem-  
23 ber has no Class A stock outstanding that could be  
24 redeemed as excess.

1       “(f) IMPAIRMENT OF CAPITAL.—If the Finance  
2 Board or the board of directors of a Federal home loan  
3 bank determines that the bank has incurred or is likely  
4 to incur losses that result in or are expected to result in  
5 charges against the capital of the bank, the bank shall  
6 not redeem or repurchase any stock of the bank without  
7 the prior approval of the Finance Board while such  
8 charges are continuing or are expected to continue. In no  
9 case may a bank redeem or repurchase any applicable cap-  
10 ital stock if, following the redemption, the bank would fail  
11 to satisfy any minimum capital requirement.

12       “(g) REJOINING AFTER DIVESTITURE OF ALL  
13 SHARES.—

14               “(1) IN GENERAL.—Except as provided in para-  
15 graph (2), and notwithstanding any other provision  
16 of this Act, an institution that divests all shares of  
17 stock in a Federal home loan bank may not, after  
18 such divestiture, acquire shares of any Federal home  
19 loan bank before the end of the 5-year period begin-  
20 ning on the date of the completion of such divesti-  
21 ture, unless the divestiture is a consequence of a  
22 transfer of membership on an uninterrupted basis  
23 between banks.

24               “(2) EXCEPTION FOR WITHDRAWALS FROM  
25 MEMBERSHIP BEFORE 1998.—Any institution that

1       withdrew from membership in any Federal home  
2       loan bank before December 31, 1997, may acquire  
3       shares of a Federal home loan bank at any time  
4       after that date, subject to the approval of the Fi-  
5       nance Board and the requirements of this Act.

6       “(h) TREATMENT OF RETAINED EARNINGS.—

7               “(1) IN GENERAL.—The holders of the Class C  
8       stock of a Federal home loan bank, and any other  
9       classes of nonredeemable stock approved by the Fi-  
10      nance Board (to the extent provided in the terms  
11      thereof), shall own the retained earnings, surplus,  
12      undivided profits, and equity reserves, if any, of the  
13      bank.

14             “(2) NO NONREDEEMABLE CLASSES OF  
15      STOCK.—If a Federal home loan bank has no out-  
16      standing Class C or other such nonredeemable stock,  
17      then the holders of any other classes of stock of the  
18      bank then outstanding shall have ownership in, and  
19      a private property right in, the retained earnings,  
20      surplus, undivided profits, and equity reserves, if  
21      any, of the bank.

22             “(3) EXCEPTION.—Except as specifically pro-  
23      vided in this section or through the declaration of a  
24      dividend or a capital distribution by a Federal home  
25      loan bank, or in the event of liquidation of the bank,

1 a member shall have no right to withdraw or other-  
 2 wise receive distribution of any portion of the re-  
 3 tained earnings of the bank.

4 “(4) LIMITATION.—A Federal home loan bank  
 5 may not make any distribution of its retained earn-  
 6 ings unless, following such distribution, the bank  
 7 would continue to meet all applicable capital require-  
 8 ments.”.

## 9 **Subtitle H—ATM Fee Reform**

### 10 **SEC. 171. SHORT TITLE.**

11 This subtitle may be cited as the “ATM Fee Reform  
 12 Act of 1999”.

### 13 **SEC. 172. ELECTRONIC FUND TRANSFER FEE DISCLOSURES** 14 **AT ANY HOST ATM.**

15 Section 904(d) of the Electronic Fund Transfer Act  
 16 (15 U.S.C. 1693b(d)) is amended by adding at the end  
 17 the following new paragraph:

18 “(3) FEE DISCLOSURES AT AUTOMATED TELL-  
 19 ER MACHINES.—

20 “(A) IN GENERAL.—The regulations pre-  
 21 scribed under paragraph (1) shall require any  
 22 automated teller machine operator who imposes  
 23 a fee on any consumer for providing host trans-  
 24 fer services to such consumer to provide notice  
 25 in accordance with subparagraph (B) to the

1 consumer (at the time the service is provided)  
2 of—

3 “(i) the fact that a fee is imposed by  
4 such operator for providing the service;  
5 and

6 “(ii) the amount of any such fee.

7 “(B) NOTICE REQUIREMENTS.—

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

16 “(ii) ON THE SCREEN.—The notice  
17 required under clauses (i) and (ii) of sub-  
18 paragraph (A) with respect to any fee de-  
19 scribed in such subparagraph shall appear  
20 on the screen of the automated teller ma-  
21 chine, or on a paper notice issued from  
22 such machine, after the transaction is initi-  
23 ated and before the consumer is irrev-  
24 ocably committed to completing the trans-  
25 action.

1           “(C) PROHIBITION ON FEES NOT PROP-  
2           ERLY DISCLOSED AND EXPLICITLY ASSUMED BY  
3           CONSUMER.—No fee may be imposed by any  
4           automated teller machine operator in connec-  
5           tion with any electronic fund transfer initiated  
6           by a consumer for which a notice is required  
7           under subparagraph (A), unless—

8                   “(i) the consumer receives such notice  
9                   in accordance with subparagraph (B); and

10                   “(ii) the consumer elects to continue  
11                   in the manner necessary to effect the  
12                   transaction after receiving such notice.

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

15                   “(i) ELECTRONIC FUND TRANSFER.—  
16                   The term ‘electronic fund transfer’ in-  
17                   cludes a transaction which involves a bal-  
18                   ance inquiry initiated by a consumer in the  
19                   same manner as an electronic fund trans-  
20                   fer, whether or not the consumer initiates  
21                   a transfer of funds in the course of the  
22                   transaction.

23                   “(ii) AUTOMATED TELLER MACHINE  
24                   OPERATOR.—The term ‘automated teller

1 machine operator' means any person  
2 who—

3 “(I) operates an automated teller  
4 machine at which consumers initiate  
5 electronic fund transfers; and

6 “(II) is not the financial institu-  
7 tion which holds the account of such  
8 consumer from which the transfer is  
9 made.

10 “(iii) HOST TRANSFER SERVICES.—  
11 The term ‘host transfer services’ means  
12 any electronic fund transfer made by an  
13 automated teller machine operator in con-  
14 nection with a transaction initiated by a  
15 consumer at an automated teller machine  
16 operated by such operator.”.

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

19 Section 905(a) of the Electronic Fund Transfer Act  
20 (15 U.S.C. 1693c(a)) is amended—

21 (1) by striking “and” at the end of paragraph  
22 (8);

23 (2) by striking the period at the end of para-  
24 graph (9) and inserting “; and”; and

1           (3) by inserting after paragraph (9) the fol-  
2           lowing new paragraph:

3           “(10) a notice to the consumer that a fee may  
4           be imposed by—

5                   “(A) an automated teller machine operator  
6                   (as defined in section 904(d)(3)(D)(ii)) if the  
7                   consumer initiates a transfer from an auto-  
8                   mated teller machine which is not operated by  
9                   the person issuing the card or other means of  
10                  access; and

11                   “(B) any national, regional, or local net-  
12                  work utilized to effect the transaction.”.

13 **SEC. 174. FEASIBILITY STUDY.**

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

19                   (1) a notice to be provided to the consumer be-  
20                   fore the consumer is irrevocably committed to com-  
21                   pleting the transaction, which clearly states the  
22                   amount of any fee which will be imposed upon the  
23                   consummation of the transaction by—

24                           (A) any automated teller machine operator  
25                           (as defined in section 904(d)(3)(D)(ii) of the

1           Electronic Fund Transfer Act) involved in the  
2           transaction;

3           (B) the financial institution holding the ac-  
4           count of the consumer;

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

7           (D) any other party involved in the trans-  
8           fer; and

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

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

16                 (1) The availability of appropriate technology.

17                 (2) Implementation and operating costs.

18                 (3) The competitive impact any such notice re-  
19          quirement would have on various sizes and types of  
20          institutions, if implemented.

21                 (4) The period of time which would be reason-  
22          able for implementing any such notice requirement.

23                 (5) The extent to which consumers would ben-  
24          efit from any such notice requirement.

1           (6) Any other factor the Comptroller General  
2 determines to be appropriate in analyzing the feasi-  
3 bility of imposing any such notice requirement.

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

8           (1) the findings and conclusions of the Comp-  
9 troller General in connection with the study required  
10 under subsection (a); and

11           (2) the recommendation of the Comptroller  
12 General with regard to the question of whether a no-  
13 tice requirement described in subsection (a) should  
14 be implemented and, if so, how such requirement  
15 should be implemented.

16 **SEC. 175. NO LIABILITY IF POSTED NOTICES ARE DAM-**  
17 **AGED.**

18           Section 910 of the Electronic Fund Transfer Act (15  
19 U.S.C 1693h) is amended by adding at the end the fol-  
20 lowing new subsection:

21           “(d) EXCEPTION FOR DAMAGED NOTICES.—If the  
22 notice required to be posted pursuant to section  
23 904(d)(3)(B)(i) by an automated teller machine operator  
24 has been posted by such operator in compliance with such  
25 section and the notice is subsequently removed, damaged,



1 fined in section 38 of the Federal Deposit Insurance  
2 Act).”.

### 3 **Subtitle J—Deposit Insurance** 4 **Funds**

#### 5 **SEC. 186. STUDY OF SAFETY AND SOUNDNESS OF FUNDS.**

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

11 (1) SAFETY AND SOUNDNESS.—The safety and  
12 soundness of the funds and the adequacy of the re-  
13 serve requirements applicable to the funds in light  
14 of—

15 (A) the size of the insured depository insti-  
16 tutions which are resulting from mergers and  
17 consolidations since the effective date of the  
18 Riegle-Neal Interstate Banking and Branching  
19 Efficiency Act of 1994; and

20 (B) the affiliation of insured depository in-  
21 stitutions with other financial institutions pur-  
22 suant to this Act and the amendments made by  
23 this Act.

24 (2) CONCENTRATION LEVELS.—The concentra-  
25 tion levels of the funds, taking into account the

1 number of members of each fund and the geographic  
2 distribution of such members, and the extent to  
3 which either fund is exposed to higher risks due to  
4 a regional concentration of members or an insuffi-  
5 cient membership base relative to the size of member  
6 institutions.

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

12 (b) REPORT REQUIRED.—

13 (1) IN GENERAL.—Before the end of the 9-  
14 month period beginning on the date of the enact-  
15 ment of this Act, the Board of Directors of the Fed-  
16 eral Deposit Insurance Corporation shall submit a  
17 report to the Congress on the study conducted pur-  
18 suant to subsection (a).

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

21 (A) detailed findings of the Board of Di-  
22 rectors with regard to the issues described in  
23 subsection (a);

24 (B) a description of the plans developed by  
25 the Board of Directors for merging the Bank

1 Insurance Fund and the Savings Association  
2 Insurance Fund, including an estimate of the  
3 amount of the cost of such merger which would  
4 be borne by Savings Association Insurance  
5 Fund members; and

6 (C) such recommendations for legislative  
7 and administrative action as the Board of Di-  
8 rectors determines to be necessary or appro-  
9 priate to preserve the safety and soundness of  
10 the deposit insurance funds, reduce the risks to  
11 such funds, provide for an efficient merger of  
12 such funds, and for other purposes.

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

15 (1) INSURED DEPOSITORY INSTITUTION.—The  
16 term “insured depository institution” has the same  
17 meaning as in section 3(c) of the Federal Deposit  
18 Insurance Act.

19 (2) BIF AND SAIF MEMBERS.—The terms  
20 “Bank Insurance Fund member” and “Savings As-  
21 sociation Insurance Fund member” have the same  
22 meanings as in section 7(l) of the Federal Deposit  
23 Insurance Act.

1 **SEC. 187. ELIMINATION OF SAIF AND DIF SPECIAL RE-**  
 2 **SERVES.**

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

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

9 (1) by striking subsection (b); and

10 (2) in subsection (d)—

11 (A) by striking paragraph (4);

12 (B) in paragraph (6)(C)(i), by striking  
 13 “(6) and (7)” and inserting “(5), (6), and (7)”;

14 and

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

17 “(ii) by redesignating paragraph (8)  
 18 as paragraph (5).”.

19 **Subtitle K—Miscellaneous**  
 20 **Provisions**

21 **SEC. 191. TERMINATION OF “KNOW YOUR CUSTOMER” REG-**  
 22 **ULATIONS.**

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

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

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

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

10 (2) The regulation proposed by the Director of  
11 the Office of Thrift Supervision to amend part 563  
12 of title 12 of the Code of Federal Regulations, as  
13 published in the Federal Register on December 7,  
14 1998.

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

20 (4) The regulation proposed by the Federal De-  
21 posit Insurance Corporation to amend part 326 of  
22 title 12 of the Code of Federal Regulations, as pub-  
23 lished in the Federal Register on December 7, 1998.

1 **SEC. 192. STUDY AND REPORT ON FEDERAL ELECTRONIC**  
2 **FUND TRANSFERS.**

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

5 (1) whether all electronic payments issued by  
6 Federal agencies could be routed through the Re-  
7 gional Finance Centers of the Department of the  
8 Treasury for verification and reconciliation;

9 (2) whether all electronic payments made by the  
10 Federal Government could be subjected to the same  
11 level of reconciliation as United States Treasury  
12 checks, including matching each payment issued  
13 with each corresponding deposit at financial institu-  
14 tions;

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

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

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

23 (b) **REPORT TO CONGRESS.**—Not later than October  
24 1, 2000, the Secretary of the Treasury shall submit a re-  
25 port to Congress containing the results of the study re-  
26 quired by subsection (a).

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

8 **SEC. 193. GENERAL ACCOUNTING OFFICE STUDY OF CON-**  
9 **FLICTS OF INTEREST**

10 (a) STUDY REQUIRED.—The Comptroller General of  
11 the United States shall conduct a study analyzing the con-  
12 flict of interest faced by the Board of Governors of the  
13 Federal Reserve System between its role as a primary reg-  
14 ulator of the banking industry and its role as a vendor  
15 of services to the banking and financial services industry.

16 (b) SPECIFIC CONFLICT REQUIRED TO BE AD-  
17 DRESSED.—In the course of the study required under sub-  
18 section (a), the Comptroller General shall address the con-  
19 flict of interest faced by the Board of Governors of the  
20 Federal Reserve System between the role of the Board as  
21 a regulator of the payment system, generally, and its par-  
22 ticipation in the payment system as a competitor with pri-  
23 vate entities who are providing payment services.

24 (c) REPORT TO CONGRESS.—Before the end of the  
25 1-year period beginning on the date of the enactment of

1 this Act, the Comptroller General shall submit a report  
2 to the Congress containing the findings and conclusions  
3 of the Comptroller General in connection with the study  
4 required under this section, together with such rec-  
5 ommendations for such legislative or administrative ac-  
6 tions as the Comptroller General may determine to be ap-  
7 propriate, including recommendations for resolving any  
8 such conflict of interest.

9 **SEC. 194. STUDY OF COST OF ALL FEDERAL BANKING REG-**  
10 **ULATIONS.**

11 (a) IN GENERAL.—In accordance with the finding in  
12 the Board of Governors of the Federal Reserve System  
13 Staff Study Numbered 171 (April, 1998) that “Further  
14 research covering more and different types of regulations  
15 and regulatory requirements is clearly needed to make in-  
16 formed decisions about regulations”, the Board of Gov-  
17 ernors of the Federal Reserve System, in consultation with  
18 the other Federal banking agencies (as defined in section  
19 3 of the Federal Deposit Insurance Act) shall conduct a  
20 comprehensive study of the total annual costs and benefits  
21 of all Federal financial regulations and regulatory require-  
22 ments applicable to banks.

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

1 tem shall submit a comprehensive report to the Congress  
2 containing the findings and conclusions of the Board in  
3 connection with the study required under subsection (a)  
4 and such recommendations for legislative and administra-  
5 tive action as the Board may determine to be appropriate.

6 **SEC. 195. STUDY AND REPORT ON ADAPTING EXISTING**  
7 **LEGISLATIVE REQUIREMENTS TO ONLINE**  
8 **BANKING AND LENDING.**

9 (a) **STUDY REQUIRED.**—The Federal banking agen-  
10 cies shall conduct a study of banking regulations regard-  
11 ing the delivery of financial services, including those regu-  
12 lations that may assume that there will be person-to-per-  
13 son contact during the course of a financial services trans-  
14 action, and report their recommendations on adapting  
15 those existing requirements to online banking and lending.

16 (b) **REPORT REQUIRED.**—Within 1 year of the date  
17 of the enactment of this Act, the Federal banking agencies  
18 shall submit a report to the Congress on the findings and  
19 conclusions of the agencies with respect to the study re-  
20 quired under subsection (a), together with such rec-  
21 ommendations for legislative or regulatory action as the  
22 agencies may determine to be appropriate.

23 (c) **DEFINITION.**—For purposes of this section, the  
24 term “Federal banking agencies” means each Federal

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

3 **SEC. 196. REGULATION OF UNINSURED STATE MEMBER**  
4 **BANKS.**

5 Section 9 of the Federal Reserve Act (12 U.S.C. 321  
6 et seq.) is amended by adding at the end the following  
7 new paragraph:

8 “(24) ENFORCEMENT AUTHORITY OVER UNIN-  
9 SURED STATE MEMBER BANKS.—Section 3(u) of the  
10 Federal Deposit Insurance Act, subsections (j) and  
11 (k) of section 7 of such Act, and subsections (b)  
12 through (n), (s), (u), and (v) of section 8 of such  
13 Act shall apply to an uninsured State member bank  
14 in the same manner and to the same extent such  
15 provisions apply to an insured State member bank  
16 and any reference in any such provision to ‘insured  
17 depository institution’ shall be deemed to be a ref-  
18 erence to ‘uninsured State member bank’ for pur-  
19 poses of this paragraph.”.

20 **SEC. 197. CLARIFICATION OF SOURCE OF STRENGTH DOC-**  
21 **TRINE.**

22 Section 18 of the Federal Deposit Insurance Act (21  
23 U.S.C. 1828) is amended by adding at the end the fol-  
24 lowing new subsection:

25 “(t) LIMITATION ON CLAIMS.—

1           “(1) IN GENERAL.—Notwithstanding any other  
2           provision of law other than paragraph (2), no person  
3           shall have any claim for monetary damages or re-  
4           turn of assets or other property against any Federal  
5           banking agency (including in its capacity as conser-  
6           vator or receiver) relating to the transfer of money,  
7           assets, or other property to increase the capital of  
8           an insured depository institution by any depository  
9           institution holding company or controlling share-  
10          holder for such depository institution, or any affil-  
11          iate or subsidiary of such depository institution, if at  
12          the time of the transfer—

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

16                   “(B) the depository institution is under-  
17                   capitalized, significantly undercapitalized, or  
18                   critically undercapitalized (as defined in section  
19                   38 of this Act); and

20                   “(C) for that portion of the transfer that  
21                   is made by an entity covered by section 5(g) of  
22                   the Bank Holding Company Act of 1956 or sec-  
23                   tion 45 of this Act, the Federal banking agency  
24                   has followed the procedure set forth in such  
25                   section.

1           “(2) EXCEPTION.—No provision of this sub-  
2 section shall be construed as limiting—

3           “(A) the right of an insured depository in-  
4 stitution, a depository institution holding com-  
5 pany, or any other agency or person to seek di-  
6 rect review of an order or directive issued by a  
7 Federal banking agency under this Act, the  
8 Bank Holding Company Act of 1956, the Na-  
9 tional Bank Receivership Act, the Bank Con-  
10 servation Act, or the Home Owners’ Loan Act;

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

13           “(C) the rights of any party to a contract  
14 with a depository institution holding company  
15 or a subsidiary of a depository institution hold-  
16 ing company (other than an insured depository  
17 institution).”

18 **SEC. 198. INTEREST RATES AND OTHER CHARGES AT**  
19 **INTERSTATE BRANCHES.**

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

22           (1) by redesignating subsection (f) as sub-  
23 section (g); and

24           (2) by inserting after subsection (e) the fol-  
25 lowing:

1       “(f) APPLICABLE RATE AND OTHER CHARGE LIM-  
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 laws 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

1 other similar charges that may be charged,  
2 taken, received, or reserved in a similar trans-  
3 action by an insured depository institution  
4 under the constitution, statutory, or other laws  
5 of the host State, without reference to this sec-  
6 tion.

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

15 “(3) RULE OF CONSTRUCTION.—No provision  
16 of this subsection shall be construed as superseding  
17 section 501 of the Depository Institutions Deregula-  
18 tion and Monetary Control Act of 1980.

## 19 **Subtitle L-Effective Date of Title**

### 20 **SEC. 199. EFFECTIVE DATE.**

21 Except with regard to any subtitle or other provision  
22 of this title for which a specific effective date is provided,  
23 this title and the amendments made by this title shall take  
24 effect at the end of the 180-day period beginning on the  
25 date of the enactment of this Act.

1                   **TITLE II—FUNCTIONAL**  
2                                   **REGULATION**  
3           **Subtitle A—Brokers and Dealers**

4   **SEC. 201. DEFINITION OF BROKER.**

5           Section 3(a)(4) of the Securities Exchange Act of  
6 1934 (15 U.S.C. 78c(a)(4)) is amended to read as follows:

7                   “(4) BROKER.—

8                                   “(A) IN GENERAL.—The term ‘broker’  
9                   means any person engaged in the business of  
10                   effecting transactions in securities for the ac-  
11                   count of others.

12                                   “(B) EXCEPTION FOR CERTAIN BANK AC-  
13                   TIVITIES.—A bank shall not be considered to be  
14                   a broker because the bank engages in any one  
15                   or more of the following activities under the  
16                   conditions described:

17                                   “(i) THIRD PARTY BROKERAGE AR-  
18                   RANGEMENTS.—The bank enters into a  
19                   contractual or other written arrangement  
20                   with a broker or dealer registered under  
21                   this title under which the broker or dealer  
22                   offers brokerage services on or off the  
23                   premises of the bank if—

1           “(I) such broker or dealer is  
2 clearly identified as the person per-  
3 forming the brokerage services;

4           “(II) the broker or dealer per-  
5 forms brokerage services in an area  
6 that is clearly marked and, to the ex-  
7 tent practicable, physically separate  
8 from the routine deposit-taking activi-  
9 ties of the bank;

10           “(III) any materials used by the  
11 bank to advertise or promote generally  
12 the availability of brokerage services  
13 under the arrangement clearly indi-  
14 cate that the brokerage services are  
15 being provided by the broker or dealer  
16 and not by the bank;

17           “(IV) any materials used by the  
18 bank to advertise or promote generally  
19 the availability of brokerage services  
20 under the arrangement are in compli-  
21 ance with the Federal securities laws  
22 before distribution;

23           “(V) bank employees (other than  
24 associated persons of a broker or deal-  
25 er who are qualified pursuant to the

1 rules of a self-regulatory organization)  
2 perform only clerical or ministerial  
3 functions in connection with broker-  
4 age transactions including scheduling  
5 appointments with the associated per-  
6 sons of a broker or dealer, except that  
7 bank employees may forward cus-  
8 tomer funds or securities and may de-  
9 scribe in general terms the types of  
10 investment vehicles available from the  
11 bank and the broker or dealer under  
12 the arrangement;

13 “(VI) bank employees do not re-  
14 ceive incentive compensation for any  
15 brokerage transaction unless such em-  
16 ployees are associated persons of a  
17 broker or dealer and are qualified  
18 pursuant to the rules of a self-regu-  
19 latory organization, except that the  
20 bank employees may receive com-  
21 pensation for the referral of any cus-  
22 tomer if the compensation is a nomi-  
23 nal one-time cash fee of a fixed dollar  
24 amount and the payment of the fee is

1 not contingent on whether the referral  
2 results in a transaction;

3 “(VII) such services are provided  
4 by the broker or dealer on a basis in  
5 which all customers which receive any  
6 services are fully disclosed to the  
7 broker or dealer;

8 “(VIII) the bank does not carry  
9 a securities account of the customer  
10 except as permitted under clause (ii)  
11 or (viii) of this subparagraph; and

12 “(IX) the bank, broker, or dealer  
13 informs each customer that the bro-  
14 kerage services are provided by the  
15 broker or dealer and not by the bank  
16 and that the securities are not depos-  
17 its or other obligations of the bank,  
18 are not guaranteed by the bank, and  
19 are not insured by the Federal De-  
20 posit Insurance Corporation.

21 “(ii) TRUST ACTIVITIES.—The bank  
22 effects transactions in a trustee or fidu-  
23 ciary capacity in its trust department, or  
24 another department where the trust or fi-  
25 duciary activity is regularly examined by

1 bank examiners under the same standards  
2 and in the same way as such activities are  
3 examined in the trust department, and—

4 “(I) is chiefly compensated for  
5 such transactions, consistent with fi-  
6 duciary principles and standards, on  
7 the basis of an administration or an-  
8 nual fee (payable on a monthly, quar-  
9 terly, or other basis), a percentage of  
10 assets under management, or a flat or  
11 capped per order processing fee equal  
12 to not more than the cost incurred by  
13 the bank in connection with executing  
14 securities transactions for trustee and  
15 fiduciary customers, or any combina-  
16 tion of such fees; and

17 “(II) does not solicit brokerage  
18 business, other than by advertising  
19 that it effects transactions in securi-  
20 ties in conjunction with advertising its  
21 other trust activities.

22 “(iii) PERMISSIBLE SECURITIES  
23 TRANSACTIONS.—The bank effects trans-  
24 actions in—

1 “(I) commercial paper, bankers  
2 acceptances, or commercial bills;

3 “(II) exempted securities;

4 “(III) qualified Canadian govern-  
5 ment obligations as defined in section  
6 5136 of the Revised Statutes, in con-  
7 formity with section 15C of this title  
8 and the rules and regulations there-  
9 under, or obligations of the North  
10 American Development Bank; or

11 “(IV) any standardized, credit  
12 enhanced debt security issued by a  
13 foreign government pursuant to the  
14 March 1989 plan of then Secretary of  
15 the Treasury Brady, used by such for-  
16 eign government to retire outstanding  
17 commercial bank loans.

18 “(iv) CERTAIN STOCK PURCHASE  
19 PLANS.—

20 “(I) EMPLOYEE BENEFIT  
21 PLANS.—The bank effects trans-  
22 actions, as a registered transfer agent  
23 (including as a registrar of stocks), in  
24 the securities of an issuer as part of  
25 any pension, retirement, profit-shar-

1 ing, bonus, thrift, savings, incentive,  
2 or other similar benefit plan for the  
3 employees of that issuer or its affili-  
4 ates (as defined in section 2 of the  
5 Bank Holding Company Act of 1956),  
6 if—

7 “(aa) the bank does not so-  
8 licit transactions or provide in-  
9 vestment advice with respect to  
10 the purchase or sale of securities  
11 in connection with the plan; and

12 “(bb) the bank’s compensa-  
13 tion for such plan or program  
14 consists chiefly of administration  
15 fees, or flat or capped per order  
16 processing fees, or both.

17 “(II) DIVIDEND REINVESTMENT  
18 PLANS.—The bank effects trans-  
19 actions, as a registered transfer agent  
20 (including as a registrar of stocks), in  
21 the securities of an issuer as part of  
22 that issuer’s dividend reinvestment  
23 plan, if—

24 “(aa) the bank does not so-  
25 licit transactions or provide in-

1 investment advice with respect to  
2 the purchase or sale of securities  
3 in connection with the plan;

4 “(bb) the bank does not net  
5 shareholders’ buy and sell orders,  
6 other than for programs for odd-  
7 lot holders or plans registered  
8 with the Commission; and

9 “(cc) the bank’s compensa-  
10 tion for such plan or program  
11 consists chiefly of administration  
12 fees, or flat or capped per order  
13 processing fees, or both.

14 “(III) ISSUER PLANS.—The bank  
15 effects transactions, as a registered  
16 transfer agent (including as a reg-  
17 istrar of stocks), in the securities of  
18 an issuer as part of that issuer’s plan  
19 for the purchase or sale of that  
20 issuer’s shares, if—

21 “(aa) the bank does not so-  
22 licit transactions or provide in-  
23 vestment advice with respect to  
24 the purchase or sale of securities

1 in connection with the plan or  
2 program;

3 “(bb) the bank does not net  
4 shareholders’ buy and sell orders,  
5 other than for programs for odd-  
6 lot holders or plans registered  
7 with the Commission; and

8 “(cc) the bank’s compensa-  
9 tion for such plan or program  
10 consists chiefly of administration  
11 fees, or flat or capped per order  
12 processing fees, or both.

13 “(IV) PERMISSIBLE DELIVERY  
14 OF MATERIALS.—The exception to  
15 being considered a broker for a bank  
16 engaged in activities described in sub-  
17 clauses (I), (II), and (III) will not be  
18 affected by a bank’s delivery of writ-  
19 ten or electronic plan materials to em-  
20 ployees of the issuer, shareholders of  
21 the issuer, or members of affinity  
22 groups of the issuer, so long as such  
23 materials are—

24 “(aa) comparable in scope or  
25 nature to that permitted by the

1 Commission as of the date of the  
2 enactment of the Financial Serv-  
3 ices Act of 1999; or

4 “(bb) otherwise permitted by  
5 the Commission.

6 “(v) SWEEP ACCOUNTS.—The bank  
7 effects transactions as part of a program  
8 for the investment or reinvestment of de-  
9 posit funds into any no-load, open-end  
10 management investment company reg-  
11 istered under the Investment Company Act  
12 of 1940 that holds itself out as a money  
13 market fund.

14 “(vi) AFFILIATE TRANSACTIONS.—  
15 The bank effects transactions for the ac-  
16 count of any affiliate (as defined in section  
17 2 of the Bank Holding Company Act of  
18 1956) of the bank other than—

19 “(I) a registered broker or deal-  
20 er; or

21 “(II) an affiliate that is engaged  
22 in merchant banking, as described in  
23 section 6(c)(3)(H) of the Bank Hold-  
24 ing Company Act of 1956.

1                   “(vii) PRIVATE SECURITIES OFFER-  
2                   INGS.—The bank—

3                   “(I) effects sales as part of a pri-  
4                   mary offering of securities not involv-  
5                   ing a public offering, pursuant to sec-  
6                   tion 3(b), 4(2), or 4(6) of the Securi-  
7                   ties Act of 1933 or the rules and reg-  
8                   ulations issued thereunder;

9                   “(II) at any time after the date  
10                  that is 1 year after the date of enact-  
11                  ment of the Financial Services Act of  
12                  1999, is not affiliated with a broker  
13                  or dealer that has been registered for  
14                  more than 1 year in accordance with  
15                  this Act, and engages in dealing, mar-  
16                  ket making, or underwriting activities,  
17                  other than with respect to exempted  
18                  securities; and

19                  “(III) effects transactions exclu-  
20                  sively with qualified investors.

21                  “(viii) SAFEKEEPING AND CUSTODY  
22                  ACTIVITIES.—

23                  “(I) IN GENERAL.—The bank, as  
24                  part of customary banking activities—

1           “(aa) provides safekeeping  
2 or custody services with respect  
3 to securities, including the exer-  
4 cise of warrants and other rights  
5 on behalf of customers;

6           “(bb) facilitates the transfer  
7 of funds or securities, as a custo-  
8 dian or a clearing agency, in con-  
9 nection with the clearance and  
10 settlement of its customers’  
11 transactions in securities;

12           “(cc) effects securities lend-  
13 ing or borrowing transactions  
14 with or on behalf of customers as  
15 part of services provided to cus-  
16 tomers pursuant to division (aa)  
17 or (bb) or invests cash collateral  
18 pledged in connection with such  
19 transactions; or

20           “(dd) holds securities  
21 pledged by a customer to another  
22 person or securities subject to  
23 purchase or resale agreements in-  
24 volving a customer, or facilitates  
25 the pledging or transfer of such

1 securities by book entry or as  
2 otherwise provided under applica-  
3 ble law, if the bank maintains  
4 records separately identifying the  
5 securities and the customer.

6 “(II) EXCEPTION FOR CARRYING  
7 BROKER ACTIVITIES.—The exception  
8 to being considered a broker for a  
9 bank engaged in activities described in  
10 subclause (I) shall not apply if the  
11 bank, in connection with such activi-  
12 ties, acts in the United States as a  
13 carrying broker (as such term, and  
14 different formulations thereof, are  
15 used in section 15(c)(3) of this title  
16 and the rules and regulations there-  
17 under) for any broker or dealer, un-  
18 less such carrying broker activities are  
19 engaged in with respect to government  
20 securities (as defined in paragraph  
21 (42) of this subsection).

22 “(ix) EXCEPTED BANKING PROD-  
23 UCTS.—The bank effects transactions in  
24 excepted banking products, as defined in

1 section 206 of the Financial Services Act  
2 of 1999.

3 “(x) MUNICIPAL SECURITIES.—The  
4 bank effects transactions in municipal se-  
5 curities.

6 “(xi) DE MINIMIS EXCEPTION.—The  
7 bank effects, other than in transactions re-  
8 ferred to in clauses (i) through (x), not  
9 more than 500 transactions in securities in  
10 any calendar year, and such transactions  
11 are not effected by an employee of the  
12 bank who is also an employee of a broker  
13 or dealer.

14 “(C) BROKER DEALER EXECUTION.—The  
15 exception to being considered a broker for a  
16 bank engaged in activities described in clauses  
17 (ii), (iv), and (viii) of subparagraph (B) shall  
18 not apply if the activities described in such pro-  
19 visions result in the trade in the United States  
20 of any security that is a publicly traded security  
21 in the United States, unless—

22 “(i) the bank directs such trade to a  
23 registered broker or dealer for execution;

1           “(ii) the trade is a cross trade or  
2 other substantially similar trade of a secu-  
3 rity that—

4                   “(I) is made by the bank or be-  
5 tween the bank and an affiliated fidu-  
6 ciary; and

7                   “(II) is not in contravention of  
8 fiduciary principles established under  
9 applicable Federal or State law; or

10           “(iii) the trade is conducted in some  
11 other manner permitted under rules, regu-  
12 lations, or orders as the Commission may  
13 prescribe or issue.

14           “(D) FIDUCIARY CAPACITY.—For purposes  
15 of subparagraph (B)(ii), the term ‘fiduciary ca-  
16 pacity’ means—

17                   “(i) in the capacity as trustee, execu-  
18 tor, administrator, registrar of stocks and  
19 bonds, transfer agent, guardian, assignee,  
20 receiver, or custodian under a uniform gift  
21 to minor act, or as an investment adviser  
22 if the bank receives a fee for its investment  
23 advice;

1           “(ii) in any capacity in which the  
2           bank possesses investment discretion on  
3           behalf of another; or

4           “(iii) in any other similar capacity.

5           “(F) EXCEPTION FOR ENTITIES SUBJECT  
6           TO SECTION 15(e).—The term ‘broker’ does not  
7           include a bank that—

8           “(i) was, immediately prior to the en-  
9           actment of the Financial Services Act of  
10          1999, subject to section 15(e) of this title;  
11          and

12          “(ii) is subject to such restrictions  
13          and requirements as the Commission con-  
14          siders appropriate.”.

15 **SEC. 202. DEFINITION OF DEALER.**

16          Section 3(a)(5) of the Securities Exchange Act of  
17          1934 (15 U.S.C. 78c(a)(5)) is amended to read as follows:

18          “(5) DEALER.—

19          “(A) IN GENERAL.—The term ‘dealer’  
20          means any person engaged in the business of  
21          buying and selling securities for such person’s  
22          own account through a broker or otherwise.

23          “(B) EXCEPTION FOR PERSON NOT EN-  
24          GAGED IN THE BUSINESS OF DEALING.—The  
25          term ‘dealer’ does not include a person that

1 buys or sells securities for such person's own  
2 account, either individually or in a fiduciary ca-  
3 pacity, but not as a part of a regular business.

4 “(C) EXCEPTION FOR CERTAIN BANK AC-  
5 TIVITIES.—A bank shall not be considered to be  
6 a dealer because the bank engages in any of the  
7 following activities under the conditions de-  
8 scribed:

9 “(i) PERMISSIBLE SECURITIES TRANS-  
10 ACTIONS.—The bank buys or sells—

11 “(I) commercial paper, bankers  
12 acceptances, or commercial bills;

13 “(II) exempted securities;

14 “(III) qualified Canadian govern-  
15 ment obligations as defined in section  
16 5136 of the Revised Statutes of the  
17 United States, in conformity with sec-  
18 tion 15C of this title and the rules  
19 and regulations thereunder, or obliga-  
20 tions of the North American Develop-  
21 ment Bank; or

22 “(IV) any standardized, credit  
23 enhanced debt security issued by a  
24 foreign government pursuant to the  
25 March 1989 plan of then Secretary of

1 the Treasury Brady, used by such for-  
2 eign government to retire outstanding  
3 commercial bank loans.

4 “(ii) INVESTMENT, TRUSTEE, AND FI-  
5 DUCIARY TRANSACTIONS.—The bank buys  
6 or sells securities for investment  
7 purposes—

8 “(I) for the bank; or

9 “(II) for accounts for which the  
10 bank acts as a trustee or fiduciary.

11 “(iii) ASSET-BACKED TRANS-  
12 ACTIONS.—The bank engages in the  
13 issuance or sale to qualified investors,  
14 through a grantor trust or other separate  
15 entity, of securities backed by or rep-  
16 resenting an interest in notes, drafts, ac-  
17 ceptances, loans, leases, receivables, other  
18 obligations (other than securities of which  
19 the bank is not the issuer), or pools of any  
20 such obligations predominantly originated  
21 by—

22 “(I) the bank;

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

1           “(III) a syndicate of banks of  
2           which the bank is a member, if the  
3           obligations or pool of obligations con-  
4           sists of mortgage obligations or con-  
5           sumer-related receivables.

6           “(iv) EXCEPTED BANKING PROD-  
7           UCTS.—The bank buys or sells excepted  
8           banking products, as defined in section  
9           206 of the Financial Services Act of 1999.

10          “(v) DERIVATIVE INSTRUMENTS.—  
11          The bank issues, buys, or sells any deriva-  
12          tive instrument to which the bank is a  
13          party—

14                 “(I) to or from a qualified inves-  
15                 tor, except that if the instrument pro-  
16                 vides for the delivery of one or more  
17                 securities (other than a derivative in-  
18                 strument or government security), the  
19                 transaction shall be effected with or  
20                 through a registered broker or dealer;  
21                 or

22                 “(II) to or from other persons,  
23                 except that if the derivative instru-  
24                 ment provides for the delivery of one  
25                 or more securities (other than a deriv-

1           ative instrument or government secu-  
2           rity), or is a security (other than a  
3           government security), the transaction  
4           shall be effected with or through a  
5           registered broker or dealer; or

6                           “(III) to or from any person if  
7           the instrument is neither a security  
8           nor provides for the delivery of one or  
9           more securities (other than a deriva-  
10          tive instrument).”.

11 **SEC. 203. REGISTRATION FOR SALES OF PRIVATE SECURI-**  
12 **TIES OFFERINGS.**

13           Section 15A of the Securities Exchange Act of 1934  
14 (15 U.S.C. 78o-3) is amended by inserting after sub-  
15 section (i) the following new subsection:

16           “(j) REGISTRATION FOR SALES OF PRIVATE SECURI-  
17 TIES OFFERINGS.—A registered securities association  
18 shall create a limited qualification category for any associ-  
19 ated person of a member who effects sales as part of a  
20 primary offering of securities not involving a public offer-  
21 ing, pursuant to section 3(b), 4(2), or 4(6) of the Securi-  
22 ties Act of 1933 and the rules and regulations thereunder,  
23 and shall deem qualified in such limited qualification cat-  
24 egory, without testing, any bank employee who, in the six

1 month period preceding the date of enactment of this Act,  
2 engaged in effecting such sales.”.

3 **SEC. 204. INFORMATION SHARING.**

4 Section 18 of the Federal Deposit Insurance Act is  
5 amended by adding at the end the following new sub-  
6 section:

7 “(t) RECORDKEEPING REQUIREMENTS.—

8 “(1) REQUIREMENTS.—Each appropriate Fed-  
9 eral banking agency, after consultation with and  
10 consideration of the views of the Commission, shall  
11 establish recordkeeping requirements for banks rely-  
12 ing on exceptions contained in paragraphs (4) and  
13 (5) of section 3(a) of the Securities Exchange Act of  
14 1934. Such recordkeeping requirements shall be suf-  
15 ficient to demonstrate compliance with the terms of  
16 such exceptions and be designed to facilitate compli-  
17 ance with such exceptions. Each appropriate Federal  
18 banking agency shall make any such information  
19 available to the Commission upon request.

20 “(2) DEFINITIONS.—As used in this subsection  
21 the term ‘Commission’ means the Securities and Ex-  
22 change Commission.”.

1 **SEC. 205. TREATMENT OF NEW HYBRID PRODUCTS.**

2 Section 15 of the Securities Exchange Act of 1934  
3 (15 U.S.C. 78o) is amended by adding at the end the fol-  
4 lowing new subsection:

5 “(i) **RULEMAKING TO EXTEND REQUIREMENTS TO**  
6 **NEW HYBRID PRODUCTS.—**

7 “(1) **LIMITATION.—**The Commission shall  
8 not—

9 “(A) require a bank to register as a broker  
10 or dealer under this section because the bank  
11 engages in any transaction in, or buys or sells,  
12 a new hybrid product; or

13 “(B) bring an action against a bank for a  
14 failure to comply with a requirement described  
15 in subparagraph (A);

16 unless the Commission has imposed such require-  
17 ment by rule or regulation issued in accordance with  
18 this section.

19 “(2) **CRITERIA FOR RULEMAKING.—**The Com-  
20 mission shall not impose a requirement under para-  
21 graph (1) of this subsection with respect to any new  
22 hybrid product unless the Commission determines  
23 that—

24 “(A) the new hybrid product is a security;  
25 and

1           “(B) imposing such requirement is nec-  
2           essary or appropriate in the public interest and  
3           for the protection of investors, consistent with  
4           the requirements of section 3(f).

5           “(3) CONSIDERATIONS.—In making a deter-  
6           mination under paragraph (2), the Commission shall  
7           consider—

8                   “(A) the nature of the new hybrid product;  
9                   and

10                   “(B) the history, purpose, extent, and ap-  
11                   propriateness of the regulation of the new hy-  
12                   brid product under the Federal securities laws  
13                   and under the Federal banking laws.

14           “(4) CONSULTATION.—In promulgating rules  
15           under this subsection, the Commission shall consult  
16           with and consider the views of the Board of Gov-  
17           ernors of the Federal Reserve System regarding the  
18           nature of the new hybrid product, the history, pur-  
19           pose, extent, and appropriateness of the regulation  
20           of the new product under the Federal banking laws,  
21           and the impact of the proposed rule on the banking  
22           industry.

23           “(5) NEW HYBRID PRODUCT.—For purposes of  
24           this subsection, the term ‘new hybrid product’ means  
25           a product that—

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

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

7 **SEC. 206. DEFINITION OF EXCEPTED BANKING PRODUCT.**

8           (a) DEFINITION OF EXCEPTED BANKING PROD-  
9 UCT.—For purposes of paragraphs (4) and (5) of section  
10 3(a) of the Securities Exchange Act of 1934 (15 U.S.C.  
11 78c(a) (4), (5)), the term “excepted banking product”  
12 means—

13           (1) a deposit account, savings account, certifi-  
14           cate of deposit, or other deposit instrument issued  
15           by a bank;

16           (2) a banker’s acceptance;

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

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

21           (5) a participation in a loan which the bank or  
22           an affiliate of the bank (other than a broker or deal-  
23           er) funds, participates in, or owns that is sold—

24                   (A) to qualified investors; or

25                   (B) to other persons that—

1 (i) have the opportunity to review and  
2 assess any material information, including  
3 information regarding the borrower's cred-  
4 itworthiness; and

5 (ii) based on such factors as financial  
6 sophistication, net worth, and knowledge  
7 and experience in financial matters, have  
8 the capability to evaluate the information  
9 available, as determined under generally  
10 applicable banking standards or guidelines;

11 or

12 (6) a derivative instrument that involves or re-  
13 lates to—

14 (A) currencies, except options on cur-  
15 rencies that trade on a national securities ex-  
16 change;

17 (B) interest rates, except interest rate de-  
18 rivative instruments that—

19 (i) are based on a security or a group  
20 or index of securities (other than govern-  
21 ment securities or a group or index of gov-  
22 ernment securities);

23 (ii) provide for the delivery of one or  
24 more securities (other than government se-  
25 curities); or

1 (iii) trade on a national securities ex-  
2 change; or

3 (C) commodities, other rates, indices, or  
4 other assets, except derivative instruments  
5 that—

6 (i) are securities or that are based on  
7 a group or index of securities (other than  
8 government securities or a group or index  
9 of government securities);

10 (ii) provide for the delivery of one or  
11 more securities (other than government se-  
12 curities); or

13 (iii) trade on a national securities ex-  
14 change.

15 (b) CLASSIFICATION LIMITED.—Classification of a  
16 particular product as an excepted banking product pursu-  
17 ant to this section shall not be construed as finding or  
18 implying that such product is or is not a security for any  
19 purpose under the securities laws, or is or is not an ac-  
20 count, agreement, contract, or transaction for any purpose  
21 under the Commodity Exchange Act.

22 (c) INCORPORATED DEFINITIONS.—For purposes of  
23 this section—

24 (1) the terms “bank”, “qualified investor”, and  
25 “securities laws” have the same meanings given in

1 section 3(a) of the Securities Exchange Act of 1934,  
2 as amended by this Act; and

3 (2) the term “government securities” has the  
4 meaning given in section 3(a)(42) of such Act (as  
5 amended by this Act), and, for purposes of this sec-  
6 tion, commercial paper, bankers acceptances, and  
7 commercial bills shall be treated in the same manner  
8 as government securities.

9 **SEC. 207. ADDITIONAL DEFINITIONS.**

10 Section 3(a) of the Securities Exchange Act of 1934  
11 is amended by adding at the end the following new para-  
12 graphs:

13 “(54) DERIVATIVE INSTRUMENT.—

14 “(A) DEFINITION.—The term ‘derivative  
15 instrument’ means any individually negotiated  
16 contract, agreement, warrant, note, or option  
17 that is based, in whole or in part, on the value  
18 of, any interest in, or any quantitative measure  
19 or the occurrence of any event relating to, one  
20 or more commodities, securities, currencies, in-  
21 terest or other rates, indices, or other assets,  
22 but does not include an excepted banking prod-  
23 uct, as defined in paragraphs (1) through (5) of  
24 section 206(a) of the Financial Services Act of  
25 1999.

1           “(B) CLASSIFICATION LIMITED.—Classi-  
2           fication of a particular contract as a derivative  
3           instrument pursuant to this paragraph shall not  
4           be construed as finding or implying that such  
5           instrument is or is not a security for any pur-  
6           pose under the securities laws, or is or is not  
7           an account, agreement, contract, or transaction  
8           for any purpose under the Commodity Ex-  
9           change Act.

10          “(55) QUALIFIED INVESTOR.—

11           “(A) DEFINITION.—For purposes of this  
12           title, the term ‘qualified investor’ means—

13                   “(i) any investment company reg-  
14                   istered with the Commission under section  
15                   8 of the Investment Company Act of 1940;

16                   “(ii) any issuer eligible for an exclu-  
17                   sion from the definition of investment com-  
18                   pany pursuant to section 3(c)(7) of the In-  
19                   vestment Company Act of 1940;

20                   “(iii) any bank (as defined in para-  
21                   graph (6) of this subsection), savings asso-  
22                   ciation (as defined in section 3(b) of the  
23                   Federal Deposit Insurance Act), broker,  
24                   dealer, insurance company (as defined in  
25                   section 2(a)(13) of the Securities Act of

1 1933), or business development company  
2 (as defined in section 2(a)(48) of the In-  
3 vestment Company Act of 1940);

4 “(iv) any small business investment  
5 company licensed by the United States  
6 Small Business Administration under sec-  
7 tion 301 (c) or (d) of the Small Business  
8 Investment Act of 1958;

9 “(v) any State sponsored employee  
10 benefit plan, or any other employee benefit  
11 plan, within the meaning of the Employee  
12 Retirement Income Security Act of 1974,  
13 other than an individual retirement ac-  
14 count, if the investment decisions are made  
15 by a plan fiduciary, as defined in section  
16 3(21) of that Act, which is either a bank,  
17 savings and loan association, insurance  
18 company, or registered investment adviser;

19 “(vi) any trust whose purchases of se-  
20 curities are directed by a person described  
21 in clauses (i) through (v) of this subpara-  
22 graph;

23 “(vii) any market intermediary ex-  
24 empt under section 3(c)(2) of the Invest-  
25 ment 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-

1           fied investor’ as any other person, taking into  
2           consideration such factors as the financial so-  
3           phistication of the person, net worth, and  
4           knowledge and experience in financial mat-  
5           ters.”.

6 **SEC. 208. GOVERNMENT SECURITIES DEFINED.**

7           Section 3(a)(42) of the Securities Exchange Act of  
8 1934 (15 U.S.C. 78c(a)(42)) is amended—

9           (1) by striking “or” at the end of subparagraph  
10          (C);

11          (2) by striking the period at the end of sub-  
12          paragraph (D) and inserting “; or”; and

13          (3) by adding at the end the following new sub-  
14          paragraph:

15                 “(E) for purposes of sections 15, 15C, and  
16                 17A as applied to a bank, a qualified Canadian  
17                 government obligation as defined in section  
18                 5136 of the Revised Statutes of the United  
19                 States.”.

20 **SEC. 209. EFFECTIVE DATE.**

21           This subtitle shall take effect at the end of the 270-  
22 day period beginning on the date of the enactment of this  
23 Act.

1 **SEC. 210. RULE OF CONSTRUCTION.**

2 Nothing in this Act shall supersede, affect, or other-  
3 wise limit the scope and applicability of the Commodity  
4 Exchange Act (7 U.S.C. 1 et seq.).

5 **Subtitle B—Bank Investment**  
6 **Company Activities**

7 **SEC. 211. CUSTODY OF INVESTMENT COMPANY ASSETS BY**  
8 **AFFILIATED BANK.**

9 (a) **MANAGEMENT COMPANIES.**—Section 17(f) of the  
10 Investment Company Act of 1940 (15 U.S.C. 80a–17(f))  
11 is amended—

12 (1) by redesignating paragraphs (1), (2), and  
13 (3) as subparagraphs (A), (B), and (C), respectively;

14 (2) by striking “(f) Every registered” and in-  
15 serting the following:

16 “(f) **CUSTODY OF SECURITIES.**—

17 “(1) Every registered”;

18 (3) by redesignating the second, third, fourth,  
19 and fifth sentences of such subsection as paragraphs  
20 (2) through (5), respectively, and indenting the left  
21 margin of such paragraphs appropriately; and

22 (4) by adding at the end the following new  
23 paragraph:

24 “(6) The Commission may adopt rules and reg-  
25 ulations, and issue orders, consistent with the pro-  
26 tection of investors, prescribing the conditions under

1       which a bank, or an affiliated person of a bank, ei-  
2       ther of which is an affiliated person, promoter, orga-  
3       nizer, or sponsor of, or principal underwriter for, a  
4       registered management company may serve as custo-  
5       dian of that registered management company.”.

6       (b) UNIT INVESTMENT TRUSTS.—Section 26 of the  
7       Investment Company Act of 1940 (15 U.S.C. 80a–26) is  
8       amended—

9               (1) by redesignating subsections (b) through (e)  
10       as subsections (c) through (f), respectively; and

11              (2) by inserting after subsection (a) the fol-  
12       lowing new subsection:

13       “(b) The Commission may adopt rules and regula-  
14       tions, and issue orders, consistent with the protection of  
15       investors, prescribing the conditions under which a bank,  
16       or an affiliated person of a bank, either of which is an  
17       affiliated person of a principal underwriter for, or deposi-  
18       tor of, a registered unit investment trust, may serve as  
19       trustee or custodian under subsection (a)(1).”.

20       (c) FIDUCIARY DUTY OF CUSTODIAN.—Section 36(a)  
21       of the Investment Company Act of 1940 (15 U.S.C. 80a–  
22       35(a)) is amended—

23              (1) in paragraph (1), by striking “or” at the  
24       end;

1           (2) in paragraph (2), by striking the period at  
2           the end and inserting “; or”; and

3           (3) by inserting after paragraph (2) the fol-  
4           lowing:

5           “(3) as custodian.”.

6 **SEC. 212. LENDING TO AN AFFILIATED INVESTMENT COM-**  
7           **PANY.**

8           Section 17(a) of the Investment Company Act of  
9           1940 (15 U.S.C. 80a-17(a)) is amended—

10           (1) by striking “or” at the end of paragraph  
11           (2);

12           (2) by striking the period at the end of para-  
13           graph (3) and inserting “; or”; and

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

16           “(4) to loan money or other property to such  
17           registered company, or to any company controlled by  
18           such registered company, in contravention of such  
19           rules, regulations, or orders as the Commission may  
20           prescribe or issue consistent with the protection of  
21           investors.”.

22 **SEC. 213. INDEPENDENT DIRECTORS.**

23           (a) IN GENERAL.—Section 2(a)(19)(A) of the Invest-  
24           ment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)(A))  
25           is amended—

1           (1) by striking clause (v) and inserting the fol-  
2           lowing new clause:

3                   “(v) any person or any affiliated per-  
4                   son of a person (other than a registered in-  
5                   vestment company) that, at any time dur-  
6                   ing the 6-month period preceding the date  
7                   of the determination of whether that per-  
8                   son or affiliated person is an interested  
9                   person, has executed any portfolio trans-  
10                  actions for, engaged in any principal trans-  
11                  actions with, or distributed shares for—

12                           “(I) the investment company;

13                           “(II) any other investment com-  
14                           pany having the same investment ad-  
15                           viser as such investment company or  
16                           holding itself out to investors as a re-  
17                           lated company for purposes of invest-  
18                           ment or investor services; or

19                           “(III) any account over which the  
20                           investment company’s investment ad-  
21                           viser has brokerage placement discre-  
22                           tion,”;

23           (2) by redesignating clause (vi) as clause (vii);

24           and

1           (3) by inserting after clause (v) the following  
2 new clause:

3                   “(vi) any person or any affiliated per-  
4                   son of a person (other than a registered in-  
5                   vestment company) that, at any time dur-  
6                   ing the 6-month period preceding the date  
7                   of the determination of whether that per-  
8                   son or affiliated person is an interested  
9                   person, has loaned money or other prop-  
10                  erty to—

11                           “(I) the investment company;

12                           “(II) any other investment com-  
13                           pany having the same investment ad-  
14                           viser as such investment company or  
15                           holding itself out to investors as a re-  
16                           lated company for purposes of invest-  
17                           ment or investor services; or

18                           “(III) any account for which the  
19                           investment company’s investment ad-  
20                           viser has borrowing authority,”.

21           (b)           CONFORMING           AMENDMENT.—Section  
22 2(a)(19)(B) of the Investment Company Act of 1940 (15  
23 U.S.C. 80a-2(a)(19)(B)) is amended—

24                   (1) by striking clause (v) and inserting the fol-  
25                   lowing new clause:

1           “(v) any person or any affiliated per-  
2           son of a person (other than a registered in-  
3           vestment company) that, at any time dur-  
4           ing the 6-month period preceding the date  
5           of the determination of whether that per-  
6           son or affiliated person is an interested  
7           person, has executed any portfolio trans-  
8           actions for, engaged in any principal trans-  
9           actions with, or distributed shares for—

10                   “(I) any investment company for  
11                   which the investment adviser or prin-  
12                   cipal underwriter serves as such;

13                   “(II) any investment company  
14                   holding itself out to investors, for pur-  
15                   poses of investment or investor serv-  
16                   ices, as a company related to any in-  
17                   vestment company for which the in-  
18                   vestment adviser or principal under-  
19                   writer serves as such; or

20                   “(III) any account over which the  
21                   investment adviser has brokerage  
22                   placement discretion,”;

23           (2) by redesignating clause (vi) as clause (vii);

24           and

1           (3) by inserting after clause (v) the following  
2 new clause:

3                   “(vi) any person or any affiliated per-  
4                   son of a person (other than a registered in-  
5                   vestment company) that, at any time dur-  
6                   ing the 6-month period preceding the date  
7                   of the determination of whether that per-  
8                   son or affiliated person is an interested  
9                   person, has loaned money or other prop-  
10                  erty to—

11                           “(I) any investment company for  
12                           which the investment adviser or prin-  
13                           cipal underwriter serves as such;

14                           “(II) any investment company  
15                           holding itself out to investors, for pur-  
16                           poses of investment or investor serv-  
17                           ices, as a company related to any in-  
18                           vestment company for which the in-  
19                           vestment adviser or principal under-  
20                           writer serves as such; or

21                           “(III) any account for which the  
22                           investment adviser has borrowing au-  
23                           thority,”.

24           (c) AFFILIATION OF DIRECTORS.—Section 10(c) of  
25 the Investment Company Act of 1940 (15 U.S.C. 80a—

1 10(c)) is amended by striking “bank, except” and insert-  
2 ing “bank (together with its affiliates and subsidiaries) or  
3 any one bank holding company (together with its affiliates  
4 and subsidiaries) (as such terms are defined in section 2  
5 of the Bank Holding Company Act of 1956), except”.

6 (d) EFFECTIVE DATE.—The amendments made by  
7 this section shall take effect at the end of the 1-year period  
8 beginning on the date of enactment of this subtitle.

9 **SEC. 214. ADDITIONAL SEC DISCLOSURE AUTHORITY.**

10 Section 35(a) of the Investment Company Act of  
11 1940 (15 U.S.C. 80a–34(a)) is amended to read as fol-  
12 lows:

13 “(a) MISREPRESENTATION OF GUARANTEES.—

14 “(1) IN GENERAL.—It shall be unlawful for any  
15 person, issuing or selling any security of which a  
16 registered investment company is the issuer, to rep-  
17 resent or imply in any manner whatsoever that such  
18 security or company—

19 “(A) has been guaranteed, sponsored, rec-  
20 ommended, or approved by the United States,  
21 or any agency, instrumentality or officer of the  
22 United States;

23 “(B) has been insured by the Federal De-  
24 posit Insurance Corporation; or

1           “(C) is guaranteed by or is otherwise an  
2           obligation of any bank or insured depository in-  
3           stitution.

4           “(2) DISCLOSURES.—Any person issuing or  
5           selling the securities of a registered investment com-  
6           pany that is advised by, or sold through, a bank  
7           shall prominently disclose that an investment in the  
8           company is not insured by the Federal Deposit In-  
9           surance Corporation or any other government agen-  
10          cy. The Commission may adopt rules and regula-  
11          tions, and issue orders, consistent with the protec-  
12          tion of investors, prescribing the manner in which  
13          the disclosure under this paragraph shall be pro-  
14          vided.

15          “(3) DEFINITIONS.—The terms ‘insured deposi-  
16          tory institution’ and ‘appropriate Federal banking  
17          agency’ have the same meanings given in section 3  
18          of the Federal Deposit Insurance Act.”.

19 **SEC. 215. DEFINITION OF BROKER UNDER THE INVEST-**  
20 **MENT COMPANY ACT OF 1940.**

21          Section 2(a)(6) of the Investment Company Act of  
22          1940 (15 U.S.C. 80a-2(a)(6)) is amended to read as fol-  
23          lows:

24          “(6) The term ‘broker’ has the same meaning  
25          given in section 3 of the Securities Exchange Act of

1 1934, except that such term does not include any  
2 person solely by reason of the fact that such person  
3 is an underwriter for one or more investment compa-  
4 nies.”.

5 **SEC. 216. DEFINITION OF DEALER UNDER THE INVEST-**  
6 **MENT COMPANY ACT OF 1940.**

7 Section 2(a)(11) of the Investment Company Act of  
8 1940 (15 U.S.C. 80a-2(a)(11)) is amended to read as fol-  
9 lows:

10 “(11) The term ‘dealer’ has the same meaning  
11 given in the Securities Exchange Act of 1934, but  
12 does not include an insurance company or invest-  
13 ment company.”.

14 **SEC. 217. REMOVAL OF THE EXCLUSION FROM THE DEFINI-**  
15 **TION OF INVESTMENT ADVISER FOR BANKS**  
16 **THAT ADVISE INVESTMENT COMPANIES.**

17 (a) INVESTMENT ADVISER.—Section 202(a)(11)(A)  
18 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-  
19 2(a)(11)(A)) is amended by striking “investment com-  
20 pany” and inserting “investment company, except that the  
21 term ‘investment adviser’ includes any bank or bank hold-  
22 ing company to the extent that such bank or bank holding  
23 company serves or acts as an investment adviser to a reg-  
24 istered investment company, but if, in the case of a bank,  
25 such services or actions are performed through a sepa-

1 rately identifiable department or division, the department  
2 or division, and not the bank itself, shall be deemed to  
3 be the investment adviser”.

4 (b) SEPARATELY IDENTIFIABLE DEPARTMENT OR  
5 DIVISION.—Section 202(a) of the Investment Advisers Act  
6 of 1940 (15 U.S.C. 80b–2(a)) is amended by adding at  
7 the end the following:

8 “(26) The term ‘separately identifiable depart-  
9 ment or division’ of a bank means a unit—

10 “(A) that is under the direct supervision of  
11 an officer or officers designated by the board of  
12 directors of the bank as responsible for the day-  
13 to-day conduct of the bank’s investment adviser  
14 activities for one or more investment companies,  
15 including the supervision of all bank employees  
16 engaged in the performance of such activities;  
17 and

18 “(B) for which all of the records relating  
19 to its investment adviser activities are sepa-  
20 rately maintained in or extractable from such  
21 unit’s own facilities or the facilities of the bank,  
22 and such records are so maintained or other-  
23 wise accessible as to permit independent exam-  
24 ination and enforcement by the Commission of  
25 this Act or the Investment Company Act of

1           1940 and rules and regulations promulgated  
2           under this Act or the Investment Company Act  
3           of 1940.”.

4 **SEC. 218. DEFINITION OF BROKER UNDER THE INVEST-**  
5 **MENT ADVISERS ACT OF 1940.**

6           Section 202(a)(3) of the Investment Advisers Act of  
7 1940 (15 U.S.C. 80b-2(a)(3)) is amended to read as fol-  
8 lows:

9           “(3) The term ‘broker’ has the same meaning  
10          given in section 3 of the Securities Exchange Act of  
11          1934.”.

12 **SEC. 219. DEFINITION OF DEALER UNDER THE INVEST-**  
13 **MENT ADVISERS ACT OF 1940.**

14          Section 202(a)(7) of the Investment Advisers Act of  
15 1940 (15 U.S.C. 80b-2(a)(7)) is amended to read as fol-  
16 lows:

17          “(7) The term ‘dealer’ has the same meaning  
18          given in section 3 of the Securities Exchange Act of  
19          1934, but does not include an insurance company or  
20          investment company.”.

21 **SEC. 220. INTERAGENCY CONSULTATION.**

22          The Investment Advisers Act of 1940 (15 U.S.C.  
23 80b-1 et seq.) is amended by inserting after section 210  
24 the following new section:

1 **“SEC. 210A. CONSULTATION.**

2 “(a) EXAMINATION RESULTS AND OTHER INFORMA-  
3 TION.—

4 “(1) The appropriate Federal banking agency  
5 shall provide the Commission upon request the re-  
6 sults of any examination, reports, records, or other  
7 information to which such agency may have access  
8 with respect to the investment advisory activities—

9 “(A) of any—

10 “(i) bank holding company;

11 “(ii) bank; or

12 “(iii) separately identifiable depart-  
13 ment or division of a bank,

14 that is registered under section 203 of this title;  
15 and

16 “(B) in the case of a bank holding com-  
17 pany or bank that has a subsidiary or a sepa-  
18 rately identifiable department or division reg-  
19 istered under that section, of such bank or bank  
20 holding company.

21 “(2) The Commission shall provide to the ap-  
22 propriate Federal banking agency upon request the  
23 results of any examination, reports, records, or other  
24 information with respect to the investment advisory  
25 activities of any bank holding company, bank, or  
26 separately identifiable department or division of a

1 bank, which is registered under section 203 of this  
2 title.

3 “(b) EFFECT ON OTHER AUTHORITY.—Nothing in  
4 this section shall limit in any respect the authority of the  
5 appropriate Federal banking agency with respect to such  
6 bank holding company, bank, or department or division  
7 under any other provision of law.

8 “(c) DEFINITION.—For purposes of this section, the  
9 term ‘appropriate Federal banking agency’ shall have the  
10 same meaning given in section 3 of the Federal Deposit  
11 Insurance Act.”.

12 **SEC. 221. TREATMENT OF BANK COMMON TRUST FUNDS.**

13 (a) SECURITIES ACT OF 1933.—Section 3(a)(2) of  
14 the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is  
15 amended by striking “or any interest or participation in  
16 any common trust fund or similar fund maintained by a  
17 bank exclusively for the collective investment and reinvest-  
18 ment of assets contributed thereto by such bank in its ca-  
19 pacity as trustee, executor, administrator, or guardian”  
20 and inserting “or any interest or participation in any com-  
21 mon trust fund or similar fund that is excluded from the  
22 definition of the term ‘investment company’ under section  
23 3(c)(3) of the Investment Company Act of 1940”.

24 (b) SECURITIES EXCHANGE ACT OF 1934.—Section  
25 3(a)(12)(A)(iii) of the Securities Exchange Act of 1934

1 (15 U.S.C. 78c(a)(12)(A)(iii)) is amended to read as fol-  
2 lows:

3 “(iii) any interest or participation in any  
4 common trust fund or similar fund that is ex-  
5 cluded from the definition of the term ‘invest-  
6 ment company’ under section 3(c)(3) of the In-  
7 vestment Company Act of 1940;”.

8 (c) INVESTMENT COMPANY ACT OF 1940.—Section  
9 3(c)(3) of the Investment Company Act of 1940 (15  
10 U.S.C. 80a-3(c)(3)) is amended by inserting before the  
11 period the following: “, if—

12 “(A) such fund is employed by the bank  
13 solely as an aid to the administration of trusts,  
14 estates, or other accounts created and main-  
15 tained for a fiduciary purpose;

16 “(B) except in connection with the ordi-  
17 nary advertising of the bank’s fiduciary serv-  
18 ices, interests in such fund are not—

19 “(i) advertised; or

20 “(ii) offered for sale to the general  
21 public; and

22 “(C) fees and expenses charged by such  
23 fund are not in contravention of fiduciary prin-  
24 ciples established under applicable Federal or  
25 State law”.

1 **SEC. 222. INVESTMENT ADVISERS PROHIBITED FROM HAV-**  
2 **ING CONTROLLING INTEREST IN REG-**  
3 **ISTERED INVESTMENT COMPANY.**

4 Section 15 of the Investment Company Act of 1940  
5 (15 U.S.C. 80a-15) is amended by adding at the end the  
6 following new subsection:

7 “(g) CONTROLLING INTEREST IN INVESTMENT COM-  
8 PANY PROHIBITED.—

9 “(1) IN GENERAL.—If an investment adviser to  
10 a registered investment company, or an affiliated  
11 person of that investment adviser, holds a control-  
12 ling interest in that registered investment company  
13 in a trustee or fiduciary capacity, such person  
14 shall—

15 “(A) if it holds the shares in a trustee or  
16 fiduciary capacity with respect to any employee  
17 benefit plan subject to the Employee Retirement  
18 Income Security Act of 1974, transfer the  
19 power to vote the shares of the investment com-  
20 pany through to another person acting in a fi-  
21 duciary capacity with respect to the plan who is  
22 not an affiliated person of that investment ad-  
23 viser or any affiliated person thereof; or

24 “(B) if it holds the shares in a trustee or  
25 fiduciary capacity with respect to any person or  
26 entity other than an employee benefit plan sub-

1           ject to the Employee Retirement Income Secu-  
2           rity Act of 1974—

3                   “(i) transfer the power to vote the  
4                   shares of the investment company through  
5                   to—

6                           “(I) the beneficial owners of the  
7                           shares;

8                           “(II) another person acting in a  
9                           fiduciary capacity who is not an affili-  
10                          ated person of that investment adviser  
11                          or any affiliated person thereof; or

12                          “(III) any person authorized to  
13                          receive statements and information  
14                          with respect to the trust who is not an  
15                          affiliated person of that investment  
16                          adviser or any affiliated person there-  
17                          of;

18                          “(ii) vote the shares of the investment  
19                          company held by it in the same proportion  
20                          as shares held by all other shareholders of  
21                          the investment company; or

22                          “(iii) vote the shares of the invest-  
23                          ment company as otherwise permitted  
24                          under such rules, regulations, or orders as

1           the Commission may prescribe or issue  
2           consistent with the protection of investors.

3           “(2) EXEMPTION.—Paragraph (1) shall not  
4           apply to any investment adviser to a registered in-  
5           vestment company, or any affiliated person of that  
6           investment adviser, that holds shares of the invest-  
7           ment company in a trustee or fiduciary capacity if  
8           that registered investment company consists solely of  
9           assets held in such capacities.

10           “(3) SAFE HARBOR.—No investment adviser to  
11           a registered investment company or any affiliated  
12           person of such investment adviser shall be deemed to  
13           have acted unlawfully or to have breached a fidu-  
14           ciary duty under State or Federal law solely by rea-  
15           son of acting in accordance with clause (i), (ii), or  
16           (iii) of paragraph (1)(B).”.

17 **SEC. 223. STATUTORY DISQUALIFICATION FOR BANK**  
18 **WRONGDOING.**

19           Section 9(a) of the Investment Company Act of 1940  
20 (15 U.S.C. 80a-9(a)) is amended in paragraphs (1) and  
21 (2) by striking “securities dealer, transfer agent,” and in-  
22 serting “securities dealer, bank, transfer agent,”.

23 **SEC. 224. CONFORMING CHANGE IN DEFINITION.**

24           Section 2(a)(5) of the Investment Company Act of  
25 1940 (15 U.S.C. 80a-2(a)(5)) is amended by striking

1 “(A) a banking institution organized under the laws of the  
2 United States” and inserting “(A) a depository institution  
3 (as defined in section 3 of the Federal Deposit Insurance  
4 Act) or a branch or agency of a foreign bank (as such  
5 terms are defined in section 1(b) of the International  
6 Banking Act of 1978)”.

7 **SEC. 225. CONFORMING AMENDMENT.**

8 Section 202 of the Investment Advisers Act of 1940  
9 (15 U.S.C. 80b-2) is amended by adding at the end the  
10 following new subsection:

11 “(c) CONSIDERATION OF PROMOTION OF EFFI-  
12 CIENCY, COMPETITION, AND CAPITAL FORMATION.—  
13 Whenever pursuant to this title the Commission is en-  
14 gaged in rulemaking and is required to consider or deter-  
15 mine whether an action is necessary or appropriate in the  
16 public interest, the Commission shall also consider, in ad-  
17 dition to the protection of investors, whether the action  
18 will promote efficiency, competition, and capital forma-  
19 tion.”.

20 **SEC. 226. CHURCH PLAN EXCLUSION.**

21 Section 3(c)(14) of the Investment Company Act of  
22 1940 (15 U.S.C. 80a-3(c)(14)) is amended—

23 (1) by redesignating clauses (i) and (ii) of sub-  
24 paragraph (B) as subclauses (I) and (II), respec-  
25 tively;

1           (2) by redesignating subparagraphs (A) and  
2           (B) as clauses (i) and (ii), respectively;

3           (3) by inserting “(A)” after “(14)”; and

4           (4) by adding at the end the following new sub-  
5           paragraph:

6           “(B) If a registered investment company would  
7           be excluded from the definition of investment com-  
8           pany under this subsection but for the fact that  
9           some of the company’s assets do not satisfy the con-  
10          dition of subparagraph (A)(ii) of this paragraph,  
11          then any investment adviser to the company or affili-  
12          ated person of such investment adviser shall not be  
13          subject to the requirements of section 15(g)(1)(B)  
14          with respect to shares of the investment company.”.

15 **SEC. 227. EFFECTIVE DATE.**

16          This subtitle shall take effect 90 days after the date  
17          of the enactment of this Act.

1 **Subtitle C—Securities and Ex-**  
2 **change Commission Supervision**  
3 **of Investment Bank Holding**  
4 **Companies**

5 **SEC. 231. SUPERVISION OF INVESTMENT BANK HOLDING**  
6 **COMPANIES BY THE SECURITIES AND EX-**  
7 **CHANGE COMMISSION.**

8 (a) AMENDMENT.—Section 17 of the Securities Ex-  
9 change Act of 1934 (15 U.S.C. 78q) is amended—

10 (1) by redesignating subsection (i) as subsection  
11 (k); and

12 (2) by inserting after subsection (h) the fol-  
13 lowing new subsection:

14 “(i) INVESTMENT BANK HOLDING COMPANIES.—

15 “(1) ELECTIVE SUPERVISION OF AN INVEST-  
16 MENT BANK HOLDING COMPANY NOT HAVING A  
17 BANK OR SAVINGS ASSOCIATION AFFILIATE.—

18 “(A) IN GENERAL.—An investment bank  
19 holding company that is not—

20 “(i) an affiliate of a wholesale finan-  
21 cial institution, an insured bank (other  
22 than an institution described in subpara-  
23 graph (D), (F), or (G) of section 2(c)(2),  
24 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 one year after receipt by the Commis-

1 sion, or such shorter or longer period as the  
2 Commission deems necessary or appropriate to  
3 ensure effective supervision of the material  
4 risks to the supervised investment bank holding  
5 company and to the affiliated broker or dealer,  
6 or to prevent evasion of the purposes of this  
7 section.

8 “(B) DISCONTINUATION OF COMMISSION  
9 SUPERVISION.—If the Commission finds that  
10 any supervised investment bank holding com-  
11 pany that is supervised pursuant to paragraph  
12 (1) is no longer in existence or has ceased to be  
13 an investment bank holding company, or if the  
14 Commission finds that continued supervision of  
15 such a supervised investment bank holding com-  
16 pany is not consistent with the purposes of this  
17 section, the Commission may discontinue the  
18 supervision pursuant to a rule or order, if any,  
19 promulgated by the Commission under this sec-  
20 tion.

21 “(3) SUPERVISION OF INVESTMENT BANK  
22 HOLDING COMPANIES.—

23 “(A) RECORDKEEPING AND REPORTING.—

24 “(i) IN GENERAL.—Every supervised  
25 investment bank holding company and

1 each affiliate thereof shall make and keep  
2 for prescribed periods such records, furnish  
3 copies thereof, and make such reports, as  
4 the Commission may require by rule, in  
5 order to keep the Commission informed as  
6 to—

7 “(I) the company’s or affiliate’s  
8 activities, financial condition, policies,  
9 systems for monitoring and control-  
10 ling financial and operational risks,  
11 and transactions and relationships be-  
12 tween any broker or dealer affiliate of  
13 the supervised investment bank hold-  
14 ing company; and

15 “(II) the extent to which the  
16 company or affiliate has complied with  
17 the provisions of this Act and regula-  
18 tions prescribed and orders issued  
19 under this Act.

20 “(ii) FORM AND CONTENTS.—Such  
21 records and reports shall be prepared in  
22 such form and according to such specifica-  
23 tions (including certification by an inde-  
24 pendent public accountant), as the Com-  
25 mission 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

1 investment bank holding company or its af-  
2 filiates have been required to provide to  
3 another appropriate regulatory agency or  
4 self-regulatory organization.

5 “(ii) AVAILABILITY.—A supervised in-  
6 vestment bank holding company or an af-  
7 filiate of such company shall provide to the  
8 Commission, at the request of the Commis-  
9 sion, any report referred to in clause (i).

10 “(C) EXAMINATION AUTHORITY.—

11 “(i) FOCUS OF EXAMINATION AU-  
12 THORITY.—The Commission may make ex-  
13 aminations of any supervised investment  
14 bank holding company and any affiliate of  
15 such company in order to—

16 “(I) inform the Commission  
17 regarding—

18 “(aa) the nature of the oper-  
19 ations and financial condition of  
20 the supervised investment bank  
21 holding company and its affili-  
22 ates;

23 “(bb) the financial and oper-  
24 ational risks within the super-  
25 vised investment bank holding

1 company that may affect any  
2 broker or dealer controlled by  
3 such supervised investment bank  
4 holding company; and

5 “(cc) the systems of the su-  
6 pervised investment bank holding  
7 company and its affiliates for  
8 monitoring and controlling those  
9 risks; and

10 “(II) monitor compliance with  
11 the provisions of this subsection, pro-  
12 visions governing transactions and re-  
13 lationships between any broker or  
14 dealer affiliated with the supervised  
15 investment bank holding company and  
16 any of the company’s other affiliates,  
17 and applicable provisions of sub-  
18 chapter II of chapter 53, title 31,  
19 United States Code (commonly re-  
20 ferred to as the ‘Bank Secrecy Act’)  
21 and regulations thereunder.

22 “(ii) RESTRICTED FOCUS OF EXAMI-  
23 NATIONS.—The Commission shall limit the  
24 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

1 (other than a broker or dealer) that is in  
2 compliance with applicable capital require-  
3 ments of another Federal regulatory au-  
4 thority or State insurance authority.

5 “(iv) APPROPRIATE EXCLUSIONS.—

6 The Commission shall take full account of  
7 the applicable capital requirements of an-  
8 other Federal regulatory authority or State  
9 insurance regulator.

10 “(C) INTERNAL RISK MANAGEMENT MOD-

11 ELS.—The Commission may incorporate inter-  
12 nal risk management models into its capital  
13 adequacy rules for supervised investment bank  
14 holding companies.

15 “(5) FUNCTIONAL REGULATION OF BANKING

16 AND INSURANCE ACTIVITIES OF SUPERVISED IN-  
17 VESTMENT BANK HOLDING COMPANIES.—The Com-  
18 mission shall defer to—

19 “(A) the appropriate regulatory agency  
20 with regard to all interpretations of, and the  
21 enforcement of, applicable banking laws relating  
22 to the activities, conduct, ownership, and oper-  
23 ations of banks, and institutions described in  
24 subparagraph (D), (F), and (G) of section

1           2(e)(2), or held under section 4(f), of the Bank  
2           Holding Company Act of 1956; and

3           “(B) the appropriate State insurance regu-  
4           lators with regard to all interpretations of, and  
5           the enforcement of, applicable State insurance  
6           laws relating to the activities, conduct, and op-  
7           erations of insurance companies and insurance  
8           agents.

9           “(6) DEFINITIONS.—For purposes of this sub-  
10          section:

11           “(A) The term ‘investment bank holding  
12          company’ means—

13           “(i) any person other than a natural  
14           person that owns or controls one or more  
15           brokers or dealers; and

16           “(ii) the associated persons of the in-  
17           vestment bank holding company.

18           “(B) The term ‘supervised investment  
19          bank holding company’ means any investment  
20          bank holding company that is supervised by the  
21          Commission pursuant to this subsection.

22           “(C) The terms ‘affiliate’, ‘bank’, ‘bank  
23          holding company’, ‘company’, ‘control’, ‘savings  
24          association’, and ‘wholesale financial institution’  
25          have the same meanings given in section 2 of

1 the Bank Holding Company Act of 1956 (12  
2 U.S.C. 1841).

3 “(D) The term ‘insured bank’ has the  
4 same meaning given in section 3 of the Federal  
5 Deposit Insurance Act.

6 “(E) The term ‘foreign bank’ has the same  
7 meaning given in section 1(b)(7) of the Inter-  
8 national Banking Act of 1978.

9 “(F) The terms ‘person associated with an  
10 investment bank holding company’ and ‘associ-  
11 ated person of an investment bank holding com-  
12 pany’ mean any person directly or indirectly  
13 controlling, controlled by, or under common  
14 control with, an investment bank holding com-  
15 pany.”.

16 “(j) AUTHORITY TO LIMIT DISCLOSURE OF INFOR-  
17 MATION.—Notwithstanding any other provision of law, the  
18 Commission shall not be compelled to disclose any infor-  
19 mation required to be reported under subsection (h) or  
20 (i) or any information supplied to the Commission by any  
21 domestic or foreign regulatory agency that relates to the  
22 financial or operational condition of any associated person  
23 of a broker or dealer, investment bank holding company,  
24 or any affiliate of an investment bank holding company.  
25 Nothing in this subsection shall authorize the Commission

1 to withhold information from Congress, or prevent the  
2 Commission from complying with a request for informa-  
3 tion from any other Federal department or agency or any  
4 self-regulatory organization requesting the information for  
5 purposes within the scope of its jurisdiction, or complying  
6 with an order of a court of the United States in an action  
7 brought by the United States or the Commission. For pur-  
8 poses of section 552 of title 5, United States Code, this  
9 subsection shall be considered a statute described in sub-  
10 section (b)(3)(B) of such section 552. In prescribing regu-  
11 lations to carry out the requirements of this subsection,  
12 the Commission shall designate information described in  
13 or obtained pursuant to subparagraphs (A), (B), and (C)  
14 of subsection (i)(5) as confidential information for pur-  
15 poses of section 24(b)(2) of this title.”.

16 (b) CONFORMING AMENDMENTS.—

17 (1) Section 3(a)(34) of the Securities Exchange  
18 Act of 1934 (15 U.S.C. 78c(a)(34)) is amended by  
19 adding at the end the following new subparagraph:

20 “(H) When used with respect to an institu-  
21 tion described in subparagraph (D), (F), or (G)  
22 of section 2(c)(2), or held under section 4(f), of  
23 the Bank Holding Company Act of 1956—

24 “(i) the Comptroller of the Currency,  
25 in the case of a national bank or a bank

1 in the District of Columbia examined by  
2 the Comptroller of the Currency;

3 “(ii) the Board of Governors of the  
4 Federal Reserve System, in the case of a  
5 State member bank of the Federal Reserve  
6 System or any corporation chartered under  
7 section 25A of the Federal Reserve Act;

8 “(iii) the Federal Deposit Insurance  
9 Corporation, in the case of any other bank  
10 the deposits of which are insured in ac-  
11 cordance with the Federal Deposit Insur-  
12 ance Act; or

13 “(iv) the Commission in the case of all  
14 other such institutions.”.

15 (2) Section 1112(e) of the Right to Financial  
16 Privacy Act of 1978 (12 U.S.C. 3412(e)) is  
17 amended—

18 (A) by striking “this title” and inserting  
19 “law”; and

20 (B) by inserting “, examination reports”  
21 after “financial records”.

1 **Subtitle D—Disclosure of Customer**  
2 **Costs of Acquiring Financial**  
3 **Products**

4 **SEC. 241. IMPROVED AND CONSISTENT DISCLOSURE.**

5 (a) REVISED REGULATIONS REQUIRED.—Within one  
6 year after the date of enactment of this Act, each Federal  
7 financial regulatory authority shall prescribe rules, or revi-  
8 sions to its rules, to improve the accuracy, simplicity, and  
9 completeness, and to make more consistent, the disclosure  
10 of information by persons subject to the jurisdiction of  
11 such regulatory authority concerning any commissions,  
12 fees, or other costs incurred by customers in the acquisi-  
13 tion of financial products.

14 (b) CONSULTATION.—In prescribing rules and revi-  
15 sions under subsection (a), the Federal financial regu-  
16 latory authorities shall consult with each other and with  
17 appropriate State financial regulatory authorities.

18 (c) CONSIDERATION OF EXISTING DISCLOSURES.—  
19 In prescribing rules and revisions under subsection (a),  
20 the Federal financial regulatory authorities shall consider  
21 the sufficiency and appropriateness of then existing laws  
22 and rules applicable to persons subject to their jurisdic-  
23 tion, and may prescribe exemptions from the rules and re-  
24 visions required by subsection (a) to the extent appro-

1 piate in light of the objective of this section to increase  
2 the consistency of disclosure practices.

3 (d) ENFORCEMENT.—Any rule prescribed by a Fed-  
4 eral financial regulatory authority pursuant to this section  
5 shall, for purposes of enforcement, be treated as a rule  
6 prescribed by such regulatory authority pursuant to the  
7 statute establishing such regulatory authority’s jurisdic-  
8 tion over the persons to whom such rule applies.

9 (e) DEFINITION.—As used in this section, the term  
10 “Federal financial regulatory authority” means the Board  
11 of Governors of the Federal Reserve System, the Securi-  
12 ties and Exchange Commission, the Comptroller of the  
13 Currency, the Federal Deposit Insurance Corporation, the  
14 Commodity Futures Trading Commission, and any self-  
15 regulatory organization under the supervision of any of  
16 the foregoing.

17 **TITLE III—INSURANCE**  
18 **Subtitle A—State Regulation of**  
19 **Insurance**

20 **SEC. 301. STATE REGULATION OF THE BUSINESS OF INSUR-**  
21 **ANCE.**

22 The Act entitled “An Act to express the intent of the  
23 Congress with reference to the regulation of the business  
24 of insurance” and approved March 9, 1945 (15 U.S.C.

1 1011 et seq.), commonly referred to as the “McCarran-  
2 Ferguson Act” remains the law of the United States.

3 **SEC. 302. MANDATORY INSURANCE LICENSING REQUIRE-**  
4 **MENTS.**

5 No person shall engage in the business of insurance  
6 in a State as principal or agent unless such person is li-  
7 censed as required by the appropriate insurance regulator  
8 of such State in accordance with the relevant State insur-  
9 ance law, subject to section 104.

10 **SEC. 303. FUNCTIONAL REGULATION OF INSURANCE.**

11 The insurance activities of any person (including a  
12 national bank exercising its power to act as agent under  
13 the 11th undesignated paragraph of section 13 of the Fed-  
14 eral Reserve Act) shall be functionally regulated by the  
15 States, subject to section 104.

16 **SEC. 304. INSURANCE UNDERWRITING IN NATIONAL**  
17 **BANKS.**

18 (a) IN GENERAL.—Except as provided in section 305,  
19 a national bank and the subsidiaries of a national bank  
20 may not provide insurance in a State as principal except  
21 that this prohibition shall not apply to authorized prod-  
22 ucts.

23 (b) AUTHORIZED PRODUCTS.—For the purposes of  
24 this section, a product is authorized if—

1           (1) as of January 1, 1999, the Comptroller of  
2 the Currency had determined in writing that na-  
3 tional banks may provide such product as principal,  
4 or national banks were in fact lawfully providing  
5 such product as principal;

6           (2) no court of relevant jurisdiction had, by  
7 final judgment, overturned a determination of the  
8 Comptroller of the Currency that national banks  
9 may provide such product as principal; and

10          (3) the product is not title insurance, or an an-  
11 nuity contract the income of which is subject to tax  
12 treatment under section 72 of the Internal Revenue  
13 Code of 1986.

14          (c) DEFINITION.—For purposes of this section, the  
15 term “insurance” means—

16           (1) any product regulated as insurance as of  
17 January 1, 1999, in accordance with the relevant  
18 State insurance law, in the State in which the prod-  
19 uct is provided;

20           (2) any product first offered after January 1,  
21 1999, which—

22           (A) a State insurance regulator determines  
23 shall be regulated as insurance in the State in  
24 which the product is provided because the prod-  
25 uct insures, guarantees, or indemnifies against

1 liability, loss of life, loss of health, or loss  
2 through damage to or destruction of property,  
3 including, but not limited to, surety bonds, life  
4 insurance, health insurance, title insurance, and  
5 property and casualty insurance (such as pri-  
6 vate passenger or commercial automobile,  
7 homeowners, mortgage, commercial multiperil,  
8 general liability, professional liability, workers'  
9 compensation, fire and allied lines, farm owners  
10 multiperil, aircraft, fidelity, surety, medical  
11 malpractice, ocean marine, inland marine, and  
12 boiler and machinery insurance); and

13 (B) is not a product or service of a bank  
14 that is—

15 (i) a deposit product;

16 (ii) a loan, discount, letter of credit,  
17 or other extension of credit;

18 (iii) a trust or other fiduciary service;

19 (iv) a qualified financial contract (as  
20 defined in or determined pursuant to sec-  
21 tion 11(e)(8)(D)(i) of the Federal Deposit  
22 Insurance Act); or

23 (v) a financial guaranty, except that  
24 this subparagraph (B) shall not apply to a  
25 product that includes an insurance compo-

1                    ment such that if the product is offered or  
2                    proposed to be offered by the bank as  
3                    principal—

4                               (I) it would be treated as a life  
5                               insurance contract under section 7702  
6                               of the Internal Revenue Code of 1986;  
7                               or

8                               (II) in the event that the product  
9                               is not a letter of credit or other simi-  
10                              lar extension of credit, a qualified fi-  
11                              nancial contract, or a financial guar-  
12                              anty, it would qualify for treatment  
13                              for losses incurred with respect to  
14                              such product under section 832(b)(5)  
15                              of the Internal Revenue Code of 1986,  
16                              if the bank were subject to tax as an  
17                              insurance company under section 831  
18                              of that Code; or

19                              (3) any annuity contract, the income on which  
20                              is subject to tax treatment under section 72 of the  
21                              Internal Revenue Code of 1986.

1 **SEC. 305. TITLE INSURANCE ACTIVITIES OF NATIONAL**  
2 **BANKS AND THEIR AFFILIATES.**

3 (a) GENERAL PROHIBITION.—No national bank, and  
4 no subsidiary of a national bank, may engage in any activ-  
5 ity involving the underwriting or sale of title insurance.

6 (b) NONDISCRIMINATION PARITY EXCEPTION.—

7 (1) IN GENERAL.—Notwithstanding any other  
8 provision of law (including section 104 of this Act),  
9 in the case of any State in which banks organized  
10 under the laws of such State are authorized to sell  
11 title insurance as agency, a national bank and a sub-  
12 sidiary of a national bank may sell title insurance as  
13 agent in such State, but only in the same manner,  
14 to the same extent, and under the same restrictions  
15 as such State banks are authorized to sell title in-  
16 surance as agent in such State.

17 (2) COORDINATION WITH “WILDCARD” PROVI-  
18 SION.—A State law which authorizes State banks to  
19 engage in any activities in such State in which a na-  
20 tional bank may engage shall not be treated as a  
21 statute which authorizes State banks to sell title in-  
22 surance as agent, for purposes of paragraph (1).

23 (c) GRANDFATHERING WITH CONSISTENT REGULA-  
24 TION.—

25 (1) IN GENERAL.—Except as provided in para-  
26 graphs (2) and (3) and notwithstanding subsections

1 (a) and (b), a national bank, and a subsidiary of a  
2 national bank, may conduct title insurance activities  
3 which such national bank or subsidiary was actively  
4 and lawfully conducting before the date of the enact-  
5 ment of this Act.

6 (2) INSURANCE AFFILIATE.—In the case of a  
7 national bank which has an affiliate which provides  
8 insurance as principal and is not a subsidiary of the  
9 bank, the national bank and any subsidiary of the  
10 national bank may not engage in the underwriting of  
11 title insurance pursuant to paragraph (1).

12 (3) INSURANCE SUBSIDIARY.—In the case of a  
13 national bank which has a subsidiary which provides  
14 insurance as principal and has no affiliate other  
15 than a subsidiary which provides insurance as prin-  
16 cipal, the national bank may not directly engage in  
17 any activity involving the underwriting of title insur-  
18 ance.

19 (d) “AFFILIATE” AND “SUBSIDIARY” DEFINED.—  
20 For purposes of this section, the terms “affiliate” and  
21 “subsidiary” have the same meanings as in section 2 of  
22 the Bank Holding Company Act of 1956.

23 (e) RULE OF CONSTRUCTION.—No provision of this  
24 Act or any other Federal law shall be construed as super-  
25 seding or affecting a State law which was in effect before

1 the date of the enactment of this Act and which prohibits  
2 title insurance from being offered, provided, or sold in  
3 such State, or from being underwritten with respect to  
4 real property in such State, by any person whatsoever.

5 **SEC. 306. EXPEDITED AND EQUALIZED DISPUTE RESOLU-**  
6 **TION FOR FEDERAL REGULATORS.**

7 (a) **FILING IN COURT OF APPEALS.**—In the case of  
8 a regulatory conflict between a State insurance regulator  
9 and a Federal regulator as to whether any product is or  
10 is not insurance, as defined in section 304(e) of this Act,  
11 or whether a State statute, regulation, order, or interpre-  
12 tation regarding any insurance sales or solicitation activity  
13 is properly treated as preempted under Federal law, either  
14 regulator may seek expedited judicial review of such deter-  
15 mination by the United States Court of Appeals for the  
16 circuit in which the State is located or in the United  
17 States Court of Appeals for the District of Columbia Cir-  
18 cuit by filing a petition for review in such court.

19 (b) **EXPEDITED REVIEW.**—The United States Court  
20 of Appeals in which a petition for review is filed in accord-  
21 ance with subsection (a) shall complete all action on such  
22 petition, including rendering a judgment, before the end  
23 of the 60-day period beginning on the date on which such  
24 petition is filed, unless all parties to such proceeding agree  
25 to any extension of such period.

1           (c) SUPREME COURT REVIEW.—Any request for cer-  
2   tiorari to the Supreme Court of the United States of any  
3   judgment of a United States Court of Appeals with respect  
4   to a petition for review under this section shall be filed  
5   with the Supreme Court of the United States as soon as  
6   practicable after such judgment is issued.

7           (d) STATUTE OF LIMITATION.—No petition may be  
8   filed under this section challenging an order, ruling, deter-  
9   mination, or other action of a Federal regulator or State  
10  insurance regulator after the later of—

11           (1) the end of the 12-month period beginning  
12   on the date on which the first public notice is made  
13   of such order, ruling, determination or other action  
14   in its final form; or

15           (2) the end of the 6-month period beginning on  
16   the date on which such order, ruling, determination,  
17   or other action takes effect.

18           (e) STANDARD OF REVIEW.—The court shall decide  
19   a petition filed under this section based on its review on  
20   the merits of all questions presented under State and Fed-  
21   eral law, including the nature of the product or activity  
22   and the history and purpose of its regulation under State  
23   and Federal law, without unequal deference.

1 **SEC. 307. CONSUMER PROTECTION REGULATIONS.**

2 The Federal Deposit Insurance Act (12 U.S.C. 1811  
3 et seq.) is amended by inserting after section 46 (as added  
4 by section 122(b) of this Act) the following new section:

5 **“SEC. 47. CONSUMER PROTECTION REGULATIONS.**

6 **“(a) REGULATIONS REQUIRED.—**

7 **“(1) IN GENERAL.—**The Federal banking agen-  
8 cies shall prescribe and publish in final form, before  
9 the end of the 1-year period beginning on the date  
10 of the enactment of the Financial Services Act of  
11 1999, consumer protection regulations (which the  
12 agencies jointly determine to be appropriate) that—

13 **“(A)** apply to retail sales practices, solici-  
14 tations, advertising, or offers of any insurance  
15 product by any insured depository institution or  
16 wholesale financial institution or any person  
17 who is engaged in such activities at an office of  
18 the institution or on behalf of the institution;  
19 and

20 **“(B)** are consistent with the requirements  
21 of this Act and provide such additional protec-  
22 tions for consumers to whom such sales, solici-  
23 tations, advertising, or offers are directed as  
24 the agency determines to be appropriate.

25 **“(2) APPLICABILITY TO SUBSIDIARIES.—**The  
26 regulations prescribed pursuant to paragraph (1)

1 shall extend such protections to any subsidiaries of  
2 an insured depository institution, as deemed appro-  
3 priate by the regulators referred to in paragraph (3),  
4 where such extension is determined to be necessary  
5 to ensure the consumer protections provided by this  
6 section.

7 “(3) CONSULTATION AND JOINT REGULA-  
8 TIONS.—The Federal banking agencies shall consult  
9 with each other and prescribe joint regulations pur-  
10 suant to paragraph (1), after consultation with the  
11 State insurance regulators, as appropriate.

12 “(b) SALES PRACTICES.—The regulations prescribed  
13 pursuant to subsection (a) shall include anticoercion rules  
14 applicable to the sale of insurance products which prohibit  
15 an insured depository institution from engaging in any  
16 practice that would lead a consumer to believe an exten-  
17 sion of credit, in violation of section 106(b) of the Bank  
18 Holding Company Act Amendments of 1970, is condi-  
19 tional upon—

20 “(1) the purchase of an insurance product from  
21 the institution or any of its affiliates; or

22 “(2) an agreement by the consumer not to ob-  
23 tain, or a prohibition on the consumer from obtain-  
24 ing, an insurance product from an unaffiliated enti-  
25 ty.

1       “(c) DISCLOSURES AND ADVERTISING.—The regula-  
2 tions prescribed pursuant to subsection (a) shall include  
3 the following provisions relating to disclosures and adver-  
4 tising in connection with the initial purchase of an insur-  
5 ance product:

6               “(1) DISCLOSURES.—

7                       “(A) IN GENERAL.—Requirements that the  
8 following disclosures be made orally and in writ-  
9 ing before the completion of the initial sale and,  
10 in the case of clause (iv), at the time of applica-  
11 tion for an extension of credit:

12                               “(i) UNINSURED STATUS.—As appro-  
13 priate, the product is not insured by the  
14 Federal Deposit Insurance Corporation,  
15 the United States Government, or the in-  
16 sured depository institution.

17                               “(ii) INVESTMENT RISK.—In the case  
18 of a variable annuity or other insurance  
19 product which involves an investment risk,  
20 that there is an investment risk associated  
21 with the product, including possible loss of  
22 value.

23                               “(iv) COERCION.—The approval of an  
24 extension of credit may not be conditioned  
25 on—

1           “(I) the purchase of an insurance  
2           product from the institution in which  
3           the application for credit is pending or  
4           any of its affiliates or subsidiaries; or

5           “(II) an agreement by the con-  
6           sumer not to obtain, or a prohibition  
7           on the consumer from obtaining, an  
8           insurance product from an unaffili-  
9           ated entity.

10           “(B) MAKING DISCLOSURE READILY UN-  
11           DERSTANDABLE.—Regulations prescribed under  
12           subparagraph (A) shall encourage the use of  
13           disclosure that is conspicuous, simple, direct,  
14           and readily understandable, such as the fol-  
15           lowing:

16                   “(i) ‘NOT FDIC-INSURED’.

17                   “(ii) ‘NOT GUARANTEED BY THE  
18                   BANK’.

19                   “(iii) ‘MAY GO DOWN IN VALUE’.

20                   “(iv) ‘NOT INSURED BY ANY  
21                   GOVERNMENT AGENCY’.

22           “(C) ADJUSTMENTS FOR ALTERNATIVE  
23           METHODS OF PURCHASE.—In prescribing the  
24           requirements under subparagraphs (A) and  
25           (D), necessary adjustments shall be made for

1 purchase in person, by telephone, or by elec-  
2 tronic media to provide for the most appro-  
3 priate and complete form of disclosure and ac-  
4 knowledgments.

5 “(D) CONSUMER ACKNOWLEDGMENT.—A  
6 requirement that an insured depository institu-  
7 tion shall require any person selling an insur-  
8 ance product at any office of, or on behalf of,  
9 the institution to obtain, at the time a con-  
10 sumer receives the disclosures required under  
11 this paragraph or at the time of the initial pur-  
12 chase by the consumer of such product, an ac-  
13 knowledgment by such consumer of the receipt  
14 of the disclosure required under this subsection  
15 with respect to such product.

16 “(2) PROHIBITION ON MISREPRESENTA-  
17 TIONS.—A prohibition on any practice, or any adver-  
18 tising, at any office of, or on behalf of, the insured  
19 depository institution, or any subsidiary as appro-  
20 priate, which could mislead any person or otherwise  
21 cause a reasonable person to reach an erroneous be-  
22 lief with respect to—

23 “(A) the uninsured nature of any insur-  
24 ance product sold, or offered for sale, by the in-  
25 stitution or any subsidiary of the institution; or

1           “(B) in the case of a variable annuity or  
2           other insurance product that involves an invest-  
3           ment risk, the investment risk associated with  
4           any such product.

5           “(d) SEPARATION OF BANKING AND NONBANKING  
6   ACTIVITIES.—

7           “(1) REGULATIONS REQUIRED.—The regula-  
8           tions prescribed pursuant to subsection (a) shall in-  
9           clude such provisions as the Federal banking agen-  
10          cies consider appropriate to ensure that the routine  
11          acceptance of deposits is kept, to the extent prac-  
12          ticable, physically segregated from insurance product  
13          activity.

14          “(2) REQUIREMENTS.—Regulations prescribed  
15          pursuant to paragraph (1) shall include the fol-  
16          lowing:

17                 “(A) SEPARATE SETTING.—A clear delin-  
18                 eation of the setting in which, and the cir-  
19                 cumstances under which, transactions involving  
20                 insurance products should be conducted in a lo-  
21                 cation physically segregated from an area where  
22                 retail deposits are routinely accepted.

23                 “(B) REFERRALS.—Standards which per-  
24                 mit any person accepting deposits from the  
25                 public in an area where such transactions are

1 routinely conducted in an insured depository in-  
2 stitution to refer a customer who seeks to pur-  
3 chase any insurance product to a qualified per-  
4 son who sells such product, only if the person  
5 making the referral receives no more than a  
6 one-time nominal fee of a fixed dollar amount  
7 for each referral that does not depend on  
8 whether the referral results in a transaction.

9 “(C) QUALIFICATION AND LICENSING RE-  
10 QUIREMENTS.—Standards prohibiting any in-  
11 sured depository institution from permitting  
12 any person to sell or offer for sale any insur-  
13 ance product in any part of any office of the in-  
14 stitution, or on behalf of the institution, unless  
15 such person is appropriately qualified and li-  
16 censed.

17 “(e) CONSUMER GRIEVANCE PROCESS.—The Federal  
18 banking agencies shall jointly establish a consumer com-  
19 plaint mechanism, for receiving and expeditiously address-  
20 ing consumer complaints alleging a violation of regulations  
21 issued under the section, which shall—

22 “(1) establish a group within each regulatory  
23 agency to receive such complaints;

24 “(2) develop procedures for investigating such  
25 complaints;

1           “(3) develop procedures for informing con-  
2           sumers of rights they may have in connection with  
3           such complaints; and

4           “(4) develop procedures for addressing concerns  
5           raised by such complaints, as appropriate, including  
6           procedures for the recovery of losses to the extent  
7           appropriate.

8           “(f) EFFECT ON OTHER AUTHORITY.—

9           “(1) IN GENERAL.—No provision of this section  
10          shall be construed as granting, limiting, or otherwise  
11          affecting—

12                 “(A) any authority of the Securities and  
13                 Exchange Commission, any self-regulatory or-  
14                 ganization, the Municipal Securities Rule-  
15                 making Board, or the Secretary of the Treasury  
16                 under any Federal securities law; or

17                 “(B) except as provided in paragraph (2),  
18                 any authority of any State insurance commis-  
19                 sioner or other State authority under any State  
20                 law.

21           “(2) COORDINATION WITH STATE LAW.—

22                 “(A) IN GENERAL.—Except as provided in  
23                 subparagraph (B), regulations prescribed by a  
24                 Federal banking agency under this section shall  
25                 not apply to retail sales, solicitations, adver-

1           tising, or offers of any insurance product by  
2           any insured depository institution or wholesale  
3           financial institution or to any person who is en-  
4           gaged in such activities at an office of such in-  
5           stitution or on behalf of the institution, in a  
6           State where the State has in effect statutes,  
7           regulations, orders, or interpretations, that are  
8           inconsistent with or contrary to the regulations  
9           prescribed by the Federal banking agencies.

10           “(B) PREEMPTION.—If, with respect to  
11           any provision of the regulations prescribed  
12           under this section, the Board of Governors of  
13           the Federal Reserve System, the Comptroller of  
14           the Currency, and the Board of Directors of the  
15           Federal Deposit Insurance Corporation deter-  
16           mine jointly that the protection afforded by  
17           such provision for consumers is greater than  
18           the protection provided by a comparable provi-  
19           sion of the statutes, regulations, orders, or in-  
20           terpretations referred to in subparagraph (A) of  
21           any State, such provision of the regulations pre-  
22           scribed under this section shall supersede the  
23           comparable provision of such State statute, reg-  
24           ulation, order, or interpretation.

1       “(h) INSURANCE PRODUCT DEFINED.—For purposes  
2 of this section, the term ‘insurance product’ includes an  
3 annuity contract the income of which is subject to tax  
4 treatment under section 72 of the Internal Revenue Code  
5 of 1986.”.

6 **SEC. 308. CERTAIN STATE AFFILIATION LAWS PREEMPTED**  
7                   **FOR INSURANCE COMPANIES AND AFFILI-**  
8                   **ATES.**

9       Except as provided in section 104(a)(2), no State  
10 may, by law, regulation, order, interpretation, or  
11 otherwise—

12           (1) prevent or significantly interfere with the  
13 ability of any insurer, or any affiliate of an insurer  
14 (whether such affiliate is organized as a stock com-  
15 pany, mutual holding company, or otherwise), to be-  
16 come a financial holding company or to acquire con-  
17 trol of an insured depository institution;

18           (2) limit the amount of an insurer’s assets that  
19 may be invested in the voting securities of an in-  
20 sured depository institution (or any company which  
21 controls such institution), except that the laws of an  
22 insurer’s State of domicile may limit the amount of  
23 such investment to an amount that is not less than  
24 5 percent of the insurer’s admitted assets; or

1           (3) prevent, significantly interfere with, or have  
2           the authority to review, approve, or disapprove a  
3           plan of reorganization by which an insurer proposes  
4           to reorganize from mutual form to become a stock  
5           insurer (whether as a direct or indirect subsidiary of  
6           a mutual holding company or otherwise) unless such  
7           State is the State of domicile of the insurer.

8 **SEC. 309. INTERAGENCY CONSULTATION.**

9           (a) PURPOSE.—It is the intention of Congress that  
10          the Board of Governors of the Federal Reserve System,  
11          as the umbrella supervisor for financial holding compa-  
12          nies, and the State insurance regulators, as the functional  
13          regulators of companies engaged in insurance activities,  
14          coordinate efforts to supervise companies that control both  
15          a depository institution and a company engaged in insur-  
16          ance activities regulated under State law. In particular,  
17          Congress believes that the Board and the State insurance  
18          regulators should share, on a confidential basis, informa-  
19          tion relevant to the supervision of companies that control  
20          both a depository institution and a company engaged in  
21          insurance activities, including information regarding the  
22          financial health of the consolidated organization and infor-  
23          mation regarding transactions and relationships between  
24          insurance companies and affiliated depository institutions.  
25          The appropriate Federal banking agencies for depository

1 institutions should also share, on a confidential basis, in-  
2 formation with the relevant State insurance regulators re-  
3 garding transactions and relationships between depository  
4 institutions and affiliated companies engaged in insurance  
5 activities. The purpose of this section is to encourage this  
6 coordination and confidential sharing of information, and  
7 to thereby improve both the efficiency and the quality of  
8 the supervision of financial holding companies and their  
9 affiliated depository institutions and companies engaged  
10 in insurance activities.

11 (b) EXAMINATION RESULTS AND OTHER INFORMA-  
12 TION.—

13 (1) INFORMATION OF THE BOARD.—Upon the  
14 request of the appropriate insurance regulator of  
15 any State, the Board may provide any information  
16 of the Board regarding the financial condition, risk  
17 management policies, and operations of any financial  
18 holding company that controls a company that is en-  
19 gaged in insurance activities and is regulated by  
20 such State insurance regulator, and regarding any  
21 transaction or relationship between such an insur-  
22 ance company and any affiliated depository institu-  
23 tion. The Board may provide any other information  
24 to the appropriate State insurance regulator that the  
25 Board believes is necessary or appropriate to permit

1 the State insurance regulator to administer and en-  
2 force applicable State insurance laws.

3 (2) BANKING AGENCY INFORMATION.—Upon  
4 the request of the appropriate insurance regulator of  
5 any State, the appropriate Federal banking agency  
6 may provide any information of the agency regard-  
7 ing any transaction or relationship between a deposi-  
8 tory institution supervised by such Federal banking  
9 agency and any affiliated company that is engaged  
10 in insurance activities regulated by such State insur-  
11 ance regulator. The appropriate Federal banking  
12 agency may provide any other information to the ap-  
13 propriate State insurance regulator that the agency  
14 believes is necessary or appropriate to permit the  
15 State insurance regulator to administer and enforce  
16 applicable State insurance laws.

17 (3) STATE INSURANCE REGULATOR INFORMA-  
18 TION.—Upon the request of the Board or the appro-  
19 priate Federal banking agency, a State insurance  
20 regulator may provide any examination or other re-  
21 ports, records, or other information to which such  
22 insurance regulator may have access with respect to  
23 a company which—

24 (A) is engaged in insurance activities and  
25 regulated by such insurance regulator; and

1           (B) is an affiliate of an insured depository  
2           institution, wholesale financial institution, or fi-  
3           nancial holding company.

4           (c) CONSULTATION.—Before making any determina-  
5           tion relating to the initial affiliation of, or the continuing  
6           affiliation of, an insured depository institution, wholesale  
7           financial institution, or financial holding company with a  
8           company engaged in insurance activities, the appropriate  
9           Federal banking agency shall consult with the appropriate  
10          State insurance regulator of such company and take the  
11          views of such insurance regulator into account in making  
12          such determination.

13          (d) EFFECT ON OTHER AUTHORITY.—Nothing in  
14          this section shall limit in any respect the authority of the  
15          appropriate Federal banking agency with respect to an in-  
16          sured depository institution, wholesale financial institu-  
17          tion, or bank holding company or any affiliate thereof  
18          under any provision of law.

19          (e) CONFIDENTIALITY AND PRIVILEGE.—

20                (1) CONFIDENTIALITY.—The appropriate Fed-  
21                eral banking agency shall not provide any informa-  
22                tion or material that is entitled to confidential treat-  
23                ment under applicable Federal banking agency regu-  
24                lations, or other applicable law, to a State insurance  
25                regulator unless such regulator agrees to maintain

1 the information or material in confidence and to  
2 take all reasonable steps to oppose any effort to se-  
3 cure disclosure of the information or material by the  
4 regulator. The appropriate Federal banking agency  
5 shall treat as confidential any information or mate-  
6 rial obtained from a State insurance regulator that  
7 is entitled to confidential treatment under applicable  
8 State regulations, or other applicable law, and take  
9 all reasonable steps to oppose any effort to secure  
10 disclosure of the information or material by the Fed-  
11 eral banking agency.

12 (2) PRIVILEGE.—The provision pursuant to this  
13 section of information or material by a Federal  
14 banking agency or State insurance regulator shall  
15 not constitute a waiver of, or otherwise affect, any  
16 privilege to which the information or material is oth-  
17 erwise subject.

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

20 (1) APPROPRIATE FEDERAL BANKING AGENCY;  
21 INSURED DEPOSITORY INSTITUTION.—The terms  
22 “appropriate Federal banking agency” and “insured  
23 depository institution” have the same meanings as  
24 in section 3 of the Federal Deposit Insurance Act.

1           (2) BOARD; FINANCIAL HOLDING COMPANY;  
2           AND WHOLESALE FINANCIAL INSTITUTION.—The  
3           terms “Board”, “financial holding company”, and  
4           “wholesale financial institution” have the same  
5           meanings as in section 2 of the Bank Holding Com-  
6           pany Act of 1956.

7   **SEC. 310. DEFINITION OF STATE.**

8           For purposes of this subtitle, the term “State” means  
9           any State of the United States, the District of Columbia,  
10          any territory of the United States, Puerto Rico, Guam,  
11          American Samoa, the Trust Territory of the Pacific Is-  
12          lands, the Virgin Islands, and the Northern Mariana Is-  
13          lands.

14   **Subtitle B—National Association of**  
15   **Registered Agents and Brokers**

16   **SEC. 321. STATE FLEXIBILITY IN MULTISTATE LICENSING**  
17                           **REFORMS.**

18          (a) IN GENERAL.—The provisions of this subtitle  
19          shall take effect unless, not later than 3 years after the  
20          date of enactment of this Act, at least a majority of the  
21          States—

22                 (1) have enacted uniform laws and regulations  
23                 governing the licensure of individuals and entities  
24                 authorized to sell and solicit the purchase of insur-  
25                 ance within the State; or

1           (2) have enacted reciprocity laws and regula-  
2           tions governing the licensure of nonresident individ-  
3           uals and entities authorized to sell and solicit insur-  
4           ance within those States.

5           (b) UNIFORMITY REQUIRED.—States shall be deemed  
6 to have established the uniformity necessary to satisfy  
7 subsection (a)(1) if the States—

8           (1) establish uniform criteria regarding the in-  
9           tegrity, personal qualifications, education, training,  
10          and experience of licensed insurance producers, in-  
11          cluding the qualification and training of sales per-  
12          sonnel in ascertaining the appropriateness of a par-  
13          ticular insurance product for a prospective customer;

14          (2) establish uniform continuing education re-  
15          quirements for licensed insurance producers;

16          (3) establish uniform ethics course require-  
17          ments for licensed insurance producers in conjunc-  
18          tion with the continuing education requirements  
19          under paragraph (2);

20          (4) establish uniform criteria to ensure that an  
21          insurance product, including any annuity contract,  
22          sold to a consumer is suitable and appropriate for  
23          the consumer based on financial information dis-  
24          closed by the consumer; and

1           (5) do not impose any requirement upon any in-  
2           surance producer to be licensed or otherwise quali-  
3           fied to do business as a nonresident that has the ef-  
4           fect of limiting or conditioning that producer's ac-  
5           tivities because of its residence or place of oper-  
6           ations, except that counter-signature requirements  
7           imposed on nonresident producers shall not be  
8           deemed to have the effect of limiting or conditioning  
9           a producer's activities because of its residence or  
10          place of operations under this section.

11          (c) RECIPROcity REQuired.—States shall be  
12          deemed to have established the reciprocity required to sat-  
13          isfy subsection (a)(2) if the following conditions are met:

14               (1) ADMINISTRATIVE LICENSING PROCE-  
15               DURES.—At least a majority of the States permit a  
16               producer that has a resident license for selling or so-  
17               liciting the purchase of insurance in its home State  
18               to receive a license to sell or solicit the purchase of  
19               insurance in such majority of States as a non-  
20               resident to the same extent that such producer is  
21               permitted to sell or solicit the purchase of insurance  
22               in its State, if the producer's home State also  
23               awards such licenses on such a reciprocal basis,  
24               without satisfying any additional requirements other  
25               than submitting—

1 (A) a request for licensure;

2 (B) the application for licensure that the  
3 producer submitted to its home State;

4 (C) proof that the producer is licensed and  
5 in good standing in its home State; and

6 (D) the payment of any requisite fee to the  
7 appropriate authority.

8 (2) CONTINUING EDUCATION REQUIRE-  
9 MENTS.—A majority of the States accept an insur-  
10 ance producer's satisfaction of its home State's con-  
11 tinuing education requirements for licensed insur-  
12 ance producers to satisfy the States' own continuing  
13 education requirements if the producer's home State  
14 also recognizes the satisfaction of continuing edu-  
15 cation requirements on such a reciprocal basis.

16 (3) NO LIMITING NONRESIDENT REQUIRE-  
17 MENTS.—A majority of the States do not impose  
18 any requirement upon any insurance producer to be  
19 licensed or otherwise qualified to do business as a  
20 nonresident that has the effect of limiting or condi-  
21 tioning that producer's activities because of its resi-  
22 dence or place of operations, except that  
23 countersignature requirements imposed on non-  
24 resident producers shall not be deemed to have the  
25 effect of limiting or conditioning a producer's activi-

1 ties because of its residence or place of operations  
2 under this section.

3 (4) RECIPROCAL RECIPROCITY.—Each of the  
4 States that satisfies paragraphs (1), (2), and (3)  
5 grants reciprocity to residents of all of the other  
6 States that satisfy such paragraphs.

7 (d) DETERMINATION.—

8 (1) NAIC DETERMINATION.—At the end of the  
9 3-year period beginning on the date of the enact-  
10 ment of this Act, the National Association of Insur-  
11 ance Commissioners shall determine, in consultation  
12 with the insurance commissioners or chief insurance  
13 regulatory officials of the States, whether the uni-  
14 formity or reciprocity required by subsections (b)  
15 and (c) has been achieved.

16 (2) JUDICIAL REVIEW.—The appropriate  
17 United States district court shall have exclusive ju-  
18 risdiction over any challenge to the National Asso-  
19 ciation of Insurance Commissioners' determination  
20 under this section and such court shall apply the  
21 standards set forth in section 706 of title 5, United  
22 States Code, when reviewing any such challenge.

23 (e) CONTINUED APPLICATION.—If, at any time, the  
24 uniformity or reciprocity required by subsections (b) and  
25 (c) no longer exists, the provisions of this subtitle shall

1 take effect 2 years after the date on which such uniformity  
2 or reciprocity ceases to exist, unless the uniformity or reci-  
3 procity required by those provisions is satisfied before the  
4 expiration of that 2-year period.

5 (f) SAVINGS PROVISION.—No provision of this sec-  
6 tion shall be construed as requiring that any law, regula-  
7 tion, provision, or action of any State which purports to  
8 regulate insurance producers, including any such law, reg-  
9 ulation, provision, or action which purports to regulate un-  
10 fair trade practices or establish consumer protections, in-  
11 cluding countersignature laws, be altered or amended in  
12 order to satisfy the uniformity or reciprocity required by  
13 subsections (b) and (c), unless any such law, regulation,  
14 provision, or action is inconsistent with a specific require-  
15 ment of any such subsection and then only to the extent  
16 of such inconsistency.

17 (g) UNIFORM LICENSING.—Nothing in this section  
18 shall be construed to require any State to adopt new or  
19 additional licensing requirements to achieve the uniformity  
20 necessary to satisfy subsection (a)(1).

21 **SEC. 322. NATIONAL ASSOCIATION OF REGISTERED**  
22 **AGENTS AND BROKERS.**

23 (a) ESTABLISHMENT.—There is established the Na-  
24 tional Association of Registered Agents and Brokers

1 (hereafter in this subtitle referred to as the “Associa-  
2 tion”).

3 (b) STATUS.—The Association shall—

4 (1) be a nonprofit corporation;

5 (2) have succession until dissolved by an Act of  
6 Congress;

7 (3) not be an agent or instrumentality of the  
8 United States Government; and

9 (4) except as otherwise provided in this Act, be  
10 subject to, and have all the powers conferred upon  
11 a nonprofit corporation by the District of Columbia  
12 Nonprofit Corporation Act (D.C. Code, sec. 29y-  
13 1001 et seq.).

14 **SEC. 323. PURPOSE.**

15 The purpose of the Association shall be to provide  
16 a mechanism through which uniform licensing, appoint-  
17 ment, continuing education, and other insurance producer  
18 sales qualification requirements and conditions can be  
19 adopted and applied on a multistate basis, while pre-  
20 serving the right of States to license, supervise, and dis-  
21 cipline insurance producers and to prescribe and enforce  
22 laws and regulations with regard to insurance-related con-  
23 sumer protection and unfair trade practices.

1 **SEC. 324. RELATIONSHIP TO THE FEDERAL GOVERNMENT.**

2 The Association shall be subject to the supervision  
3 and oversight of the National Association of Insurance  
4 Commissioners (hereafter in this subtitle referred to as the  
5 “NAIC”).

6 **SEC. 325. MEMBERSHIP.**

7 (a) ELIGIBILITY.—

8 (1) IN GENERAL.—Any State-licensed insurance  
9 producer shall be eligible to become a member in the  
10 Association.

11 (2) INELIGIBILITY FOR SUSPENSION OR REV-  
12 OCATION OF LICENSE.—Notwithstanding paragraph  
13 (1), a State-licensed insurance producer shall not be  
14 eligible to become a member if a State insurance  
15 regulator has suspended or revoked such producer’s  
16 license in that State during the 3-year period pre-  
17 ceeding the date on which such producer applies for  
18 membership.

19 (3) RESUMPTION OF ELIGIBILITY.—Paragraph  
20 (2) shall cease to apply to any insurance producer  
21 if—

22 (A) the State insurance regulator renews  
23 the license of such producer in the State in  
24 which the license was suspended or revoked; or

25 (B) the suspension or revocation is subse-  
26 quently overturned.

1 (b) AUTHORITY TO ESTABLISH MEMBERSHIP CRI-  
2 TERIA.—The Association shall have the authority to estab-  
3 lish membership criteria that—

4 (1) bear a reasonable relationship to the pur-  
5 poses for which the Association was established; and

6 (2) do not unfairly limit the access of smaller  
7 agencies to the Association membership.

8 (c) ESTABLISHMENT OF CLASSES AND CAT-  
9 EGORIES.—

10 (1) CLASSES OF MEMBERSHIP.—The Associa-  
11 tion may establish separate classes of membership,  
12 with separate criteria, if the Association reasonably  
13 determines that performance of different duties re-  
14 quires different levels of education, training, or expe-  
15 rience.

16 (2) CATEGORIES.—The Association may estab-  
17 lish separate categories of membership for individ-  
18 uals and for other persons. The establishment of any  
19 such categories of membership shall be based either  
20 on the types of licensing categories that exist under  
21 State laws or on the aggregate amount of business  
22 handled by an insurance producer. No special cat-  
23 egories of membership, and no distinct membership  
24 criteria, shall be established for members which are  
25 insured depository institutions or wholesale financial

1 institutions or for their employees, agents, or affili-  
2 ates.

3 (d) MEMBERSHIP CRITERIA.—

4 (1) IN GENERAL.—The Association may estab-  
5 lish criteria for membership which shall include  
6 standards for integrity, personal qualifications, edu-  
7 cation, training, and experience.

8 (2) MINIMUM STANDARD.—In establishing cri-  
9 teria under paragraph (1), the Association shall con-  
10 sider the highest levels of insurance producer quali-  
11 fications established under the licensing laws of the  
12 States.

13 (e) EFFECT OF MEMBERSHIP.—Membership in the  
14 Association shall entitle the member to licensure in each  
15 State for which the member pays the requisite fees, includ-  
16 ing licensing fees and, where applicable, bonding require-  
17 ments, set by such State.

18 (f) ANNUAL RENEWAL.—Membership in the Associa-  
19 tion shall be renewed on an annual basis.

20 (g) CONTINUING EDUCATION.—The Association shall  
21 establish, as a condition of membership, continuing edu-  
22 cation requirements which shall be comparable to or great-  
23 er than the continuing education requirements under the  
24 licensing laws of a majority of the States.

1 (h) SUSPENSION AND REVOCATION.—The Associa-  
2 tion may—

3 (1) inspect and examine the records and offices  
4 of the members of the Association to determine com-  
5 pliance with the criteria for membership established  
6 by the Association; and

7 (2) suspend or revoke the membership of an in-  
8 surance producer if—

9 (A) the producer fails to meet the applica-  
10 ble membership criteria of the Association; or

11 (B) the producer has been subject to dis-  
12 ciplinary action pursuant to a final adjudicatory  
13 proceeding under the jurisdiction of a State in-  
14 surance regulator, and the Association con-  
15 cludes that retention of membership in the As-  
16 sociation would not be in the public interest.

17 (i) OFFICE OF CONSUMER COMPLAINTS.—

18 (1) IN GENERAL.—The Association shall estab-  
19 lish an office of consumer complaints that shall—

20 (A) receive and investigate complaints  
21 from both consumers and State insurance regu-  
22 lators related to members of the Association;  
23 and

24 (B) recommend to the Association any dis-  
25 ciplinary actions that the office considers appro-

1           appropriate, to the extent that any such rec-  
2           ommendation is not inconsistent with State law.

3           (2) RECORDS AND REFERRALS.—The office of  
4           consumer complaints of the Association shall—

5                   (A) maintain records of all complaints re-  
6                   ceived in accordance with paragraph (1) and  
7                   make such records available to the NAIC and  
8                   to each State insurance regulator for the State  
9                   of residence of the consumer who filed the com-  
10                  plaint; and

11                   (B) refer, when appropriate, any such com-  
12                  plaint to any appropriate State insurance regu-  
13                  lator.

14           (3) TELEPHONE AND OTHER ACCESS.—The of-  
15           fice of consumer complaints shall maintain a toll-free  
16           telephone number for the purpose of this subsection  
17           and, as practicable, other alternative means of com-  
18           munication with consumers, such as an Internet  
19           home page.

20 **SEC. 326. BOARD OF DIRECTORS.**

21           (a) ESTABLISHMENT.—There is established the  
22           board of directors of the Association (hereafter in this sub-  
23           title referred to as the “Board”) for the purpose of gov-  
24           erning and supervising the activities of the Association  
25           and the members of the Association.

1 (b) POWERS.—The Board shall have such powers and  
2 authority as may be specified in the bylaws of the Associa-  
3 tion.

4 (c) COMPOSITION.—

5 (1) MEMBERS.—The Board shall be composed  
6 of 7 members appointed by the NAIC.

7 (2) REQUIREMENT.—At least 4 of the members  
8 of the Board shall have significant experience with  
9 the regulation of commercial lines of insurance in at  
10 least 1 of the 20 States in which the greatest total  
11 dollar amount of commercial-lines insurance is  
12 placed in the United States.

13 (3) INITIAL BOARD MEMBERSHIP.—

14 (A) IN GENERAL.—If, by the end of the 2-  
15 year period beginning on the date of enactment  
16 of this Act, the NAIC has not appointed the  
17 initial 7 members of the Board of the Associa-  
18 tion, the initial Board shall consist of the 7  
19 State insurance regulators of the 7 States with  
20 the greatest total dollar amount of commercial-  
21 lines insurance in place as of the end of such  
22 period.

23 (B) ALTERNATE COMPOSITION.—If any of  
24 the State insurance regulators described in sub-  
25 paragraph (A) declines to serve on the Board,

1 the State insurance regulator with the next  
2 greatest total dollar amount of commercial-lines  
3 insurance in place, as determined by the NAIC  
4 as of the end of such period, shall serve as a  
5 member of the Board.

6 (C) INOPERABILITY.—If fewer than 7  
7 State insurance regulators accept appointment  
8 to the Board, the Association shall be estab-  
9 lished without NAIC oversight pursuant to sec-  
10 tion 332.

11 (d) TERMS.—The term of each director shall, after  
12 the initial appointment of the members of the Board, be  
13 for 3 years, with  $\frac{1}{3}$  of the directors to be appointed each  
14 year.

15 (e) BOARD VACANCIES.—A vacancy on the Board  
16 shall be filled in the same manner as the original appoint-  
17 ment of the initial Board for the remainder of the term  
18 of the vacating member.

19 (f) MEETINGS.—The Board shall meet at the call of  
20 the chairperson, or as otherwise provided by the bylaws  
21 of the Association.

22 **SEC. 327. OFFICERS.**

23 (a) IN GENERAL.—

24 (1) POSITIONS.—The officers of the Association  
25 shall consist of a chairperson and a vice chairperson

1 of the Board, a president, secretary, and treasurer  
2 of the Association, and such other officers and as-  
3 sistant officers as may be deemed necessary.

4 (2) MANNER OF SELECTION.—Each officer of  
5 the Board and the Association shall be elected or ap-  
6 pointed at such time and in such manner and for  
7 such terms not exceeding 3 years as may be pre-  
8 scribed in the bylaws of the Association.

9 (b) CRITERIA FOR CHAIRPERSON.—Only individuals  
10 who are members of the NAIC shall be eligible to serve  
11 as the chairperson of the board of directors.

12 **SEC. 328. BYLAWS, RULES, AND DISCIPLINARY ACTION.**

13 (a) ADOPTION AND AMENDMENT OF BYLAWS.—

14 (1) COPY REQUIRED TO BE FILED WITH THE  
15 NAIC.—The board of directors of the Association  
16 shall file with the NAIC a copy of the proposed by-  
17 laws or any proposed amendment to the bylaws, ac-  
18 companied by a concise general statement of the  
19 basis and purpose of such proposal.

20 (2) EFFECTIVE DATE.—Except as provided in  
21 paragraph (3), any proposed bylaw or proposed  
22 amendment shall take effect—

23 (A) 30 days after the date of the filing of  
24 a copy with the NAIC;

1 (B) upon such later date as the Associa-  
2 tion may designate; or

3 (C) upon such earlier date as the NAIC  
4 may determine.

5 (3) DISAPPROVAL BY THE NAIC.—Notwith-  
6 standing paragraph (2), a proposed bylaw or amend-  
7 ment shall not take effect if, after public notice and  
8 opportunity to participate in a public hearing—

9 (A) the NAIC disapproves such proposal as  
10 being contrary to the public interest or contrary  
11 to the purposes of this subtitle and provides no-  
12 tice to the Association setting forth the reasons  
13 for such disapproval; or

14 (B) the NAIC finds that such proposal in-  
15 volves a matter of such significant public inter-  
16 est that public comment should be obtained, in  
17 which case it may, after notifying the Associa-  
18 tion in writing of such finding, require that the  
19 procedures set forth in subsection (b) be fol-  
20 lowed with respect to such proposal, in the  
21 same manner as if such proposed bylaw change  
22 were a proposed rule change within the mean-  
23 ing of such subsection.

24 (b) ADOPTION AND AMENDMENT OF RULES.—

1           (1) FILING PROPOSED REGULATIONS WITH THE  
2           NAIC.—

3           (A) IN GENERAL.—The board of directors  
4           of the Association shall file with the NAIC a  
5           copy of any proposed rule or any proposed  
6           amendment to a rule of the Association which  
7           shall be accompanied by a concise general state-  
8           ment of the basis and purpose of such proposal.

9           (B) OTHER RULES AND AMENDMENTS IN-  
10          EFFECTIVE.—No proposed rule or amendment  
11          shall take effect unless approved by the NAIC  
12          or otherwise permitted in accordance with this  
13          paragraph.

14          (2) INITIAL CONSIDERATION BY THE NAIC.—  
15          Not later than 35 days after the date of publication  
16          of notice of filing of a proposal, or before the end  
17          of such longer period not to exceed 90 days as the  
18          NAIC may designate after such date, if the NAIC  
19          finds such longer period to be appropriate and sets  
20          forth its reasons for so finding, or as to which the  
21          Association consents, the NAIC shall—

22                  (A) by order approve such proposed rule or  
23                  amendment; or

1 (B) institute proceedings to determine  
2 whether such proposed rule or amendment  
3 should be modified or disapproved.

4 (3) NAIC PROCEEDINGS.—

5 (A) IN GENERAL.—Proceedings instituted  
6 by the NAIC with respect to a proposed rule or  
7 amendment pursuant to paragraph (2) shall—

8 (i) include notice of the grounds for  
9 disapproval under consideration;

10 (ii) provide opportunity for hearing;

11 and

12 (iii) be concluded not later than 180  
13 days after the date of the Association's fil-  
14 ing of such proposed rule or amendment.

15 (B) DISPOSITION OF PROPOSAL.—At the  
16 conclusion of any proceeding under subpara-  
17 graph (A), the NAIC shall, by order, approve or  
18 disapprove the proposed rule or amendment.

19 (C) EXTENSION OF TIME FOR CONSIDER-  
20 ATION.—The NAIC may extend the time for  
21 concluding any proceeding under subparagraph  
22 (A) for—

23 (i) not more than 60 days if the  
24 NAIC finds good cause for such extension  
25 and sets forth its reasons for so finding; or

1 (ii) for such longer period as to which  
2 the Association consents.

3 (4) STANDARDS FOR REVIEW.—

4 (A) GROUNDS FOR APPROVAL.—The NAIC  
5 shall approve a proposed rule or amendment if  
6 the NAIC finds that the rule or amendment is  
7 in the public interest and is consistent with the  
8 purposes of this Act.

9 (B) APPROVAL BEFORE END OF NOTICE  
10 PERIOD.—The NAIC shall not approve any pro-  
11 posed rule before the end of the 30-day period  
12 beginning on the date on which the Association  
13 files proposed rules or amendments in accord-  
14 ance with paragraph (1), unless the NAIC finds  
15 good cause for so doing and sets forth the rea-  
16 sons for so finding.

17 (5) ALTERNATE PROCEDURE.—

18 (A) IN GENERAL.—Notwithstanding any  
19 provision of this subsection other than subpara-  
20 graph (B), a proposed rule or amendment relat-  
21 ing to the administration or organization of the  
22 Association shall take effect—

23 (i) upon the date of filing with the  
24 NAIC, if such proposed rule or amendment  
25 is designated by the Association as relating

1 solely to matters which the NAIC, con-  
2 sistent with the public interest and the  
3 purposes of this subsection, determines by  
4 rule do not require the procedures set forth  
5 in this paragraph; or

6 (ii) upon such date as the NAIC shall  
7 for good cause determine.

8 (B) ABROGATION BY THE NAIC.—

9 (i) IN GENERAL.—At any time within  
10 60 days after the date of filing of any pro-  
11 posed rule or amendment under subpara-  
12 graph (A)(i) or clause (ii) of this subpara-  
13 graph, the NAIC may repeal such rule or  
14 amendment and require that the rule or  
15 amendment be refiled and reviewed in ac-  
16 cordance with this paragraph, if the NAIC  
17 finds that such action is necessary or ap-  
18 propriate in the public interest, for the  
19 protection of insurance producers or policy-  
20 holders, or otherwise in furtherance of the  
21 purposes of this subtitle.

22 (ii) EFFECT OF RECONSIDERATION BY  
23 THE NAIC.—Any action of the NAIC pur-  
24 suant to clause (i) shall—

1 (I) not affect the validity or force  
2 of a rule change during the period  
3 such rule or amendment was in effect;  
4 and

5 (II) not be considered to be a  
6 final action.

7 (c) ACTION REQUIRED BY THE NAIC.—The NAIC  
8 may, in accordance with such rules as the NAIC deter-  
9 mines to be necessary or appropriate to the public interest  
10 or to carry out the purposes of this subtitle, require the  
11 Association to adopt, amend, or repeal any bylaw, rule or  
12 amendment of the Association, whenever adopted.

13 (d) DISCIPLINARY ACTION BY THE ASSOCIATION.—

14 (1) SPECIFICATION OF CHARGES.—In any pro-  
15 ceeding to determine whether membership shall be  
16 denied, suspended, revoked, or not renewed (here-  
17 after in this section referred to as a “disciplinary ac-  
18 tion”), the Association shall bring specific charges,  
19 notify such member of such charges, give the mem-  
20 ber an opportunity to defend against the charges,  
21 and keep a record.

22 (2) SUPPORTING STATEMENT.—A determina-  
23 tion to take disciplinary action shall be supported by  
24 a statement setting forth—

1 (A) any act or practice in which such  
2 member has been found to have been engaged;

3 (B) the specific provision of this subtitle,  
4 the rules or regulations under this subtitle, or  
5 the rules of the Association which any such act  
6 or practice is deemed to violate; and

7 (C) the sanction imposed and the reason  
8 for such sanction.

9 (e) NAIC REVIEW OF DISCIPLINARY ACTION.—

10 (1) NOTICE TO THE NAIC.—If the Association  
11 orders any disciplinary action, the Association shall  
12 promptly notify the NAIC of such action.

13 (2) REVIEW BY THE NAIC.—Any disciplinary  
14 action taken by the Association shall be subject to  
15 review by the NAIC—

16 (A) on the NAIC's own motion; or

17 (B) upon application by any person ag-  
18 grieved by such action if such application is  
19 filed with the NAIC not more than 30 days  
20 after the later of—

21 (i) the date the notice was filed with  
22 the NAIC pursuant to paragraph (1); or

23 (ii) the date the notice of the discipli-  
24 nary action was received by such aggrieved  
25 person.

1 (f) EFFECT OF REVIEW.—The filing of an applica-  
2 tion to the NAIC for review of a disciplinary action, or  
3 the institution of review by the NAIC on the NAIC's own  
4 motion, shall not operate as a stay of disciplinary action  
5 unless the NAIC otherwise orders.

6 (g) SCOPE OF REVIEW.—

7 (1) IN GENERAL.—In any proceeding to review  
8 such action, after notice and the opportunity for  
9 hearing, the NAIC shall—

10 (A) determine whether the action should be  
11 taken;

12 (B) affirm, modify, or rescind the discipli-  
13 nary sanction; or

14 (C) remand to the Association for further  
15 proceedings.

16 (2) DISMISSAL OF REVIEW.—The NAIC may  
17 dismiss a proceeding to review disciplinary action if  
18 the NAIC finds that—

19 (A) the specific grounds on which the ac-  
20 tion is based exist in fact;

21 (B) the action is in accordance with appli-  
22 cable rules and regulations; and

23 (C) such rules and regulations are, and  
24 were, applied in a manner consistent with the  
25 purposes of this subtitle.

1 **SEC. 329. ASSESSMENTS.**

2 (a) **INSURANCE PRODUCERS SUBJECT TO ASSESS-**  
3 **MENT.**—The Association may establish such application  
4 and membership fees as the Association finds necessary  
5 to cover the costs of its operations, including fees made  
6 reimbursable to the NAIC under subsection (b), except  
7 that, in setting such fees, the Association may not dis-  
8 criminate against smaller insurance producers.

9 (b) **NAIC ASSESSMENTS.**—The NAIC may assess the  
10 Association for any costs that the NAIC incurs under this  
11 subtitle.

12 **SEC. 330. FUNCTIONS OF THE NAIC.**

13 (a) **ADMINISTRATIVE PROCEDURE.**—Determinations  
14 of the NAIC, for purposes of making rules pursuant to  
15 section 328, shall be made after appropriate notice and  
16 opportunity for a hearing and for submission of views of  
17 interested persons.

18 (b) **EXAMINATIONS AND REPORTS.**—

19 (1) **EXAMINATIONS.**—The NAIC may make  
20 such examinations and inspections of the Association  
21 and require the Association to furnish to the NAIC  
22 such reports and records or copies thereof as the  
23 NAIC may consider necessary or appropriate in the  
24 public interest or to effectuate the purposes of this  
25 subtitle.



1 (b) LIABILITY OF THE ASSOCIATION, ITS DIREC-  
2 TORS, OFFICERS, AND EMPLOYEES.—Neither the Associa-  
3 tion nor any of its directors, officers, or employees shall  
4 have any liability to any person for any action taken or  
5 omitted in good faith under or in connection with any mat-  
6 ter subject to this subtitle.

7 **SEC. 332. ELIMINATION OF NAIC OVERSIGHT.**

8 (a) IN GENERAL.—The Association shall be estab-  
9 lished without NAIC oversight and the provisions set forth  
10 in section 324, subsections (a), (b), (c), and (e) of section  
11 328, and sections 329(b) and 330 of this subtitle shall  
12 cease to be effective if, at the end of the 2-year period  
13 beginning on the date on which the provisions of this sub-  
14 title take effect pursuant to section 321—

15 (1) at least a majority of the States rep-  
16 resenting at least 50 percent of the total United  
17 States commercial-lines insurance premiums have  
18 not satisfied the uniformity or reciprocity require-  
19 ments of subsections (a), (b), and (c) of section 321;  
20 and

21 (2) the NAIC has not approved the Associa-  
22 tion's bylaws as required by section 328 or is unable  
23 to operate or supervise the Association, or the Asso-  
24 ciation is not conducting its activities as required  
25 under this Act.

1 (b) BOARD APPOINTMENTS.—If the repeals required  
2 by subsection (a) are implemented, the following shall  
3 apply:

4 (1) GENERAL APPOINTMENT POWER.—The  
5 President, with the advice and consent of the Sen-  
6 ate, shall appoint the members of the Association’s  
7 Board established under section 326 from lists of  
8 candidates recommended to the President by the  
9 National Association of Insurance Commissioners.

10 (2) PROCEDURES FOR OBTAINING NATIONAL  
11 ASSOCIATION OF INSURANCE COMMISSIONERS AP-  
12 POINTMENT RECOMMENDATIONS.—

13 (A) INITIAL DETERMINATION AND REC-  
14 OMMENDATIONS.—After the date on which the  
15 provisions of subsection (a) take effect, the  
16 NAIC shall, not later than 60 days thereafter,  
17 provide a list of recommended candidates to the  
18 President. If the NAIC fails to provide a list by  
19 that date, or if any list that is provided does  
20 not include at least 14 recommended candidates  
21 or comply with the requirements of section  
22 326(c), the President shall, with the advice and  
23 consent of the Senate, make the requisite ap-  
24 pointments without considering the views of the  
25 NAIC.

1           (B) SUBSEQUENT APPOINTMENTS.—After  
2 the initial appointments, the NAIC shall pro-  
3 vide a list of at least 6 recommended candidates  
4 for the Board to the President by January 15  
5 of each subsequent year. If the NAIC fails to  
6 provide a list by that date, or if any list that  
7 is provided does not include at least 6 rec-  
8 ommended candidates or comply with the re-  
9 quirements of section 326(c), the President,  
10 with the advice and consent of the Senate, shall  
11 make the requisite appointments without con-  
12 sidering the views of the NAIC.

13           (C) PRESIDENTIAL OVERSIGHT.—

14           (i) REMOVAL.—If the President deter-  
15 mines that the Association is not acting in  
16 the interests of the public, the President  
17 may remove the entire existing Board for  
18 the remainder of the term to which the  
19 members of the Board were appointed and  
20 appoint, with the advice and consent of the  
21 Senate, new members to fill the vacancies  
22 on the Board for the remainder of such  
23 terms.

24           (ii) SUSPENSION OF RULES OR AC-  
25 TIONS.—The President, or a person des-

1           ignated by the President for such purpose,  
2           may suspend the effectiveness of any rule,  
3           or prohibit any action, of the Association  
4           which the President or the designee deter-  
5           mines is contrary to the public interest.

6           (c) ANNUAL REPORT.—As soon as practicable after  
7 the close of each fiscal year, the Association shall submit  
8 to the President and to the Congress a written report rel-  
9 ative to the conduct of its business, and the exercise of  
10 the other rights and powers granted by this subtitle, dur-  
11 ing such fiscal year. Such report shall include financial  
12 statements setting forth the financial position of the Asso-  
13 ciation at the end of such fiscal year and the results of  
14 its operations (including the source and application of its  
15 funds) for such fiscal year.

16 **SEC. 333. RELATIONSHIP TO STATE LAW.**

17           (a) PREEMPTION OF STATE LAWS.—State laws, reg-  
18 ulations, provisions, or other actions purporting to regu-  
19 late insurance producers shall be preempted as provided  
20 in subsection (b).

21           (b) PROHIBITED ACTIONS.—No State shall—

22               (1) impede the activities of, take any action  
23           against, or apply any provision of law or regulation  
24           to, any insurance producer because that insurance

1 producer or any affiliate plans to become, has ap-  
2 plied to become, or is a member of the Association;

3 (2) impose any requirement upon a member of  
4 the Association that it pay different fees to be li-  
5 censed or otherwise qualified to do business in that  
6 State, including bonding requirements, based on its  
7 residency;

8 (3) impose any licensing, appointment, integ-  
9 rity, personal or corporate qualifications, education,  
10 training, experience, residency, or continuing edu-  
11 cation requirement upon a member of the Associa-  
12 tion that is different from the criteria for member-  
13 ship in the Association or renewal of such member-  
14 ship, except that counter-signature requirements im-  
15 posed on nonresident producers shall not be deemed  
16 to have the effect of limiting or conditioning a pro-  
17 ducer's activities because of its residence or place of  
18 operations under this section; or

19 (4) implement the procedures of such State's  
20 system of licensing or renewing the licenses of insur-  
21 ance producers in a manner different from the au-  
22 thority of the Association under section 325.

23 (c) SAVINGS PROVISION.—Except as provided in sub-  
24 sections (a) and (b), no provision of this section shall be  
25 construed as altering or affecting the continuing effective-

1 ness of any law, regulation, provision, or other action of  
2 any State which purports to regulate insurance producers,  
3 including any such law, regulation, provision, or action  
4 which purports to regulate unfair trade practices or estab-  
5 lish consumer protections, including countersignature  
6 laws.

7 **SEC. 334. COORDINATION WITH OTHER REGULATORS.**

8 (a) COORDINATION WITH STATE INSURANCE REGU-  
9 LATORS.—The Association shall have the authority to—

10 (1) issue uniform insurance producer applica-  
11 tions and renewal applications that may be used to  
12 apply for the issuance or removal of State licenses,  
13 while preserving the ability of each State to impose  
14 such conditions on the issuance or renewal of a li-  
15 cense as are consistent with section 333;

16 (2) establish a central clearinghouse through  
17 which members of the Association may apply for the  
18 issuance or renewal of licenses in multiple States;  
19 and

20 (3) establish or utilize a national database for  
21 the collection of regulatory information concerning  
22 the activities of insurance producers.

23 (b) COORDINATION WITH THE NATIONAL ASSOCIA-  
24 TION OF SECURITIES DEALERS.—The Association shall  
25 coordinate with the National Association of Securities

1 Dealers in order to ease any administrative burdens that  
2 fall on persons that are members of both associations, con-  
3 sistent with the purposes of this subtitle and the Federal  
4 securities laws.

5 **SEC. 335. JUDICIAL REVIEW.**

6 (a) JURISDICTION.—The appropriate United States  
7 district court shall have exclusive jurisdiction over litiga-  
8 tion involving the Association, including disputes between  
9 the Association and its members that arise under this sub-  
10 title. Suits brought in State court involving the Associa-  
11 tion shall be deemed to have arisen under Federal law and  
12 therefore be subject to jurisdiction in the appropriate  
13 United States district court.

14 (b) EXHAUSTION OF REMEDIES.—An aggrieved per-  
15 son shall be required to exhaust all available administra-  
16 tive remedies before the Association and the NAIC before  
17 it may seek judicial review of an Association decision.

18 (c) STANDARDS OF REVIEW.—The standards set  
19 forth in section 553 of title 5, United States Code, shall  
20 be applied whenever a rule or bylaw of the Association is  
21 under judicial review, and the standards set forth in sec-  
22 tion 554 of title 5, United States Code, shall be applied  
23 whenever a disciplinary action of the Association is judi-  
24 cially reviewed.

1 **SEC. 336. DEFINITIONS.**

2 For purposes of this subtitle, the following definitions  
3 shall apply:

4 (1) HOME STATE.—The term “home State”  
5 means the State in which the insurance producer  
6 maintains its principal place of residence and is li-  
7 censed to act as an insurance producer.

8 (2) INSURANCE.—The term “insurance” means  
9 any product, other than title insurance, defined or  
10 regulated as insurance by the appropriate State in-  
11 surance regulatory authority.

12 (3) INSURANCE PRODUCER.—The term “insur-  
13 ance producer” means any insurance agent or  
14 broker, surplus lines broker, insurance consultant,  
15 limited insurance representative, and any other per-  
16 son that solicits, negotiates, effects, procures, deliv-  
17 ers, renews, continues or binds policies of insurance  
18 or offers advice, counsel, opinions or services related  
19 to insurance.

20 (4) STATE.—The term “State” includes any  
21 State, the District of Columbia, American Samoa,  
22 Guam, Puerto Rico, and the United States Virgin  
23 Islands.

24 (5) STATE LAW.—The term “State law” in-  
25 cludes all laws, decisions, rules, regulations, or other  
26 State action having the effect of law, of any State.

1 A law of the United States applicable only to the  
2 District of Columbia shall be treated as a State law  
3 rather than a law of the United States.

4 **Subtitle C—Rental Car Agency**  
5 **Insurance Activities**

6 **SEC. 341. STANDARD OF REGULATION FOR MOTOR VEHI-**  
7 **CLE RENTALS.**

8 (a) PROTECTION AGAINST RETROACTIVE APPLICA-  
9 TION OF REGULATORY AND LEGAL ACTION.—Except as  
10 provided in subsection (b), during the 3-year period begin-  
11 ning on the date of the enactment of this Act, it shall  
12 be a presumption that no State law imposes any licensing,  
13 appointment, or education requirements on any person  
14 who solicits the purchase of or sells insurance connected  
15 with, and incidental to, the lease or rental of a motor vehi-  
16 cle.

17 (b) PREEMINENCE OF STATE INSURANCE LAW.—No  
18 provision of this section shall be construed as altering the  
19 validity, interpretation, construction, or effect of—

20 (1) any State statute;

21 (2) the prospective application of any court  
22 judgment interpreting or applying any State statute;

23 or

1           (3) the prospective application of any final  
2           State regulation, order, bulletin, or other statutorily  
3           authorized interpretation or action,  
4           which, by its specific terms, expressly regulates or exempts  
5           from regulation any person who solicits the purchase of  
6           or sells insurance connected with, and incidental to, the  
7           short-term lease or rental of a motor vehicle.

8           (c) SCOPE OF APPLICATION.—This section shall  
9           apply with respect to—

10           (1) the lease or rental of a motor vehicle for a  
11           total period of 90 consecutive days or less; and

12           (2) insurance which is provided in connection  
13           with, and incidentally to, such lease or rental for a  
14           period of consecutive days not exceeding the lease or  
15           rental period.

16           (d) MOTOR VEHICLE DEFINED.—For purposes of  
17           this section, the term “motor vehicle” has the meaning  
18           given to such term in section 13102 of title 49, United  
19           States Code.

## 20           **Subtitle D—Confidentiality**

### 21           **SEC. 351. CONFIDENTIALITY OF HEALTH AND MEDICAL IN-** 22           **FORMATION.**

23           (a) IN GENERAL.—A company which underwrites or  
24           sells annuities contracts or contracts insuring, guaran-  
25           teeing, or indemnifying against loss, harm, damage, ill-

1 ness, disability, or death (other than credit-related insur-  
2 ance) and any subsidiary or affiliate thereof shall maintain  
3 a practice of protecting the confidentiality of individually  
4 identifiable customer health and medical and genetic infor-  
5 mation and may disclose such information only—

6 (1) with the consent, or at the direction, of the  
7 customer;

8 (2) for insurance underwriting and reinsuring  
9 policies, account administration, reporting, inves-  
10 tigating, or preventing fraud or material misrepresen-  
11 tation, processing premium payments, processing  
12 insurance claims, administering insurance benefits  
13 (including utilization review activities), providing in-  
14 formation to the customer's physician or other  
15 health care provider, participating in research  
16 projects, enabling the purchase, transfer, merger, or  
17 sale of any insurance-related business, or as other-  
18 wise required or specifically permitted by Federal or  
19 State law; or

20 (3) in connection with—

21 (A) the authorization, settlement, billing,  
22 processing, clearing, transferring, reconciling,  
23 or collection of amounts charged, debited, or  
24 otherwise paid using a debit, credit, or other

1 payment card or account number, or by other  
2 payment means;

3 (B) the transfer of receivables, accounts,  
4 or interest therein;

5 (C) the audit of the debit, credit, or other  
6 payment information;

7 (D) compliance with Federal, State, or  
8 local law;

9 (E) compliance with a properly authorized  
10 civil, criminal, or regulatory investigation by  
11 Federal, State, or local authorities as governed  
12 by the requirements of this section; or

13 (F) fraud protection, risk control, resolving  
14 customer disputes or inquiries, communicating  
15 with the person to whom the information re-  
16 lates, or reporting to consumer reporting agen-  
17 cies.

18 (b) STATE ACTIONS FOR VIOLATIONS.—In addition  
19 to such other remedies as are provided under State law,  
20 if the chief law enforcement officer of a State, State insur-  
21 ance regulator, or an official or agency designated by a  
22 State, has reason to believe that any person has violated  
23 or is violating this title, the State may bring an action  
24 to enjoin such violation in any appropriate United States

1 district court or in any other court of competent jurisdic-  
2 tion.

3 (c) EFFECTIVE DATE; SUNSET.—

4 (1) EFFECTIVE DATE.—Except as provided in  
5 paragraph (2), subsection (a) shall take effect on  
6 February 1, 2000.

7 (2) SUNSET.—Subsection (a) shall not take ef-  
8 fect if, or shall cease to be effective on and after the  
9 date on which, legislation is enacted that satisfies  
10 the requirements in section 264(c)(1) of the Health  
11 Insurance Portability and Accountability Act of  
12 1996 (Public Law 104–191; 110 Stat. 2033).

13 (d) CONSULTATION.—While subsection (a) is in ef-  
14 fect, State insurance regulatory authorities, through the  
15 National Association of Insurance Commissioners, shall  
16 consult with the Secretary of Health and Human Services  
17 in connection with the administration of such subsection.

18 **TITLE IV—UNITARY SAVINGS**  
19 **AND LOAN HOLDING COMPA-**  
20 **NIES**

21 **SEC. 401. PROHIBITION ON NEW UNITARY SAVINGS AND**  
22 **LOAN HOLDING COMPANIES.**

23 (a) IN GENERAL.—Section 10(c) of the Home Own-  
24 ers' Loan Act (12 U.S.C. 1467a(c)) is amended by adding  
25 at the end the following new paragraph:

1           “(9) TERMINATION OF EXPANDED POWERS FOR  
2 NEW UNITARY HOLDING COMPANY.—

3           “(A) IN GENERAL.—Subject to subpara-  
4 graph (B) and notwithstanding paragraph (3),  
5 no company may directly or indirectly, includ-  
6 ing through any merger, consolidation, or other  
7 type of business combination, acquire control of  
8 a savings association after March 4, 1999, un-  
9 less the company is engaged, directly or indi-  
10 rectly (including through a subsidiary other  
11 than a savings association), only in activities  
12 that are permitted—

13                   “(i) under paragraph (1)(C) or (2); or

14                   “(ii) for financial holding companies  
15 under section 6(c) of the Bank Holding  
16 Company Act of 1956.

17           “(B) EXISTING UNITARY HOLDING COMPA-  
18 NIES AND THE SUCCESSORS TO SUCH COMPA-  
19 NIES.—Subparagraph (A) shall not apply, and  
20 paragraph (3) shall continue to apply, to a com-  
21 pany (or any subsidiary of such company)  
22 that—

23                   “(i) either—

24                           “(I) acquired 1 or more savings  
25 associations described in paragraph

1 (3) pursuant to applications at least 1  
2 of which was filed on or before March  
3 4, 1999; or

4 “(II) subject to subparagraph  
5 (C), became a savings and loan hold-  
6 ing company by acquiring control of  
7 the company described in subclause  
8 (I); and

9 “(ii) continues to control the savings  
10 association referred to in clause (i)(II) or  
11 the successor to any such savings associa-  
12 tion.

13 “(C) NOTICE PROCESS FOR NONFINANCIAL  
14 ACTIVITIES BY A SUCCESSOR UNITARY HOLDING  
15 COMPANY.—

16 “(i) NOTICE REQUIRED.—Subpara-  
17 graph (B) shall not apply to any company  
18 described in subparagraph (B)(i)(II) which  
19 engages, directly or indirectly, in any activ-  
20 ity other than activities described in  
21 clauses (i) and (ii) of subparagraph (A),  
22 unless—

23 “(I) in addition to an application  
24 to the Director under this section to  
25 become a savings and loan holding

1 company, the company submits a no-  
2 tice to the Board of Governors of the  
3 Federal Reserve System of such non-  
4 financial activities in the same man-  
5 ner as a notice of nonbanking activi-  
6 ties is filed with the Board under sec-  
7 tion 4(j) of the Bank Holding Com-  
8 pany Act of 1956; and

9 “(II) before the end of the appli-  
10 cable period under such section 4(j),  
11 the Board either approves or does not  
12 disapprove of the continuation of such  
13 activities by such company, directly or  
14 indirectly, after becoming a savings  
15 and loan holding company.

16 “(ii) PROCEDURE.—Section 4(j) of  
17 the Bank Holding Company Act of 1956,  
18 including the standards for review, shall  
19 apply to any notice filed with the Board  
20 under this subparagraph in the same man-  
21 ner as it applies to notices filed under such  
22 section.”.

23 (b) TECHNICAL AND CONFORMING AMENDMENT.—  
24 Section 10(c)(3) of the Home Owners’ Loan Act (12  
25 U.S.C. 1467a(c)(3)) is amended by striking “Notwith-

1 standing” and inserting “Except as provided in paragraph  
2 (9) and notwithstanding”.

3 (c) CONFORMING AMENDMENT.—Section 10(o)(5) of  
4 the Home Owners’ Loan Act (12 U.S.C. 1467a(o)(5)) is  
5 amended—

6 (1) in subparagraph (E), by striking “, except  
7 subparagraph (B)”;

8 (2) by adding at the end the following new sub-  
9 paragraph:

10 “(F) In the case of a mutual holding com-  
11 pany which is a savings and loan holding com-  
12 pany described in subsection (c)(3), engaging in  
13 the activities permitted for financial holding  
14 companies under section 6(c) of the Bank Hold-  
15 ing Company Act of 1956.”.

16 **SEC. 402. RETENTION OF “FEDERAL” IN NAME OF CON-**  
17 **VERTED FEDERAL SAVINGS ASSOCIATION.**

18 Section 2 of the Act entitled “An Act to enable na-  
19 tional banking associations to increase their capital stock  
20 and to change their names or locations”, approved May  
21 1, 1886 (12 U.S.C. 30), is amended by adding at the end  
22 the following new subsection:

23 “(d) RETENTION OF ‘FEDERAL’ IN NAME OF CON-  
24 VERTED FEDERAL SAVINGS ASSOCIATION.—

1           “(1) IN GENERAL.—Notwithstanding subsection  
 2           (a) or any other provision of law, any depository in-  
 3           stitution the charter of which is converted from that  
 4           of a Federal savings association to a national bank  
 5           or a State bank after the date of the enactment of  
 6           the Financial Services Act of 1999 may retain the  
 7           term ‘Federal’ in the name of such institution if  
 8           such depository institution remains an insured de-  
 9           pository institution.

10           “(2) DEFINITIONS.—For purposes of this sub-  
 11           section, the terms ‘depository institution’, ‘insured  
 12           depository institution’, ‘national bank’, and ‘State  
 13           bank’ have the same meanings as in section 3 of the  
 14           Federal Deposit Insurance Act.”.

## 15           **TITLE V—PRIVACY**

### 16           **Subtitle A—Privacy Policy**

#### 17           **SEC. 501. DEPOSITORY INSTITUTION PRIVACY POLICIES.**

18           Section 6 of the Bank Holding Company Act of 1956  
 19           (as added by section 103 of this title) is amended by add-  
 20           ing at the end the following new subsection:

21           “(h) DEPOSITORY INSTITUTION PRIVACY POLI-  
 22           CIES.—

23           “(1) DISCLOSURE REQUIRED.—In the case of  
 24           any insured depository institution which becomes af-  
 25           filiated under this section with a financial holding

1 company, the privacy policy of such depository insti-  
2 tution shall be clearly and conspicuously disclosed—

3 “(A) with respect to any person who be-  
4 comes a customer of the depository institution  
5 any time after the depository institution be-  
6 comes affiliated with such company, to such  
7 person at the time at which the business rela-  
8 tionship between the customer and the institu-  
9 tion is initiated; and

10 “(B) with respect to any person who al-  
11 ready is a customer of the depository institution  
12 at the time the depository institution becomes  
13 affiliated with such company, to such person  
14 within a reasonable time after the affiliation is  
15 consummated.

16 “(2) INFORMATION TO BE INCLUDED.—The  
17 privacy policy of an insured depository institution  
18 which is disclosed pursuant to paragraph (1) shall  
19 include—

20 “(A) the policy of the institution with re-  
21 spect to disclosing customer information to  
22 third parties, other than agents of the deposi-  
23 tory institution, for marketing purposes; and

24 “(B) the disclosures required under section  
25 603(d)(2)(A)(iii) of the Fair Credit Reporting

1 Act with regard to the right of the customer, at  
2 any time, to direct that information referred to  
3 in such section not be shared with affiliates of  
4 the depository institution.

5 “(3) APPLICABILITY.—For purposes of section  
6 10 of the Home Owners’ Loan Act, this subsection  
7 and subsection (i) shall apply with regard to a sav-  
8 ings and loan holding company and any affiliate or  
9 insured depository institution subsidiary of such  
10 holding company to the same extent and in the same  
11 manner this subsection and subsection (i) apply with  
12 respect to a financial holding company, affiliate of a  
13 financial holding company, or insured depository in-  
14 stitution subsidiary of a financial holding com-  
15 pany.”.

16 **SEC. 502. STUDY OF CURRENT FINANCIAL PRIVACY LAWS.**

17 (a) IN GENERAL.—The Federal banking agencies  
18 shall conduct a study of whether existing laws which regu-  
19 late the sharing of customer information by insured depos-  
20 itory institutions with affiliates of such institutions ade-  
21 quately protect the privacy rights of customers of such in-  
22 stitutions.

23 (b) REPORT.—Before the end of the 6-month period  
24 beginning on the date of the enactment of this Act, the  
25 Federal banking agencies shall submit a report to the Con-

1 gress containing the findings and conclusions of the agen-  
2 cy with respect to the study required under subsection (a),  
3 together with such recommendations for legislative or ad-  
4 ministrative action as the agencies may determine to be  
5 appropriate.

6 (c) DEFINITIONS.—For purposes of this section, the  
7 terms “affiliate”, “Federal banking agency”, and “insured  
8 depository institution” have the meanings given to such  
9 terms in section 3 of the Federal Deposit Insurance Act.

## 10 **Subtitle B—Fraudulent Access to** 11 **Financial Information**

### 12 **SEC. 521. PRIVACY PROTECTION FOR CUSTOMER INFORMA-** 13 **TION OF FINANCIAL INSTITUTIONS.**

14 (a) PROHIBITION ON OBTAINING CUSTOMER INFOR-  
15 MATION BY FALSE PRETENSES.—It shall be a violation  
16 of this subtitle for any person to obtain or attempt to ob-  
17 tain, or cause to be disclosed or attempt to cause to be  
18 disclosed to any person, customer information of a finan-  
19 cial institution relating to another person—

20 (1) by making a false, fictitious, or fraudulent  
21 statement or representation to an officer, employee,  
22 or agent of a financial institution;

23 (2) by making a false, fictitious, or fraudulent  
24 statement or representation to a customer of a fi-  
25 nancial institution; or

1           (3) by providing any document to an officer,  
2           employee, or agent of a financial institution, know-  
3           ing that the document is forged, counterfeit, lost, or  
4           stolen, was fraudulently obtained, or contains a  
5           false, fictitious, or fraudulent statement or represen-  
6           tation.

7           (b) PROHIBITION ON SOLICITATION OF A PERSON TO  
8           OBTAIN CUSTOMER INFORMATION FROM FINANCIAL IN-  
9           STITUTION UNDER FALSE PRETENSES.—It shall be a vio-  
10          lation of this subtitle to request a person to obtain cus-  
11          tomer information of a financial institution, knowing that  
12          the person will obtain, or attempt to obtain, the informa-  
13          tion from the institution in any manner described in sub-  
14          section (a).

15          (c) NONAPPLICABILITY TO LAW ENFORCEMENT  
16          AGENCIES.—No provision of this section shall be con-  
17          strued so as to prevent any action by a law enforcement  
18          agency, or any officer, employee, or agent of such agency,  
19          to obtain customer information of a financial institution  
20          in connection with the performance of the official duties  
21          of the agency.

22          (d) NONAPPLICABILITY TO FINANCIAL INSTITUTIONS  
23          IN CERTAIN CASES.—No provision of this section shall be  
24          construed so as to prevent any financial institution, or any  
25          officer, employee, or agent of a financial institution, from

1 obtaining customer information of such financial institu-  
2 tion in the course of—

3 (1) testing the security procedures or systems  
4 of such institution for maintaining the confiden-  
5 tiality of customer information;

6 (2) investigating allegations of misconduct or  
7 negligence on the part of any officer, employee, or  
8 agent of the financial institution; or

9 (3) recovering customer information of the fi-  
10 nancial institution which was obtained or received by  
11 another person in any manner described in sub-  
12 section (a) or (b).

13 (e) NONAPPLICABILITY TO INSURANCE INSTITU-  
14 TIONS FOR INVESTIGATION OF INSURANCE FRAUD.—No  
15 provision of this section shall be construed so as to prevent  
16 any insurance institution, or any officer, employee, or  
17 agency of an insurance institution, from obtaining infor-  
18 mation as part of an insurance investigation into criminal  
19 activity, fraud, material misrepresentation, or material  
20 nondisclosure that is authorized for such institution under  
21 State law, regulation, interpretation, or order.

22 (f) NONAPPLICABILITY TO CERTAIN TYPES OF CUS-  
23 TOMER INFORMATION OF FINANCIAL INSTITUTIONS.—No  
24 provision of this section shall be construed so as to prevent  
25 any person from obtaining customer information of a fi-

1 nancial institution that otherwise is available as a public  
2 record filed pursuant to the securities laws (as defined in  
3 section 3(a)(47) of the Securities Exchange Act of 1934).

4 (g) NONAPPLICABILITY TO COLLECTION OF CHILD  
5 SUPPORT JUDGMENTS.—No provision of this section shall  
6 be construed to prevent any State-licensed private investi-  
7 gator, or any officer, employee, or agent of such private  
8 investigator, from obtaining customer information of a fi-  
9 nancial institution, to the extent reasonably necessary to  
10 collect child support from a person adjudged to have been  
11 delinquent in his or her obligations by a Federal or State  
12 court, and to the extent that such action by a State-li-  
13 censed private investigator is not unlawful under any other  
14 Federal or State law or regulation, and has been author-  
15 ized by an order or judgment of a court of competent juris-  
16 diction.

17 **SEC. 522. ADMINISTRATIVE ENFORCEMENT.**

18 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-  
19 SION.—Compliance with this subtitle shall be enforced by  
20 the Federal Trade Commission in the same manner and  
21 with the same power and authority as the Commission has  
22 under the title VIII, the Fair Debt Collection Practices  
23 Act, to enforce compliance with such title.

24 (b) NOTICE OF ACTIONS.—The Federal Trade Com-  
25 mission shall—

1           (1) notify the Securities and Exchange Commis-  
2           sion whenever the Federal Trade Commission initi-  
3           ates an investigation with respect to a financial in-  
4           stitution subject to regulation by the Securities and  
5           Exchange Commission;

6           (2) notify the Federal banking agency (as de-  
7           fined in section 3(z) of the Federal Deposit Insur-  
8           ance Act) whenever the Commission initiates an in-  
9           vestigation with respect to a financial institution  
10          subject to regulation by such Federal banking agen-  
11          cy; and

12          (3) notify the appropriate State insurance regu-  
13          lator whenever the Commission initiates an inves-  
14          tigation with respect to a financial institution sub-  
15          ject to regulation by such regulator.

16 **SEC. 523. CRIMINAL PENALTY.**

17          (a) IN GENERAL.—Whoever knowingly and inten-  
18          tionally violates, or knowingly and intentionally attempts  
19          to violate, section 521 shall be fined in accordance with  
20          title 18, United States Code, or imprisoned for not more  
21          than 5 years, or both.

22          (b) ENHANCED PENALTY FOR AGGRAVATED  
23          CASES.—Whoever violates, or attempts to violate, section  
24          521 while violating another law of the United States or  
25          as part of a pattern of any illegal activity involving more

1 than \$100,000 in a 12-month period shall be fined twice  
2 the amount provided in subsection (b)(3) or (c)(3) (as the  
3 case may be) of section 3571 of title 18, United States  
4 Code, imprisoned for not more than 10 years, or both.

5 **SEC. 524. RELATION TO STATE LAWS.**

6 (a) IN GENERAL.—This subtitle shall not be con-  
7 strued as superseding, altering, or affecting the statutes,  
8 regulations, orders, or interpretations in effect in any  
9 State, except to the extent that such statutes, regulations,  
10 orders, or interpretations are inconsistent with the provi-  
11 sions of this subtitle, and then only to the extent of the  
12 inconsistency.

13 (b) GREATER PROTECTION UNDER STATE LAW.—  
14 For purposes of this section, a State statute, regulation,  
15 order, or interpretation is not inconsistent with the provi-  
16 sions of this subtitle if the protection such statute, regula-  
17 tion, order, or interpretation affords any person is greater  
18 than the protection provided under this subtitle as deter-  
19 mined by the Commission, on its own motion or upon the  
20 petition of any interested party.

21 **SEC. 525. AGENCY GUIDANCE.**

22 In furtherance of the objectives of this subtitle, each  
23 Federal banking agency (as defined in section 3(z) of the  
24 Federal Deposit Insurance Act) and the Securities and  
25 Exchange Commission or self-regulatory organizations, as

1 appropriate, shall review regulations and guidelines appli-  
2 cable to financial institutions under their respective jurisdic-  
3 tions and shall prescribe such revisions to such regula-  
4 tions and guidelines as may be necessary to ensure that  
5 such financial institutions have policies, procedures, and  
6 controls in place to prevent the unauthorized disclosure  
7 of customer financial information and to deter and detect  
8 activities proscribed under section 521.

9 **SEC. 526. REPORTS.**

10 (a) **REPORT TO THE CONGRESS.**—Before the end of  
11 the 18-month period beginning on the date of the enact-  
12 ment of this Act, the Comptroller General, in consultation  
13 with the Federal Trade Commission, Federal banking  
14 agencies, the Securities and Exchange Commission, appro-  
15 priate Federal law enforcement agencies, and appropriate  
16 State insurance regulators, shall submit to the Congress  
17 a report on the following:

18 (1) The efficacy and adequacy of the remedies  
19 provided in this subtitle in addressing attempts to  
20 obtain financial information by fraudulent means or  
21 by false pretenses.

22 (2) Any recommendations for additional legisla-  
23 tive or regulatory action to address threats to the  
24 privacy of financial information created by attempts

1 to obtain information by fraudulent means or false  
2 pretenses.

3 (b) ANNUAL REPORT BY ADMINISTERING AGEN-  
4 CIES.—The Federal Trade Commission and the Attorney  
5 General shall submit to Congress an annual report on  
6 number and disposition of all enforcement actions taken  
7 pursuant to this subtitle.

8 **SEC. 527. DEFINITIONS.**

9 For purposes of this subtitle, the following definitions  
10 shall apply:

11 (1) CUSTOMER.—The term “customer” means,  
12 with respect to a financial institution, any person (or  
13 authorized representative of a person) to whom the  
14 financial institution provides a product or service,  
15 including that of acting as a fiduciary.

16 (2) CUSTOMER INFORMATION OF A FINANCIAL  
17 INSTITUTION.—The term “customer information of  
18 a financial institution” means any information main-  
19 tained by or for a financial institution which is de-  
20 rived from the relationship between the financial in-  
21 stitution and a customer of the financial institution  
22 and is identified with the customer.

23 (3) DOCUMENT.—The term “document” means  
24 any information in any form.

25 (4) FINANCIAL INSTITUTION.—

1           (A) IN GENERAL.—The term “financial in-  
2           stitution” means any institution engaged in the  
3           business of providing financial services to cus-  
4           tomers who maintain a credit, deposit, trust, or  
5           other financial account or relationship with the  
6           institution.

7           (B) CERTAIN FINANCIAL INSTITUTIONS  
8           SPECIFICALLY INCLUDED.—The term “financial  
9           institution” includes any depository institution  
10          (as defined in section 19(b)(1)(A) of the Fed-  
11          eral Reserve Act), any broker or dealer, any in-  
12          vestment adviser or investment company, any  
13          insurance company, any loan or finance com-  
14          pany, any credit card issuer or operator of a  
15          credit card system, and any consumer reporting  
16          agency that compiles and maintains files on  
17          consumers on a nationwide basis (as defined in  
18          section 603(p)).

19          (C) SECURITIES INSTITUTIONS.—For pur-  
20          poses of subparagraph (B)—

21                 (i) the terms “broker” and “dealer”  
22                 have the meanings provided in section 3 of  
23                 the Securities Exchange Act of 1934 (15  
24                 U.S.C. 78e);

1           (ii) the term “investment adviser” has  
2           the meaning provided in section 202(a)(11)  
3           of the Investment Advisers Act of 1940  
4           (15 U.S.C. 80b-2(a)); and

5           (iii) the term “investment company”  
6           has the meaning provided in section 3 of  
7           the Investment Company Act of 1940 (15  
8           U.S.C. 80a-3).

9           (D) FURTHER DEFINITION BY REGULA-  
10          TION.—The Federal Trade Commission, after  
11          consultation with Federal banking agencies and  
12          the Securities and Exchange Commission, may  
13          prescribe regulations clarifying or describing  
14          the types of institutions which shall be treated  
15          as financial institutions for purposes of this  
16          subtitle.