

[COMMITTEE PRINT]

February 27, 1999

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
17 through the creation of a regulatory framework for
18 financial holding companies that respects the diver-
19 gent requirements of each of the component busi-

1 nesses of the holding company, and that is based
2 upon principles of strong functional regulation and
3 enhanced regulatory coordination.

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

10 (6) To enhance the availability of financial serv-
11 ices to citizens of all economic circumstances and in
12 all geographic areas.

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

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

21 (c) TABLE OF CONTENTS.—The table of contents for
22 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.

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- Sec. 102. Activity restrictions applicable to bank holding companies which are not financial holding companies.
- Sec. 103. Financial holding companies.
- Sec. 104. Operation of State law.
- Sec. 105. Mutual bank holding companies authorized.
- Sec. 106. Prohibition on deposit production offices.
- Sec. 107. Clarification of branch closure requirements.
- Sec. 108. Amendments relating to limited purpose banks.
- Sec. 109. Reports on ongoing FTC study of consumer privacy issues.
- Sec. 110. GAO study of economic impact on community banks and other small financial institutions.

Subtitle B—Streamlining Supervision of Financial Holding Companies

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

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. Functional regulation.
- Sec. 125. 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.

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- Sec. 143. Clarification of status of subsidiaries and affiliates.
- Sec. 144. Annual GAO report.

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

- Sec. 151. Applying the principles of national treatment and equality of competitive opportunity to foreign banks that are financial holding companies.
- Sec. 152. Applying the principles of national treatment and equality of competitive opportunity to foreign banks and foreign financial institutions that are wholesale financial institutions.
- Sec. 153. Representative offices.

Subtitle G—Federal Home Loan Bank System Modernization

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

Subtitle H—Customer Service and Education

- Sec. 176. Customer protection and education regulations.

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—Effective Date of Title

- Sec. 191. Effective date.

TITLE II—FUNCTIONAL REGULATION

Subtitle A—Brokers and Dealers

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

Subtitle B—Bank Investment Company Activities

- Sec. 211. Custody of investment company assets by affiliated bank.
- Sec. 212. Lending to an affiliated investment company.

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

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

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

Subtitle D—Studies

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

TITLE III—INSURANCE

Subtitle A—State Regulation of Insurance

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

Subtitle B—National Association of Registered Agents and Brokers

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

- Sec. 333. Relationship to State law.
Sec. 334. Coordination with other regulators.
Sec. 335. Judicial review.
Sec. 336. Definitions.

TITLE IV—UNITARY SAVINGS AND LOAN HOLDING COMPANIES

- Sec. 401. Prevention of creation of new S&L holding companies with commercial affiliates.
Sec. 402. Retention of “Federal” in name of converted Federal savings association.

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

6 **Subtitle A—Affiliations**

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

8 (a) SECTION 20 REPEALED.—Section 20 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-

1 tion or order under this paragraph as of the day be-
2 fore the date of the enactment of the Financial Serv-
3 ices Act of 1999, to be so closely related to banking
4 as to be a proper incident thereto (subject to such
5 terms and conditions contained in such regulation,
6 unless modified by the Board);”.

7 (b) CONFORMING CHANGES TO OTHER STATUTES.—

8 (1) AMENDMENT TO THE BANK HOLDING COM-
9 PANY ACT AMENDMENTS OF 1970.—Section 105 of
10 the Bank Holding Company Act Amendments of
11 1970 (12 U.S.C. 1850) is amended by striking “, to
12 engage directly or indirectly in a nonbanking activity
13 pursuant to section 4 of such Act,”.

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

20 **SEC. 103. FINANCIAL HOLDING COMPANIES.**

21 (a) IN GENERAL.—The Bank Holding Company Act
22 of 1956 is amended by inserting after section 5 (12 U.S.C.
23 1844) the following new section:

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

2 “(a) FINANCIAL HOLDING COMPANY DEFINED.—

3 For purposes of this section, the term ‘financial holding
4 company’ means a bank holding company which meets the
5 requirements of subsection (b).

6 “(b) ELIGIBILITY REQUIREMENTS FOR FINANCIAL
7 HOLDING COMPANIES.—

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

13 “(A) All of the subsidiary depository insti-
14 tutions of the bank holding company are well
15 capitalized.

16 “(B) All of the subsidiary depository insti-
17 tutions of the bank holding company are well
18 managed.

19 “(C) All of the subsidiary depository insti-
20 tutions of the bank holding company have
21 achieved a rating of ‘satisfactory record of
22 meeting community credit needs’, or better, at
23 the most recent examination of each such insti-
24 tution;

25 “(D) The company has filed with the
26 Board a declaration that the company elects to

1 be a financial holding company and certifying
2 that the company meets the requirements of
3 subparagraphs (A), (B), and (C).

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

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

23 “(A) the bank holding company has sub-
24 mitted an affirmative plan to the appropriate
25 Federal banking agency to take such action as

1 may be necessary in order for such institution
2 to achieve a rating of ‘satisfactory record of
3 meeting community credit needs’, or better, at
4 the next examination of the institution; and

5 “(B) the plan has been accepted by such
6 agency.

7 “(c) ENGAGING IN ACTIVITIES THAT ARE FINANCIAL
8 IN NATURE.—

9 “(1) FINANCIAL ACTIVITIES.—

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

18 “(i) financial in nature or incidental
19 to such financial activities; or

20 “(ii) complementary to such financial
21 activities to the extent that the amount of
22 such complementary activities remains
23 small.

1 “(B) COORDINATION BETWEEN THE
2 BOARD AND THE DEPARTMENT OF THE TREAS-
3 URY.—

4 “(i) PROPOSALS RAISED BEFORE THE
5 BOARD.—

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

17 “(II) TREASURY VIEW.—The
18 Board shall not determine that any
19 activity is financial in nature or inci-
20 dental to a financial activity under
21 this subsection (other than an activity
22 described in paragraph (3)(H)) if the
23 Secretary of the Treasury notifies the
24 Board in writing, not later than 30
25 days after the date of receipt of the

1 notice described in subclause (I) (or
2 such longer period as the Board deter-
3 mines to be appropriate in light of the
4 circumstances) that the Secretary of
5 the Treasury believes that the activity
6 is not financial in nature or incidental
7 to a financial activity.

8 “(ii) PROPOSALS RAISED BY THE
9 TREASURY.—

10 “(I) TREASURY RECOMMENDA-
11 TION.—The Secretary of the Treasury
12 may, at any time, recommend in writ-
13 ing that the Board find an activity to
14 be financial in nature or incidental to
15 a financial activity.

16 “(II) TIME PERIOD FOR BOARD
17 ACTION.—Not later than 30 days
18 after the date of receipt of a written
19 recommendation from the Secretary of
20 the Treasury under subclause (I) (or
21 such longer period as the Secretary of
22 the Treasury and the Board deter-
23 mine to be appropriate in light of the
24 circumstances), the Board shall deter-
25 mine whether to initiate a public rule-

1 making proposing that the subject
2 recommended activity be found to be
3 financial in nature or incidental to a
4 financial activity under this sub-
5 section, and shall notify the Secretary
6 of the Treasury in writing of the de-
7 termination of the Board and, in the
8 event that the Board determines not
9 to seek public comment on the pro-
10 posal, the reasons for that determina-
11 tion.

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

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

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

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

24 “(D) whether such activity is necessary or
25 appropriate to allow a bank holding company

1 and the affiliates of a bank holding company
2 to—

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

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

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

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

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

21 “(B) Insuring, guaranteeing, or indemnify-
22 ing against loss, harm, damage, illness, disabil-
23 ity, or death, or providing and issuing annu-
24 ities, and acting as principal, agent, or broker
25 for purposes of the foregoing.

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

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

8 “(E) Underwriting, dealing in, or making
9 a market in securities.

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

19 “(G) Engaging, in the United States, in
20 any activity that—

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

23 “(ii) the Board has determined, under
24 regulations issued pursuant to section
25 4(c)(13) of this Act (as in effect on the

1 day before the date of enactment of the Fi-
2 nancial Services Act of 1999) to be usual
3 in connection with the transaction of bank-
4 ing or other financial operations abroad.

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

18 “(i) the shares, assets, or ownership
19 interests are not acquired or held by a de-
20 pository institution;

21 “(ii) such shares, assets, or ownership
22 interests are acquired and held by an affili-
23 ate of the bank holding company that is a
24 registered broker or dealer that is engaged
25 in securities underwriting activities, or an

1 affiliate of such broker or dealer, as part
2 of a bona fide underwriting or merchant
3 banking activity, including investment ac-
4 tivities engaged in for the purpose of ap-
5 preciation and ultimate resale or disposi-
6 tion of the investment;

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

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

20 “(I) Directly or indirectly acquiring or con-
21 trolling, whether as principal, on behalf of 1 or
22 more entities (including entities, other than a
23 depository institution or subsidiary of a deposi-
24 tory institution, that the bank holding company
25 controls) or otherwise, shares, assets, or owner-

1 ship interests (including without limitation debt
2 or equity securities, partnership interests, trust
3 certificates or other instruments representing
4 ownership) of a company or other entity, wheth-
5 er or not constituting control of such company
6 or entity, engaged in any activity not authorized
7 pursuant to this section if—

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

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

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

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

9 “(4) AUTHORIZATION OF NEW FINANCIAL AC-
10 TIVITIES.—The Board shall, by regulation or order
11 and in accordance with paragraph (1)(B), define,
12 consistent with the purposes of this Act, the follow-
13 ing activities as, and the extent to which such activi-
14 ties are, financial in nature or incidental to activities
15 which are financial in nature:

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

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

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

25 “(5) POST-CONSUMMATION NOTIFICATION.—

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

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

21 “(6) NOTICE REQUIRED FOR LARGE COMBINA-
22 TIONS.—

23 “(A) IN GENERAL.—No financial holding
24 company or wholesale financial holding com-
25 pany shall directly or indirectly acquire, and no

1 company that becomes a financial holding com-
2 pany or a wholesale financial holding company
3 shall directly or indirectly acquire control of,
4 any company in the United States, including
5 through merger, consolidation, or other type of
6 business combination, that—

7 “(i) is engaged in activities permitted
8 under this subsection or subsection (g);
9 and

10 “(ii) has consolidated total assets in
11 excess of \$40,000,000,000,

12 unless such holding company has provided no-
13 tice to the Board, not later than 60 days prior
14 to such proposed acquisition or prior to becom-
15 ing a financial holding company or wholesale fi-
16 nancial holding company, and during that time
17 period, or such longer time period not exceeding
18 an additional 60 days, as established by the
19 Board, the Board has not issued a notice dis-
20 approving the proposed acquisition or retention.

21 “(B) FACTORS FOR CONSIDERATION.—In
22 reviewing any prior notice filed under this para-
23 graph, the Board shall take into
24 consideration—

1 “(i) whether the company is in com-
2 pliance with all applicable criteria set forth
3 in subsection (b) and the provisions of sub-
4 section (d);

5 “(ii) whether the proposed combina-
6 tion represents an undue aggregation of
7 resources;

8 “(iii) whether the proposed combina-
9 tion poses a risk to the deposit insurance
10 system;

11 “(iv) whether the proposed combina-
12 tion poses a risk to State insurance guar-
13 anty funds;

14 “(v) whether the proposed combina-
15 tion can reasonably be expected to be in
16 the best interests of depositors or policy-
17 holders of the respective entities; and

18 “(vi) whether the proposed trans-
19 action can reasonably be expected to
20 produce benefits to the public.

21 “(C) REQUIRED INFORMATION.—The
22 Board may disapprove any prior notice filed
23 under this paragraph if the company submitting
24 such notice neglects, fails, or refuses to furnish

1 to the Board all relevant information required
2 by the Board.

3 “(D) SOLICITATION OF VIEWS OF OTHER
4 SUPERVISORY AGENCIES.—

5 “(i) IN GENERAL.—Upon receiving a
6 prior notice under this paragraph, in order
7 to provide for the submission of their views
8 and recommendations, the Board shall give
9 notice of the proposal to—

10 “(I) the appropriate Federal
11 banking agency of any bank involved;

12 “(II) the appropriate functional
13 regulator of any functionally regulated
14 nondepository institution (as defined
15 in section 5(c)(1)(C)) involved; and

16 “(III) the Secretary of the Treas-
17 ury, the Department of Justice, and
18 the Federal Trade Commission.

19 “(ii) TIMING.—The views and rec-
20 ommendations of any agency provided no-
21 tice under this paragraph shall be submit-
22 ted to the Board not later than 30 cal-
23 endar days after the date on which notice
24 to the agency was given, unless the Board

1 determines that another shorter time pe-
2 riod is appropriate.

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

5 “(1) IN GENERAL.—If a financial holding com-
6 pany is not in compliance with the requirements of
7 subparagraph (A), (B), or (C) of subsection (b)(1),
8 the appropriate Federal banking agency of the sub-
9 sidiary depository institution shall notify the Board
10 which shall give notice of such finding to the com-
11 pany.

12 “(2) AGREEMENT TO CORRECT CONDITIONS RE-
13 QUIRED.—Not later than 45 days after receipt by a
14 financial holding company of a notice given under
15 paragraph (1) (or such additional period as the
16 Board may permit), the company and any relevant
17 depository institution shall execute an agreement ac-
18 ceptable to the Board and the appropriate Federal
19 banking agency to comply with the requirements ap-
20 plicable to a financial holding company.

21 “(3) BOARD MAY IMPOSE LIMITATIONS.—Until
22 the conditions described in a notice to a financial
23 holding company under paragraph (1) are
24 corrected—

1 “(A) the Board may impose such limita-
2 tions on the conduct or activities of the com-
3 pany or any affiliate of the company (other
4 than a depository institution or a subsidiary of
5 a depository institution) as the Board deter-
6 mines to be appropriate under the cir-
7 cumstances; and

8 “(B) the appropriate Federal banking
9 agency may impose such limitations on the con-
10 duct or activities of an affiliated depository in-
11 stitution or subsidiary of a depository institu-
12 tion as the appropriate Federal banking agency
13 determines to be appropriate under the cir-
14 cumstances.

15 “(4) FAILURE TO CORRECT.—If, after receiving
16 a notice under paragraph (1), a financial holding
17 company or a depository institution affiliate of such
18 company does not—

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

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

23 “(C) in the case of a notice of failure to
24 comply with subsection (b)(1)(A), restore each
25 depository institution subsidiary to well capital-

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

5 “(D) in the case of a notice of failure to
6 comply with subparagraph (B) or (C) of sub-
7 section (b)(1), restore compliance with any such
8 subparagraph on or before the date on which
9 the next examination of the depository institu-
10 tion subsidiary is completed or by the end of
11 such other period as the Board determines to
12 be appropriate,

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

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

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

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

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

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

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

19 “(1) IN GENERAL.—Notwithstanding section
20 4(a), a company that is not a bank holding company
21 or a foreign bank (as defined in section 1(b)(7) of
22 the International Banking Act of 1978) and becomes
23 a financial holding company after the date of the en-
24 actment of the Financial Services Act of 1999 may
25 continue to engage in any activity and retain direct

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

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

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

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

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

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

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

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

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

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

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

14 “(6) TRANSACTIONS WITH NONFINANCIAL AF-
15 FILLATES.—An insured depository institution con-
16 trolled by a financial holding company or wholesale
17 financial holding company may not engage in a cov-
18 ered transaction (as defined by section 23A(b)(7) of
19 the Federal Reserve Act) with any affiliate con-
20 trolled by the company pursuant to section 10(c),
21 this subsection, or subparagraph (H) or (I) of sub-
22 section (c)(3).

23 “(7) SUNSET OF GRANDFATHER.—A financial
24 holding company engaged in any activity, or retain-
25 ing direct or indirect ownership or control of shares

1 of a company, pursuant to this subsection, shall ter-
2 minate such activity and divest ownership or control
3 of the shares of such company before the end of the
4 10-year period beginning on the date of the enact-
5 ment of the Financial Services Act of 1999. The
6 Board may, upon application by a financial holding
7 company, extend such 10-year period by a period not
8 to exceed an additional 5 years if such extension
9 would not be detrimental to the public interest.

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

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

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

23 “(3) the aggregate total assets of all companies
24 the shares of which are held under this subsection

1 do not exceed 5 percent of the holding company's
2 consolidated total assets;

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

7 “(5) neither the Board nor the Secretary of the
8 Treasury has determined that the activity is not fi-
9 nancial in nature or incidental to financial activities
10 under subsection (c);

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

14 “(7) the holding company provides written noti-
15 fication to the Board describing the activity com-
16 menced or conducted by the company acquired no
17 later than 10 business days after commencing the
18 activity or consummating the acquisition.”

19 (b) TECHNICAL AND CONFORMING AMENDMENT.—
20 Section 4(j) of the Bank Holding Company Act of 1956
21 (12 U.S.C. 1843(j)) is amended—

22 (1) in paragraph (1)(A), by inserting “or in any
23 complementary activity under section 6(c)(1)(A)(ii)”
24 after “subsection (c)(8) or (a)(2)”; and

1 (2) in paragraph (3), by inserting “, other than
2 any complementary activity under section
3 6(c)(1)(A)(ii),” after “ to engage in any activity”.

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

5 (a) AFFILIATIONS.—

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

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

21 (A) requiring any person or entity that
22 proposes to acquire control of an entity that is
23 engaged in the business of insurance and domi-
24 ciled in that State (hereafter in this subpara-
25 graph referred to as the “insurer”) to furnish

1 to the insurance regulatory authority of that
2 State, not later than 60 days before the effec-
3 tive date of the proposed acquisition—

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

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

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

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

1 (II) an informative description of
2 the business intended to be done by
3 the acquiring party and any subsidi-
4 ary thereof; and

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

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

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

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

24 (vii) the number of shares of any se-
25 curity of the insurer that each acquiring

1 party proposes to acquire, the terms of any
2 offer, request, invitation, agreement, or ac-
3 quisition, and a statement as to the meth-
4 od by which the fairness of the proposal
5 was arrived at;

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

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

24 (x) a description of the purchase of
25 any security of the insurer during the 12-

1 month period preceding the date of notifi-
2 cation by any acquiring party, including
3 the dates of purchase, names of the pur-
4 chasers, and consideration paid, or agreed
5 to be paid, therefor;

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

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

19 (xiii) the terms of any agreement,
20 contract, or understanding made with any
21 broker-dealer as to solicitation of securities
22 of the insurer for tender and the amount
23 of any fees, commissions, or other com-
24 pensation to be paid to broker-dealers with
25 regard thereto;

1 (B) requiring an entity that is acquiring
2 control of an entity that is engaged in the busi-
3 ness of insurance and domiciled in that State to
4 maintain or restore the capital requirements of
5 that insurance entity to the level required under
6 the capital regulations of general applicability
7 in that State to avoid the requirement of pre-
8 paring and filing with the insurance regulatory
9 authority of that State a plan to increase the
10 capital of the entity, except that any determina-
11 tion by the State insurance regulatory authority
12 with respect to such requirement shall be made
13 not later than 60 days after the date of notifi-
14 cation under subparagraph (A);

15 (C) taking actions with respect to the re-
16 ceivership or conservatorship of any insurance
17 company; or

18 (D) restricting a change in the ownership
19 of stock in an insurance company, or a com-
20 pany formed for the purpose of controlling such
21 insurance company, for a period of not more
22 than 3 years beginning on the date of the con-
23 version of such company from mutual to stock
24 form.

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

3 (A) IN GENERAL.—Subject to subsection
4 (c) and the nondiscrimination provisions con-
5 tained in such subsection, no provision in para-
6 graph (1) shall be construed as affecting State
7 laws, regulations, orders, interpretations, or
8 other actions of general applicability relating to
9 the governance of corporations, partnerships,
10 limited liability companies or other business as-
11 sociations incorporated or formed under the
12 laws of that State or domiciled in that State, or
13 the applicability of the antitrust laws of any
14 State or any State law that is similar to the
15 antitrust laws.

16 (B) DEFINITION.—The term “antitrust
17 laws” has the same meaning as in subsection
18 (a) of the first section of the Clayton Act, and
19 includes section 5 of the Federal Trade Com-
20 mission Act to the extent that such section 5
21 relates to unfair methods of competition.

22 (b) ACTIVITIES.—

23 (1) IN GENERAL.—Except as provided in para-
24 graph (3), and except with respect to insurance
25 sales, solicitation, and cross marketing activities,

1 which shall be governed by paragraph (2), no State
2 may, by statute, regulation, order, interpretation, or
3 other action, prevent or restrict an insured deposi-
4 tory institution, wholesale financial institution, or
5 subsidiary or affiliate thereof from engaging directly
6 or indirectly, either by itself or in conjunction with
7 a subsidiary, affiliate, or any other entity or person,
8 in any activity authorized or permitted under this
9 Act.

10 (2) INSURANCE SALES.—

11 (A) IN GENERAL.—In accordance with the
12 legal standards for preemption set forth in the
13 decision of the Supreme Court of the United
14 States in *Barnett Bank of Marion County N.A.*
15 *v. Nelson*, 116 S. Ct. 1103 (1996), no State
16 may, by statute, regulation, order, interpreta-
17 tion, or other action, prevent or significantly
18 interfere with the ability of an insured deposi-
19 tory institution or wholesale financial institu-
20 tion, or a subsidiary or affiliate thereof, to en-
21 gage, directly or indirectly, either by itself or
22 in conjunction with a subsidiary, affiliate, or
23 any other party, in any insurance sales, sollicita-
24 tion, or cross-marketing activity.

1 (B) CERTAIN STATE LAWS PRESERVED.—
2 Notwithstanding subparagraph (A), a State
3 may impose any of the following restrictions, or
4 restrictions which are substantially the same as
5 but no more burdensome or restrictive than
6 those in each of the following clauses:

7 (i) Restrictions prohibiting the rejec-
8 tion of an insurance policy solely because
9 the policy has been issued or underwritten
10 by any person who is not associated with
11 such insured depository institution or
12 wholesale financial institution, or any sub-
13 sidiary or affiliate thereof, when such in-
14 surance is required in connection with a
15 loan or extension of credit.

16 (ii) Restrictions prohibiting a require-
17 ment for any debtor, insurer, or insurance
18 agent or broker to pay a separate charge
19 in connection with the handling of insur-
20 ance that is required in connection with a
21 loan or other extension of credit or the
22 provision of another traditional banking
23 product, unless such charge would be re-
24 quired when the insured depository institu-
25 tion or wholesale financial institution, or

1 any subsidiary or affiliate thereof, is the li-
2 censed insurance agent or broker providing
3 the insurance.

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

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

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

22 (iv) Restrictions prohibiting the pay-
23 ment or receipt of any commission or bro-
24 kerage fee or other valuable consideration
25 for services as an insurance agent or

1 broker to or by any person, unless such
2 person holds a valid State license regard-
3 ing the applicable class of insurance at the
4 time at which the services are performed,
5 except that, in this clause, the term “serv-
6 ices as an insurance agent or broker” does
7 not include a referral by an unlicensed per-
8 son of a customer or potential customer to
9 a licensed insurance agent or broker that
10 does not include a discussion of specific in-
11 surance policy terms and conditions.

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

21 (vi) Restrictions prohibiting the re-
22 lease of the insurance information of a cus-
23 tomer (defined as information concerning
24 the premiums, terms, and conditions of in-
25 surance coverage, including expiration

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

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

1 (II) the release of information as
2 otherwise authorized by State or Fed-
3 eral law.

4 (vii) Restrictions prohibiting the use
5 of health information obtained from the in-
6 surance records of a customer for any pur-
7 pose, other than for its activities as a li-
8 censed agent or broker, without the ex-
9 press consent of the customer.

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

1 (I) from engaging in any activity
2 that would not violate section 106 of
3 the Bank Holding Company Act
4 Amendments of 1970, as interpreted
5 by the Board of Governors of the Fed-
6 eral Reserve System; or

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

18 (ix) Restrictions requiring, when an
19 application by a consumer for a loan or
20 other extension of credit from an insured
21 depository institution or wholesale financial
22 institution is pending, and insurance is of-
23 fered or sold to the consumer or is re-
24 quired in connection with the loan or ex-
25 tension of credit by the insured depository

1 institution or wholesale financial institu-
2 tion, that a written disclosure be provided
3 to the consumer or prospective customer
4 indicating that his or her choice of an in-
5 surance provider will not affect the credit
6 decision or credit terms in any way, except
7 that the insured depository institution or
8 wholesale financial institution, or subsidi-
9 ary or affiliate thereof, may impose reason-
10 able requirements concerning the credit-
11 worthiness of the insurance provider and
12 scope of coverage chosen.

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

18 (I) is not a deposit;

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

21 (III) is not guaranteed by the in-
22 surance provider or insured depository institution or whole-
23 sale financial institution or, if appro-
24 priate, its subsidiaries or affiliates or
25 any person soliciting the purchase of

1 or selling insurance on the premises
2 thereof; and

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

6 (xi) Restrictions requiring that, when
7 a customer obtains insurance (other than
8 credit insurance or flood insurance) and
9 credit from an insured depository institu-
10 tion or wholesale financial institution, or
11 any subsidiary or affiliate thereof, or any
12 person soliciting the purchase of or selling
13 insurance on the premises thereof, the
14 credit and insurance transactions be com-
15 pleted through separate documents.

16 (xii) Restrictions prohibiting, when a
17 customer obtains insurance (other than
18 credit insurance or flood insurance) and
19 credit from an insured depository institu-
20 tion or wholesale financial institution or its
21 subsidiaries or affiliates, or any person so-
22 liciting the purchase of or selling insurance
23 on the premises thereof, inclusion of the
24 expense of insurance premiums in the pri-

1 mary credit transaction without the ex-
2 press written consent of the customer.

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

12 (C) LIMITATIONS.—

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

22 (ii) NONDISCRIMINATION.—Subsection
23 (c) does not apply with respect to any
24 State statute, regulation, order, interpreta-
25 tion, or other action regarding insurance

1 sales, solicitation, or cross marketing ac-
2 tivities described in subparagraph (A) that
3 was issued, adopted, or enacted before
4 September 3, 1998, and that is not de-
5 scribed in subparagraph (B).

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

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

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

24 (A) relate to, or are issued, adopted, or en-
25 acted for the purpose of regulating the business

1 of insurance in accordance with the Act of
2 March 9, 1945 (commonly known as the
3 “McCarran-Ferguson Act”);

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

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

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

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

21 (A) it does not relate to, and is not issued
22 and adopted, or enacted for the purpose of reg-
23 ulating, directly or indirectly, insurance sales,
24 solicitations, or cross marketing activities cov-
25 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 affili-
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, to inves-
13 tigate and bring enforcement actions, consistent with sec-
14 tion 18(c) of the Securities Act of 1933, with respect to
15 fraud or deceit or unlawful conduct by any person, in con-
16 nection with securities or securities transactions.

17 (e) DEFINITION.—For purposes of this section, the
18 term “State” means any State of the United States, the
19 District of Columbia, any territory of the United States,
20 Puerto Rico, Guam, American Samoa, the Trust Territory
21 of the Pacific Islands, the Virgin Islands, and the North-
22 ern Mariana Islands.

1 **SEC. 105. MUTUAL BANK HOLDING COMPANIES AUTHOR-**
2 **IZED.**

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

6 “(2) REGULATIONS.—A bank holding company
7 organized as a mutual holding company shall be reg-
8 ulated on terms, and shall be subject to limitations,
9 comparable to those applicable to any other bank
10 holding company.”.

11 **SEC. 106. PROHIBITION ON DEPOSIT PRODUCTION OF-**
12 **FICES.**

13 (a) IN GENERAL.—Section 109(d) of the Riegle-Neal
14 Interstate Banking and Branching Efficiency Act of 1994
15 (12 U.S.C. 1835a(d)) is amended—

16 (1) by inserting “, the Financial Services Act of
17 1999,” after “pursuant to this title”; and

18 (2) by inserting “or such Act” after “made by
19 this title”.

20 (b) TECHNICAL AND CONFORMING AMENDMENT.—
21 Section 109(e)(4) of the Riegle-Neal Interstate Banking
22 and Branching Efficiency Act of 1994 (12 U.S.C.
23 1835a(e)(4)) is amended by inserting “and any branch of
24 a bank controlled by an out-of-State bank holding com-
25 pany (as defined in section 2(o)(7) of the Bank Holding
26 Company Act of 1956)” before the period.

1 **SEC. 107. CLARIFICATION OF BRANCH CLOSURE REQUIRE-**
2 **MENTS.**

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

8 **SEC. 108. AMENDMENTS RELATING TO LIMITED PURPOSE**
9 **BANKS.**

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

12 (1) in paragraph (2)(A)(ii)—

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

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

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

19 “(XI) assets that are derived
20 from, or are incidental to, activities in
21 which institutions described in section
22 2(c)(2)(F) are permitted to engage;”;

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

25 “(B) any bank subsidiary of such company
26 engages in any activity in which the bank was

1 not lawfully engaged as of March 5, 1987, un-
2 less the bank is well managed and well capital-
3 ized;

4 “(C) any bank subsidiary of such company
5 both—

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

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

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

23 (3) by striking paragraphs (3) and (4) and in-
24 serting the following new paragraphs:

1 “(3) PERMISSIBLE OVERDRAFTS DESCRIBED.—

2 For purposes of paragraph (2)(D), an overdraft is
3 described in this paragraph if—

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

8 “(B) such overdraft—

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

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

22 “(4) DIVESTITURE IN CASE OF LOSS OF EX-
23 EMPTION.—If any company described in paragraph
24 (1) fails to qualify for the exemption provided under
25 such paragraph by operation of paragraph (2), such

1 exemption shall cease to apply to such company and
2 such company shall divest control of each bank it
3 controls before the end of the 180-day period begin-
4 ning on the date that the company receives notice
5 from the Board that the company has failed to con-
6 tinue to qualify for such exemption, unless before
7 the end of such 180-day period, the company has—

8 “(A) corrected the condition or ceased the
9 activity that caused the company to fail to con-
10 tinue to qualify for the exemption; and

11 “(B) implemented procedures that are rea-
12 sonably adapted to avoid the reoccurrence of
13 such condition or activity.”.

14 (b) INDUSTRIAL LOAN COMPANIES AFFILIATE OVER-
15 DRAFTS.—Section 2(c)(2)(H) of the Bank Holding Com-
16 pany Act of 1956 (12 U.S.C. 1841(c)(2)(H)) is amended
17 by inserting before the period at the end “, or that is oth-
18 erwise permissible for a bank controlled by a company de-
19 scribed in section 4(f)(1)”.

20 **SEC. 109. REPORTS ON ONGOING FTC STUDY OF CON-**
21 **SUMER PRIVACY ISSUES.**

22 With respect to the ongoing multistage study being
23 conducted by the Federal Trade Commission on consumer
24 privacy issues, the Commission shall submit to the Con-
25 gress an interim report on the findings and conclusions

1 of the Commission, together with such recommendations
2 for legislative and administrative action as the Commis-
3 sion determines to be appropriate, at the conclusion of
4 each stage of such study and a final report at the conclu-
5 sion of the study.

6 **SEC. 110. GAO STUDY OF ECONOMIC IMPACT ON COMMU-**
7 **NITY BANKS AND OTHER SMALL FINANCIAL**
8 **INSTITUTIONS.**

9 (a) **STUDY REQUIRED.**—The Comptroller General of
10 the United States shall conduct a study of the projected
11 economic impact that the enactment of this Act will have
12 on financial institutions which have total assets of
13 \$100,000,000 or less.

14 (b) **REPORT TO THE CONGRESS.**—The Comptroller
15 General of the United States shall submit a report to the
16 Congress before the end of the 6-month period beginning
17 on the date of the date of the enactment of this Act con-
18 taining the findings and conclusions of the Comptroller
19 General with regard to the study required under sub-
20 section (a) and such recommendations for legislative or
21 administrative action as the Comptroller General may de-
22 termine to be appropriate.

1 **Subtitle B—Streamlining Super-**
2 **vision of Financial Holding**
3 **Companies**

4 **SEC. 111. STREAMLINING FINANCIAL HOLDING COMPANY**
5 **SUPERVISION.**

6 Section 5(c) of the Bank Holding Company Act of
7 1956 (12 U.S.C. 1844(c)) is amended to read as follows:

8 “(c) REPORTS AND EXAMINATIONS.—

9 “(1) REPORTS.—

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

15 “(i) its financial condition, systems
16 for monitoring and controlling financial
17 and operating risks, and transactions with
18 depository institution subsidiaries of the
19 holding company; and

20 “(ii) compliance by the company or
21 subsidiary with applicable provisions of
22 this Act.

23 “(B) USE OF EXISTING REPORTS.—

24 “(i) IN GENERAL.—The Board shall,
25 to the fullest extent possible, accept re-

1 ports in fulfillment of the Board's report-
2 ing requirements under this paragraph
3 that a bank holding company or any sub-
4 sidiary of such company has provided or
5 been required to provide to other Federal
6 and State supervisors or to appropriate
7 self-regulatory organizations.

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

13 “(iii) REQUIRED USE OF PUBLICLY
14 REPORTED INFORMATION.—The Board
15 shall, to the fullest extent possible, accept
16 in fulfillment of any reporting or record-
17 keeping requirements under this Act infor-
18 mation that is otherwise required to be re-
19 ported publicly and externally audited fi-
20 nancial statements.

21 “(iv) REPORTS FILED WITH OTHER
22 AGENCIES.—In the event the Board re-
23 quires a report from a functionally regu-
24 lated nondepository institution subsidiary
25 of a bank holding company of a kind that

1 is not required by another Federal or State
2 regulator or appropriate self-regulatory or-
3 ganization, the Board shall request that
4 the appropriate regulator or self-regulatory
5 organization obtain such report. If the re-
6 port is not made available to the Board,
7 and the report is necessary to assess a ma-
8 terial risk to the bank holding company or
9 any of its subsidiary depository institutions
10 or compliance with this Act, the Board
11 may require such subsidiary to provide
12 such a report to the Board.

13 “(C) DEFINITION.—For purposes of this
14 subsection, the term ‘functionally regulated
15 nondepository institution’ means—

16 “(i) a broker or dealer registered
17 under the Securities Exchange Act of
18 1934;

19 “(ii) an investment adviser registered
20 under the Investment Advisers Act of
21 1940, or with any State, with respect to
22 the investment advisory activities of such
23 investment adviser and activities incidental
24 to such investment advisory activities;

1 “(iii) an insurance company subject to
2 supervision by a State insurance commis-
3 sion, agency, or similar authority; and

4 “(iv) an entity subject to regulation
5 by the Commodity Futures Trading Com-
6 mission, with respect to the commodities
7 activities of such entity and activities inci-
8 dental to such commodities activities.

9 “(2) EXAMINATIONS.—

10 “(A) EXAMINATION AUTHORITY.—

11 “(i) IN GENERAL.—The Board may
12 make examinations of each bank holding
13 company and each subsidiary of a bank
14 holding company.

15 “(ii) FUNCTIONALLY REGULATED
16 NONDEPOSITORY INSTITUTION SUBSIDI-
17 ARIES.—Notwithstanding clause (i), the
18 Board may make examinations of a func-
19 tionally regulated nondepository institution
20 subsidiary of a bank holding company only
21 if—

22 “(I) the Board has reasonable
23 cause to believe that such subsidiary
24 is engaged in activities that pose a

1 material risk to an affiliated deposi-
2 tory institution, or

3 “(II) based on reports and other
4 available information, the Board has
5 reasonable cause to believe that a sub-
6 sidiary is not in compliance with this
7 Act or with provisions relating to
8 transactions with an affiliated deposi-
9 tory institution and the Board cannot
10 make such determination through ex-
11 amination of the affiliated depository
12 institution or bank holding company.

13 “(B) LIMITATIONS ON EXAMINATION AU-
14 THORITY FOR BANK HOLDING COMPANIES AND
15 SUBSIDIARIES.—Subject to subparagraph
16 (A)(ii), the Board may make examinations
17 under subparagraph (A)(i) of each bank holding
18 company and each subsidiary of such holding
19 company in order to—

20 “(i) inform the Board of the nature of
21 the operations and financial condition of
22 the holding company and such subsidiaries;

23 “(ii) inform the Board of—

24 “(I) the financial and operational
25 risks within the holding company sys-

1 tem that may pose a threat to the
2 safety and soundness of any subsidi-
3 ary depository institution of such
4 holding company; and

5 “(II) the systems for monitoring
6 and controlling such risks; and

7 “(iii) monitor compliance with the
8 provisions of this Act and those governing
9 transactions and relationships between any
10 subsidiary depository institution and its af-
11 filiates.

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

16 “(i) the bank holding company; and

17 “(ii) any subsidiary of the holding
18 company that, because of—

19 “(I) the size, condition, or activi-
20 ties of the subsidiary; or

21 “(II) the nature or size of trans-
22 actions between such subsidiary and
23 any depository institution which is
24 also a subsidiary of such holding com-
25 pany,

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

4 “(D) DEFERENCE TO BANK EXAMINA-
5 TIONS.—The Board shall, to the fullest extent
6 possible, use, for the purposes of this para-
7 graph, the reports of examinations of depository
8 institutions made by the appropriate Federal
9 and State depository institution supervisory au-
10 thority.

11 “(E) DEFERENCE TO OTHER EXAMINA-
12 TIONS.—The Board shall, to the fullest extent
13 possible, address the circumstances which might
14 otherwise permit or require an examination by
15 the Board by forgoing an examination and in-
16 stead reviewing the reports of examination
17 made of—

18 “(i) any registered broker or dealer by
19 or on behalf of the Securities and Ex-
20 change Commission;

21 “(ii) any registered investment adviser
22 properly registered by or on behalf of ei-
23 ther the Securities and Exchange Commis-
24 sion or any State;

1 “(iii) any licensed insurance company
2 by or on behalf of any state regulatory au-
3 thority responsible for the supervision of
4 insurance companies; and

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

8 “(3) CAPITAL.—

9 “(A) IN GENERAL.—The Board shall not,
10 by regulation, guideline, order or otherwise, pre-
11 scribe or impose any capital or capital adequacy
12 rules, guidelines, standards, or requirements on
13 any subsidiary of a financial holding company
14 that is not a depository institution and—

15 “(i) is in compliance with applicable
16 capital requirements of another Federal
17 regulatory authority (including the Securi-
18 ties and Exchange Commission) or State
19 insurance authority; or

20 “(ii) is properly registered as an in-
21 vestment adviser under the Investment Ad-
22 visers Act of 1940, or with any State.

23 “(B) RULE OF CONSTRUCTION.—Subpara-
24 graph (A) shall not be construed as preventing
25 the Board from imposing capital or capital ade-

1 quacy rules, guidelines, standards, or require-
2 ments with respect to activities of a registered
3 investment adviser other than investment advi-
4 sory activities or activities incidental to invest-
5 ment advisory activities.

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

15 “(i) a bank holding company; or

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

24 “(4) TRANSFER OF BOARD AUTHORITY TO AP-
25 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 registered
3 brokers, dealers, and investment advisers; and
4 “(C) the relevant State insurance authori-
5 ties with regard to all interpretations of, and
6 the enforcement of, applicable State insurance
7 laws (and rules, regulations, orders, and other
8 directives issued thereunder) relating to the ac-
9 tivities, conduct, and operations of insurance
10 companies and insurance agents.”.

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

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

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

24 (1) by striking “Financial Institutions Super-
25 visory Act of 1966, order” and inserting “Financial

1 Institutions Supervisory Act of 1966, at the election
2 of the bank holding company—

3 “(A) order”; and

4 (2) by striking “shareholders of the bank hold-
5 ing company. Such distribution” and inserting
6 “shareholders of the bank holding company; or

7 “(B) order the bank holding company, after due
8 notice and opportunity for hearing, and after con-
9 sultation with the primary supervisor for the bank,
10 which shall be the Comptroller of the Currency in
11 the case of a national bank, and the Federal Deposit
12 Insurance Corporation and the appropriate State su-
13 pervisor in the case of an insured nonmember bank,
14 to terminate (within 120 days or such longer period
15 as the Board may direct) the ownership or control
16 of any such bank by such company.

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

18 **SEC. 113. AUTHORITY OF STATE INSURANCE REGULATOR**
19 **AND SECURITIES AND EXCHANGE COMMIS-**
20 **SION.**

21 Section 5 of the Bank Holding Company Act of 1956
22 (12 U.S.C. 1844) is amended by adding at the end the
23 following new subsection:

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

1 “(1) IN GENERAL.—Notwithstanding any other
2 provision of law, any regulation, order, or other ac-
3 tion of the Board which requires a bank holding
4 company to provide funds or other assets to a sub-
5 sidiary insured depository institution shall not be ef-
6 fective nor enforceable if—

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

9 “(i) a bank holding company that is
10 an insurance company or is a broker or
11 dealer registered under the Securities Ex-
12 change Act of 1934; or

13 “(ii) an affiliate of the depository in-
14 stitution which is an insurance company or
15 a broker or dealer registered under such
16 Act; and

17 “(B) the State insurance authority for the
18 insurance company or the Securities and Ex-
19 change Commission for the registered broker or
20 dealer, as the case may be, determines in writ-
21 ing sent to the holding company and the Board
22 that the holding company shall not provide such
23 funds or assets because such action would have
24 a material adverse effect on the financial condi-

1 tion of the insurance company or the broker or
2 dealer, as the case may be.

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

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

1 mines consistent with the safe and sound operation
2 of the insured depository institution.

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

14 **SEC. 114. PRUDENTIAL SAFEGUARDS.**

15 (a) COMPTROLLER OF THE CURRENCY.—

16 (1) IN GENERAL.—The Comptroller of the Cur-
17 rency may, by regulation or order, impose restric-
18 tions or requirements on relationships or trans-
19 actions between a national bank and a subsidiary of
20 the national bank which the Comptroller finds is
21 consistent with the public interest, the purposes of
22 this Act, title LXII of the Revised Statutes of the
23 United States, and other Federal law applicable to
24 national banks, and the standards in paragraph (2).

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

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

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

10 (C) Avoid conflicts of interest or other
11 abuses.

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

15 (E) Promote the application of national
16 treatment and equality of competitive oppor-
17 tunity between nonbank affiliates owned or con-
18 trolled by domestic bank holding companies and
19 nonbank affiliates owned or controlled by for-
20 eign banks operating in the United States.

21 (3) REVIEW.—The Comptroller of the Currency
22 shall regularly—

23 (A) review all restrictions or requirements
24 established pursuant to paragraph (1) to deter-
25 mine whether there is a continuing need for any

1 such restriction or requirement to carry out the
2 purposes of the Act, including any purpose de-
3 scribed in paragraph (2); and

4 (B) modify or eliminate any restriction or
5 requirement the Comptroller finds is no longer
6 required for such purposes.

7 (b) BOARD OF GOVERNORS OF THE FEDERAL RE-
8 SERVE SYSTEM.—

9 (1) IN GENERAL.—The Board of Governors of
10 the Federal Reserve System may, by regulation or
11 order, impose restrictions or requirements on rela-
12 tionships or transactions—

13 (A) between a depository institution sub-
14 sidiary of a bank holding company and any af-
15 filiate of such depository institution (other than
16 a subsidiary of such institution); or

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

19 which the Board finds is consistent with the public
20 interest, the purposes of this Act, the Bank Holding
21 Company Act of 1956, the Federal Reserve Act, and
22 other Federal law applicable to depository institution
23 subsidiaries of bank holding companies or State
24 banks (as the case may be), and the standards in
25 paragraph (2).

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

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

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

10 (C) Avoid conflicts of interest or other
11 abuses.

12 (D) Enhance the privacy of customers of
13 the State member bank or any subsidiary of the
14 bank.

15 (E) Promote the application of national
16 treatment and equality of competitive oppor-
17 tunity between nonbank affiliates owned or con-
18 trolled by domestic bank holding companies and
19 nonbank affiliates owned or controlled by for-
20 eign banks operating in the United States.

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

23 (A) review all restrictions or requirements
24 established pursuant to paragraph (1) to deter-
25 mine whether there is a continuing need for any

1 such restriction or requirement to carry out the
2 purposes of the Act, including any purpose de-
3 scribed in paragraph (2); and

4 (B) modify or eliminate any restriction or
5 requirement the Board finds is no longer re-
6 quired for such purposes.

7 (4) FOREIGN BANKS.—

8 (A) IN GENERAL.—The Board may, by
9 regulation or order, impose restrictions or re-
10 quirements on relationships or transactions be-
11 tween a branch, agency, or commercial lending
12 company of a foreign bank in the United States
13 and any affiliate in the United States of such
14 foreign bank that the Board finds are consist-
15 ent with the public interest, the purposes of this
16 Act, the Bank Holding Company Act of 1956,
17 the Federal Reserve Act, and other Federal law
18 applicable to foreign banks and their affiliates
19 in the United States, and the standards in
20 paragraphs (2) and (3).

21 (B) EVASION.—In the event that the
22 Board determines that there may be cir-
23 cumstances that would result in an evasion of
24 this paragraph, the Board may also impose re-
25 strictions or requirements on relationships or

1 transactions between operations of a foreign
2 bank outside the United States and any affiliate
3 in the United States of such foreign bank that
4 are consistent with national treatment and
5 equality of competitive opportunity.

6 (c) FEDERAL DEPOSIT INSURANCE CORPORATION.—

7 (1) IN GENERAL.—The Federal Deposit Insur-
8 ance Corporation may, by regulation or order, im-
9 pose restrictions or requirements on relationships or
10 transactions between a State nonmember bank (as
11 defined in section 3 of the Federal Deposit Insur-
12 ance Act) and a subsidiary of the State nonmember
13 bank which the Corporation finds is consistent with
14 the public interest, the purposes of this Act, the
15 Federal Deposit Insurance Act, or other Federal law
16 applicable to State nonmember banks and the stand-
17 ards in paragraph (2).

18 (2) STANDARDS.—The Federal Deposit Insur-
19 ance Corporation may exercise authority under para-
20 graph (1) if the Corporation finds that such action
21 will have any of the following effects:

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

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

3 (C) Avoid conflicts of interest or other
4 abuses.

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

8 (E) Promote the application of national
9 treatment and equality of competitive oppor-
10 tunity between nonbank affiliates owned or con-
11 trolled by domestic bank holding companies and
12 nonbank affiliates owned or controlled by for-
13 eign banks operating in the United States.

14 (3) REVIEW.—The Federal Deposit Insurance
15 Corporation shall regularly—

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

22 (B) modify or eliminate any restriction or
23 requirement the Corporation finds is no longer
24 required for such purposes.

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

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

3 (1) **IN GENERAL.—**Except as provided in para-
4 graph (3), the Commission shall be the sole Federal
5 agency with authority to inspect and examine any
6 registered investment company that is not a bank
7 holding company or a savings and loan holding com-
8 pany.

9 (2) **PROHIBITION ON BANKING AGENCIES.—**Ex-
10 cept as provided in paragraph (3), a Federal bank-
11 ing agency may not inspect or examine any reg-
12 istered investment company that is not a bank hold-
13 ing company or a savings and loan holding company.

14 (3) **CERTAIN EXAMINATIONS AUTHORIZED.—**
15 Nothing in this subsection prevents the Federal De-
16 posit Insurance Corporation, if the Corporation finds
17 it necessary to determine the condition of an insured
18 depository institution for insurance purposes, from
19 examining an affiliate of any insured depository in-
20 stitution, pursuant to its authority under section
21 10(b)(4) of the Federal Deposit Insurance Act, as
22 may be necessary to disclose fully the relationship
23 between the depository institution and the affiliate,
24 and the effect of such relationship on the depository
25 institution.

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

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

10 (1) BANK HOLDING COMPANY.—The term
11 “bank holding company” has the same meaning as
12 in section 2 of the Bank Holding Company Act of
13 1956.

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

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

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

23 (5) SAVINGS AND LOAN HOLDING COMPANY.—
24 The term “savings and loan holding company” has

1 the same meaning as in section 10(a)(1)(D) of the
2 Home Owners' Loan Act.

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

6 The Bank Holding Company Act of 1956 (12 U.S.C.
7 1841 et seq.) is amended by inserting after section 10 the
8 following new section:

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

12 “(a) LIMITATION ON DIRECT ACTION.—

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

1 “(A) the financial safety, soundness, or
2 stability of an affiliated depository institution;
3 or

4 “(B) the domestic or international pay-
5 ment system.

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

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

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

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

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

13 “(2) a registered investment adviser, properly
14 registered by or on behalf of either the Securities
15 and Exchange Commission or any State, with re-
16 spect to the investment advisory activities of such in-
17 vestment adviser and activities incidental to such in-
18 vestment advisory activities;

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

21 “(4) an insurance company or an insurance
22 agency subject to supervision by a State insurance
23 commission, agency, or similar authority; or

24 “(5) an entity subject to regulation by the Com-
25 modity Futures Trading Commission, with respect

1 to the commodities activities of such entity and ac-
2 tivities incidental to such commodities activities.”.

3 **SEC. 117. INTERAGENCY CONSULTATION.**

4 (a) PURPOSE.—It is the intention of Congress that
5 the Board of Governors of the Federal Reserve System,
6 as the umbrella supervisor for financial holding compa-
7 nies, and the State insurance regulators, as the functional
8 regulators of companies engaged in insurance activities,
9 coordinate efforts to supervise companies that control both
10 a depository institution and a company engaged in insur-
11 ance activities regulated under State law. In particular,
12 Congress believes that the Board and the State insurance
13 regulators should share, on a confidential basis, informa-
14 tion relevant to the supervision of companies that control
15 both a depository institution and a company engaged in
16 insurance activities, including information regarding the
17 financial health of the consolidated organization and infor-
18 mation regarding transactions and relationships between
19 insurance companies and affiliated depository institutions.
20 The appropriate Federal banking agencies for depository
21 institutions should also share, on a confidential basis, in-
22 formation with the relevant State insurance regulators re-
23 garding transactions and relationships between depository
24 institutions and affiliated companies engaged in insurance
25 activities. The purpose of this section is to encourage this

1 coordination and confidential sharing of information, and
2 to thereby improve both the efficiency and the quality of
3 the supervision of financial holding companies and their
4 affiliated depository institutions and companies engaged
5 in insurance activities.

6 (b) EXAMINATION RESULTS AND OTHER INFORMA-
7 TION.—

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

23 (2) BANKING AGENCY INFORMATION.—Upon
24 the request of the appropriate insurance regulator of
25 any State, the appropriate Federal banking agency

1 may provide any information of the agency regard-
2 ing any transaction or relationship between a deposi-
3 tory institution supervised by such Federal banking
4 agency and any affiliated company that is engaged
5 in insurance activities regulated by such State insur-
6 ance regulator. The appropriate Federal banking
7 agency may provide any other information to the ap-
8 propriate State insurance regulator that the agency
9 believes is necessary or appropriate to permit the
10 State insurance regulator to administer and enforce
11 applicable State insurance laws.

12 (3) STATE INSURANCE REGULATOR INFORMA-
13 TION.—Upon the request of the Board or the appro-
14 priate Federal banking agency, a State insurance
15 regulator may provide any examination or other re-
16 ports, records, or other information to which such
17 insurance regulator may have access with respect to
18 a company which—

19 (A) is engaged in insurance activities and
20 regulated by such insurance regulator; and

21 (B) is an affiliate of an insured depository
22 institution, wholesale financial institution, or fi-
23 nancial holding company.

24 (c) CONSULTATION.—Before making any determina-
25 tion relating to the initial affiliation of, or the continuing

1 affiliation of, an insured depository institution, wholesale
2 financial institution, or financial holding company with a
3 company engaged in insurance activities, the appropriate
4 Federal banking agency shall consult with the appropriate
5 State insurance regulator of such company and take the
6 views of such insurance regulator into account in making
7 such determination.

8 (d) EFFECT ON OTHER AUTHORITY.—Nothing in
9 this section shall limit in any respect the authority of the
10 appropriate Federal banking agency with respect to an in-
11 sured depository institution, wholesale financial institu-
12 tion, or bank holding company or any affiliate thereof
13 under any provision of law.

14 (e) CONFIDENTIALITY AND PRIVILEGE.—

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

1 rial obtained from a State insurance regulator that
2 is entitled to confidential treatment under applicable
3 State regulations, or other applicable law, and take
4 all reasonable steps to oppose any effort to secure
5 disclosure of the information or material by the Fed-
6 eral banking agency.

7 (2) PRIVILEGE.—The provision pursuant to this
8 section of information or material by a Federal
9 banking agency or State insurance regulator shall
10 not constitute a waiver of, or otherwise affect, any
11 privilege to which the information or material is oth-
12 erwise subject.

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

15 (1) APPROPRIATE FEDERAL BANKING AGENCY;
16 INSURED DEPOSITORY INSTITUTION.—The terms
17 “appropriate Federal banking agency” and “insured
18 depository institution” have the same meanings as
19 in section 3 of the Federal Deposit Insurance Act.

20 (2) BOARD; FINANCIAL HOLDING COMPANY;
21 AND WHOLESALE FINANCIAL INSTITUTION.—The
22 terms “Board”, “financial holding company”, and
23 “wholesale financial institution” have the same
24 meanings as in section 2 of the Bank Holding Com-
25 pany Act of 1956.

1 **SEC. 118. EQUIVALENT REGULATION AND SUPERVISION.**

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

4 (1) section 5(c) of the Bank Holding Company
5 Act of 1956 (as amended by this Act) that limit the
6 authority of the Board of Governors of the Federal
7 Reserve System to require reports from, to make ex-
8 aminations of, or to impose capital requirements on
9 bank holding companies and their nonbank subsidi-
10 aries; and

11 (2) section 10A of the Bank Holding Company
12 Act of 1956 (as added by this Act) that limit what-
13 ever authority the Board might otherwise have to
14 take direct or indirect action with respect to bank
15 holding companies and their nonbank subsidiaries,
16 shall also limit whatever authority that the Federal De-
17 posit Insurance Corporation might otherwise have under
18 any statute to require reports, make examinations, impose
19 capital requirements or take any other direct or indirect
20 action with respect to bank holding companies and their
21 nonbank subsidiaries (including nonbank subsidiaries of
22 depository institutions), subject to the same standards and
23 requirements as are applicable to the Board under such
24 provisions.

25 (b) CERTAIN EXAMINATIONS AUTHORIZED.—Noth-
26 ing in this section shall prevent the Federal Deposit Insur-

1 ance Corporation, if the Corporation finds it necessary to
2 determine the condition of an insured depository institu-
3 tion for insurance purposes, from examining an affiliate
4 of any insured depository institution, pursuant to its au-
5 thority under section 10(b)(4) of the Federal Deposit In-
6 surance Act, as may be necessary to disclose fully the rela-
7 tionship between the depository institution and the affili-
8 ate, and the effect of such relationship on the depository
9 institution.

10 **SEC. 119. PROHIBITION ON FDIC ASSISTANCE TO AFFILI-**
11 **ATES AND SUBSIDIARIES.**

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

18 **SEC. 120. REPEAL OF SAVINGS BANK PROVISIONS IN THE**
19 **BANK HOLDING COMPANY ACT OF 1956.**

20 Section 3(f) of the Bank Holding Company Act of
21 1956 (12 U.S.C. 1842(f)) is amended to read as follows:

22 “(f) [Repealed].”

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

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

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

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

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

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

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

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

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

1 “(B) is conducted under terms or condi-
2 tions other than those that would govern the
3 conduct of such activity by a national bank,
4 unless a national bank is specifically authorized by
5 the express terms of a Federal statute and not by
6 implication or interpretation to acquire shares of or
7 an interest in, or to control, such subsidiary, such as
8 by paragraph (2) of this subsection and section 25A
9 of the Federal Reserve Act.

10 “(2) SPECIFIC AUTHORIZATION TO CONDUCT
11 ACTIVITIES WHICH ARE FINANCIAL IN NATURE.—
12 Subject to paragraphs (3) and (4), a national bank
13 may control a company, or hold an interest in a
14 company that is controlled by insured depository in-
15 stitutions or subsidiaries thereof, that engage in ac-
16 tivities that have been determined, in accordance
17 with subsection (b), to be financial in nature or inci-
18 dental to such financial activities or that are per-
19 mitted under subsection (b)(4).

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

23 “(A) the national bank and all depository
24 institution affiliates of the national bank are
25 well capitalized;

1 “(B) the national bank and all depository
2 institution affiliates of the national bank are
3 well managed;

4 “(C) the national bank and all depository
5 institution affiliates of such national bank have
6 achieved a rating of ‘satisfactory record of
7 meeting community credit needs’, or better, at
8 the most recent examination of each such bank
9 or institution; and

10 “(D) the bank has received the approval of
11 the Comptroller of the Currency.

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

16 “(A) engage as principal in insuring, guar-
17 anteeing, or indemnifying against loss, harm,
18 damage, illness, disability, or death (other than
19 in connection with credit-related insurance) or
20 in providing or issuing annuities;

21 “(B) engage in real estate investment or
22 development activities; or

23 “(C) engage in any activity permissible for
24 a financial holding company under paragraph
25 (3)(I) of section 6(c) of the Bank Holding Com-

1 pany Act of 1956 (relating to insurance com-
2 pany investments),
3 (except to the extent that a Federal statute ex-
4 pressly authorizes a national bank to engage directly
5 in such an activity).

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

13 “(6) LIMITED EXCLUSIONS FROM COMMUNITY
14 NEEDS REQUIREMENTS FOR NEWLY AFFILIATED DE-
15 POSITORY INSTITUTIONS.—Any depository institu-
16 tion which becomes an affiliate of a national bank
17 during the 12-month period preceding the date of an
18 approval by the Comptroller of the Currency under
19 paragraph (3)(D) for such bank, and any depository
20 institution which becomes an affiliate of the national
21 bank after such date, may be excluded for purposes
22 of paragraph (3)(C) during the 12-month period be-
23 ginning on the date of such affiliation if—

24 “(A) the national bank or such depository
25 institution has submitted an affirmative plan to

1 the appropriate Federal banking agency to take
2 such action as may be necessary in order for
3 such institution to achieve a rating of ‘satisfac-
4 tory record of meeting community credit needs’,
5 or better, at the next examination of the insti-
6 tution; and

7 “(B) the plan has been accepted by such
8 agency.

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

11 “(A) COMPANY; CONTROL; AFFILIATE;
12 SUBSIDIARY.—The terms ‘company’, ‘control’,
13 ‘affiliate’, and ‘subsidiary’ have the same mean-
14 ings as in section 2 of the Bank Holding Com-
15 pany Act of 1956.

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

22 “(C) WELL MANAGED.—The term ‘well
23 managed’ means—

24 “(i) in the case of a depository insti-
25 tution that has been examined, unless oth-

1 otherwise determined in writing by the appro-
2 priate Federal banking agency—

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

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

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

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

24 “(b) ACTIVITIES THAT ARE FINANCIAL IN NA-
25 TURE.—

1 “(1) FINANCIAL ACTIVITIES.—

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

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

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

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

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

1 “(I) CONSULTATION.—The Sec-
2 retary of the Treasury shall notify the
3 Board of, and consult with the Board
4 concerning, any request, proposal, or
5 application under this subsection, in-
6 cluding any regulation or order pro-
7 posed under paragraph (3)(B), for a
8 determination of whether an activity
9 is financial in nature or incidental to
10 such a financial activity.

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

1 “(ii) PROPOSALS RAISED BY THE
2 BOARD.—

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

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

1 section, and shall notify the Board in
2 writing of the determination of the
3 Secretary and, in the event that the
4 Secretary determines not to seek pub-
5 lic comment on the proposal, the rea-
6 sons for that determination.

7 “(2) FACTORS TO BE CONSIDERED.—In deter-
8 mining whether an activity is financial in nature or
9 incidental to financial activities, the Secretary shall
10 take 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 banks
15 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 and the subsidiaries
21 of a bank to—

22 “(i) compete effectively with any com-
23 pany seeking to provide financial services
24 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) AUTHORIZATION OF NEW FINANCIAL AC-
11 TIVITIES.—

12 “(A) REGULATION OF MERCHANT BANK-
13 ING.—The Board shall have sole authority to
14 prescribe regulations and issue interpretations
15 to implement paragraph (1) with respect to ac-
16 tivities described in section 6(e)(3)(H) of the
17 Bank Holding Company Act of 1956.

18 “(B) JOINT REGULATION OF OTHER AC-
19 TIVITIES.—The Secretary of the Treasury shall,
20 by regulation or order and in accordance with
21 paragraph (1)(B), define, consistent with the
22 purposes of this Act, the following activities as,
23 and the extent to which such activities are, fi-
24 nancial in nature or incidental to activities
25 which are financial in nature:

1 “(i) Lending, exchanging, transfer-
2 ring, investing for others, or safeguarding
3 financial assets other than money or secu-
4 rities.

5 “(ii) Providing any device or other in-
6 strumentality for transferring money or
7 other financial assets.

8 “(iii) Arranging, effecting, or facilitat-
9 ing financial transactions for the account
10 of third parties.

11 “(4) DEVELOPING ACTIVITIES.—Subject to sub-
12 section (a)(2), a subsidiary of a national bank may
13 engage directly or indirectly, or acquire shares of
14 any company engaged, in any activity that has not
15 been determined to be financial in nature or inciden-
16 tal to financial activities under this subsection by ei-
17 ther the Secretary of the Treasury or the Board if—

18 “(A) the subsidiary reasonably concludes
19 that the activity is financial in nature or inci-
20 dental to financial activities;

21 “(B) the gross revenues from all activities
22 conducted under this paragraph represent less
23 than 5 percent of the consolidated gross reve-
24 nues of the national bank;

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

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

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

13 “(F) the national bank subsidiary provides
14 written notice to the Secretary of the Treasury
15 describing the activity commenced by the sub-
16 sidiary or conducted by the company acquired
17 no later than 10 business days after commene-
18 ing the activity or consummating the acquisi-
19 tion.

20 “(c) PROVISIONS APPLICABLE TO NATIONAL BANKS
21 THAT FAIL TO MEET REQUIREMENTS.—

22 “(1) IN GENERAL.—If the Comptroller of the
23 Currency finds that a national bank is not in compli-
24 ance with the requirements of subparagraph (A),
25 (B), or (C) of subsection (a)(3), the Comptroller of

1 the Currency shall give notice of such finding to the
2 national bank.

3 “(2) AGREEMENT TO CORRECT CONDITIONS RE-
4 QUIRED.—Not later than 45 days after receipt by a
5 national bank of a notice given under paragraph (1)
6 (or such additional period as the Comptroller of the
7 Currency may permit), the national bank shall exe-
8 cute an agreement acceptable to the Comptroller of
9 the Currency to comply with the requirements appli-
10 cable to a national bank.

11 “(3) COMPTROLLER OF THE CURRENCY MAY
12 IMPOSE LIMITATIONS.—Until the conditions de-
13 scribed in a notice to a national bank under para-
14 graph (1) are corrected, the Comptroller of the Cur-
15 rency may impose such limitations on the conduct or
16 activities of the national bank or any affiliate of the
17 bank as the Comptroller of the Currency determines
18 to be appropriate under the circumstances.

19 “(4) FAILURE TO CORRECT.—If, after receiving
20 a notice under paragraph (1), a national does not—

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

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

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

9 “(D) in the case of a notice of failure to
10 comply with subparagraph (B) or (C) of sub-
11 section (a)(3), restore compliance with any such
12 subparagraph on or before the date on which
13 the next examination of the depository institu-
14 tion subsidiary is completed or by the end of
15 such other period as the Comptroller of the
16 Currency determines to be appropriate,
17 the Comptroller of the Currency may require such
18 national bank, under such terms and conditions as
19 may be imposed by the Comptroller of the Currency
20 and subject to such extension of time as may be
21 granted in the Comptroller of the Currency’s discre-
22 tion, to divest control of any subsidiary engaged in
23 activities pursuant to subsection (a)(2) or, at the
24 election of the national bank, instead to cease to en-

1 gage in any activity conducted by a subsidiary of the
2 national bank pursuant to subsection (a)(2).

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

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

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

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

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

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

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

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

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

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

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

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

12 (b) SAFETY AND SOUNDNESS FIREWALLS APPLICA-
13 BLE TO SUBSIDIARIES OF BANKS.—The Federal Deposit
14 Insurance Act (12 U.S.C. 1811 et seq.) is amended by
15 adding at the end the following new section:

16 **“SEC. 45. SAFETY AND SOUNDNESS FIREWALLS APPLICA-**
17 **BLE TO SUBSIDIARIES OF BANKS.**

18 “(a) LIMITING THE EQUITY INVESTMENT OF A BANK
19 IN A SUBSIDIARY.—

20 “(1) CAPITAL DEDUCTION.—In determining
21 whether an insured bank complies with applicable
22 regulatory capital standards—

23 “(A) the appropriate Federal banking
24 agency shall deduct from the assets and tan-
25 gible equity of the bank the aggregate amount

1 of the outstanding equity investments of the
2 bank in financial subsidiaries of the bank; and

3 “(B) the assets and liabilities of such fi-
4 nancial subsidiaries shall not be consolidated
5 with those of the bank.

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

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

18 “(c) MAINTENANCE OF SEPARATE CORPORATE
19 IDENTITY AND SEPARATE LEGAL STATUS.—

20 “(1) IN GENERAL.—Each insured bank shall
21 ensure that the bank maintains and complies with
22 reasonable policies and procedures to preserve the
23 separate corporate identity and legal status of the
24 bank and any financial subsidiary or affiliate of the
25 bank.

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

6 “(d) FINANCIAL SUBSIDIARY DEFINED.—For pur-
7 poses of this section, the term ‘financial subsidiary’ means
8 a subsidiary of a national bank that is engaged in activi-
9 ties that are financial in nature or incidental to such fi-
10 nancial activities pursuant to subsection (a)(2) or (b)(4)
11 of section 5136A of the Revised Statutes of the United
12 States.

13 “(e) REGULATIONS.—The appropriate Federal bank-
14 ing agencies shall jointly prescribe regulations implement-
15 ing this section.”.

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

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

21 (2) by inserting after subsection (d), the follow-
22 ing new subsection:

23 “(e) RULES RELATING TO BANKS WITH FINANCIAL
24 SUBSIDIARIES.—

1 “(1) FINANCIAL SUBSIDIARY DEFINED.—For
2 purposes of this section and section 23B, the term
3 ‘financial subsidiary’ means a company which—

4 “(A) is a subsidiary of a bank (other than
5 a corporation organized under section 25A of
6 the Federal Reserve Act or a corporation oper-
7 ating under section 25 of such Act); and

8 “(B) is engaged in activities that are fi-
9 nancial in nature or incidental to such financial
10 activities pursuant to subsection (a)(2) or
11 (b)(4) of section 5136A of the Revised Statutes
12 of the United States.

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

22 “(A) shall be an affiliate of the bank and
23 any other subsidiary of the bank which is not
24 a financial subsidiary; and

1 “(B) shall not be treated as a subsidiary of
2 the bank.

3 “(3) APPLICATION TO TRANSACTIONS BETWEEN
4 FINANCIAL SUBSIDIARY AND NONBANK AFFILI-
5 ATES.—

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

13 “(B) CERTAIN AFFILIATES EXCLUDED.—
14 For purposes of subparagraph (A) and notwith-
15 standing paragraph (4), the term ‘affiliate’
16 shall not include a bank, or a subsidiary of a
17 bank, which is engaged exclusively in activities
18 permissible for a national bank to engage in di-
19 rectly.

20 “(4) EQUITY INVESTMENTS EXCLUDED SUB-
21 JECT TO THE APPROVAL OF THE BANKING AGEN-
22 CY.—Subsection (a)(1) shall not apply so as to limit
23 the equity investment of a bank in a financial sub-
24 sidiary of such bank, except that any investment
25 that exceeds the amount of a dividend that the bank

1 party of a subsidiary or affiliate of an insured depository
2 institution shall fraudulently represent that the institution
3 is or will be liable for any obligation of a subsidiary or
4 other affiliate of the institution.

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

8 “(c) INSTITUTION-AFFILIATED PARTY DEFINED.—
9 For purposes of this section, the term ‘institution-affili-
10 ated party’ with respect to a subsidiary or affiliate has
11 the same meaning as in section 3 of the Federal Deposit
12 Insurance Act, except that references to an insured deposi-
13 tory institution shall be deemed to be references to a sub-
14 sidiary or affiliate of an insured depository institution.

15 “(d) OTHER DEFINITIONS.—For purposes of this
16 section, the terms ‘affiliate’, ‘insured depository institu-
17 tion’, and ‘subsidiary’ have same meanings as in section
18 3 of the Federal Deposit Insurance Act.”.

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

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

1 **SEC. 124. FUNCTIONAL REGULATION.**

2 The Federal Deposit Insurance Act (12 U.S.C. 1811
3 et seq.), is amended by inserting after section 45 (as
4 added by section 122 of this subtitle) the following new
5 section:

6 **“SEC. 46. FUNCTIONAL REGULATION OF SECURITIES SUB-**
7 **SIDIARIES AND INSURANCE AGENCY SUBSIDI-**
8 **ARIES OF INSURED DEPOSITORY INSTITU-**
9 **TIONS.**

10 “(a) **BROKER OR DEALER SUBSIDIARY.**—A broker or
11 dealer that is a subsidiary of an insured depository institu-
12 tion shall be subject to regulation under the Securities Ex-
13 change Act of 1934 in the same manner and to the same
14 extent as a broker or dealer that—

15 “(1) is controlled by the same bank holding
16 company as controls the insured depository institu-
17 tion; and

18 “(2) is not an insured depository institution or
19 a subsidiary of an insured depository institution.

20 “(b) **INSURANCE AGENCY SUBSIDIARY.**—An insur-
21 ance agency or brokerage that is a subsidiary of an in-
22 sured depository institution shall be subject to regulation
23 by a State insurance authority in the same manner and
24 to the same extent as an insurance agency or brokerage
25 that—

1 “(1) is controlled by the same bank holding
2 company as controls the insured depository institu-
3 tion; and

4 “(2) is not an insured depository institution or
5 a subsidiary of an insured depository institution.

6 “(c) DEFINITIONS.—For purposes of this section, the
7 terms ‘broker’ and ‘dealer’ have the same meanings as in
8 section 3 of the Securities Exchange Act of 1934.”.

9 **SEC. 125. REPEAL OF STOCK LOAN LIMIT IN FEDERAL RE-**
10 **SERVE ACT.**

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

14 **Subtitle D—Wholesale Financial**
15 **Holding Companies; Wholesale**
16 **Financial Institutions**

17 **CHAPTER 1—WHOLESALE FINANCIAL**
18 **HOLDING COMPANIES**

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

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

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

2 “(a) COMPANIES THAT CONTROL WHOLESALE FI-
3 NANCIAL INSTITUTIONS.—

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

7 “(A) is registered as a bank holding com-
8 pany;

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

11 “(C) controls 1 or more wholesale financial
12 institutions;

13 “(D) does not control—

14 “(i) a bank other than a wholesale fi-
15 nancial institution;

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

19 “(iii) a savings association; and

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

23 “(2) SAVINGS ASSOCIATION TRANSITION PE-
24 RIOD.—Notwithstanding paragraph (1)(D)(iii), the
25 Board may permit a company that controls a sav-
26 ings association and that otherwise meets the re-

1 requirements of paragraph (1) to become supervised
2 under paragraph (1), if the company divests control
3 of any such savings association within such period,
4 not to exceed 5 years after becoming supervised
5 under paragraph (1), as permitted by the Board.

6 “(b) SUPERVISION BY THE BOARD.—

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

11 “(2) REPORTS.—

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

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

23 “(ii) the extent to which the company
24 or subsidiary has complied with the provi-

1 sions of this Act and regulations prescribed
2 and orders issued under this Act.

3 “(B) USE OF EXISTING REPORTS.—

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

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

18 “(C) EXEMPTIONS FROM REPORTING RE-
19 QUIREMENTS.—

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

1 paragraph and any regulation prescribed
2 under this paragraph.

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

10 “(I) Whether information of the
11 type required under this paragraph is
12 available from a supervisory agency
13 (as defined in section 1101(7) of the
14 Right to Financial Privacy Act of
15 1978) or a foreign regulatory author-
16 ity of a similar type.

17 “(II) The primary business of the
18 company.

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

22 “(3) EXAMINATIONS.—

23 “(A) LIMITED USE OF EXAMINATION AU-
24 THORITY.—The Board may make examinations
25 of each wholesale financial holding company

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

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

7 “(ii) inform the Board regarding—

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

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

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

23 “(B) RESTRICTED FOCUS OF EXAMINA-
24 TIONS.—The Board shall, to the fullest extent
25 possible, limit the focus and scope of any exam-

1 ination of a wholesale financial holding com-
2 pany under this paragraph to—

3 “(i) the holding company; and

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

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

1 “(D) 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 by
6 instead reviewing the reports of examination
7 made of—

8 “(i) any registered broker or dealer or
9 any registered investment adviser by or on
10 behalf of the Commission; and

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

15 “(E) CONFIDENTIALITY OF REPORTED IN-
16 FORMATION.—

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

1 wholesale financial holding company or any
2 subsidiary of such company.

3 “(ii) COMPLIANCE WITH REQUESTS
4 FOR INFORMATION.—No provision of this
5 subparagraph shall be construed as author-
6 izing the Board to withhold information
7 from the Congress, or preventing the
8 Board from complying with a request for
9 information from any other Federal de-
10 partment or agency for purposes within the
11 scope of such department’s or agency’s ju-
12 risdiction, or from complying with any
13 order of a court of competent jurisdiction
14 in an action brought by the United States
15 or the Board.

16 “(iii) COORDINATION WITH OTHER
17 LAW.—For purposes of section 552 of title
18 5, United States Code, this subparagraph
19 shall be considered to be a statute de-
20 scribed in subsection (b)(3)(B) of such sec-
21 tion.

22 “(iv) DESIGNATION OF CONFIDENTIAL
23 INFORMATION.—In prescribing regulations
24 to carry out the requirements of this sub-
25 section, the Board shall designate informa-

1 tion described in or obtained pursuant to
2 this paragraph as confidential information.

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

7 “(4) CAPITAL ADEQUACY GUIDELINES.—

8 “(A) CAPITAL ADEQUACY PROVISIONS.—
9 Subject to the requirements of, and solely in ac-
10 cordance with, the terms of this paragraph, the
11 Board may adopt capital adequacy rules or
12 guidelines for wholesale financial holding com-
13 panies.

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

17 “(i) FOCUS ON DOUBLE LEVERAGE.—

18 The Board shall focus on the use by whole-
19 sale financial holding companies of debt
20 and other liabilities to fund capital invest-
21 ments in subsidiaries.

22 “(ii) NO UNWEIGHTED CAPITAL
23 RATIO.—The Board shall not, by regula-
24 tion, guideline, order, or otherwise, impose
25 under this section a capital ratio that is

1 not based on appropriate risk-weighting
2 considerations.

3 “(iii) NO CAPITAL REQUIREMENT ON
4 REGULATED ENTITIES.—The Board shall
5 not, by regulation, guideline, order or oth-
6 erwise, prescribe or impose any capital or
7 capital adequacy rules, standards, guide-
8 lines, or requirements upon any subsidiary
9 that—

10 “(I) is not a depository institu-
11 tion; and

12 “(II) is in compliance with appli-
13 cable capital requirements of another
14 Federal regulatory authority (includ-
15 ing the Securities and Exchange Com-
16 mission) or State insurance authority.

17 “(iv) CERTAIN SUBSIDIARIES.—The
18 Board shall not, by regulation, guideline,
19 order or otherwise, prescribe or impose any
20 capital or capital adequacy rules, stand-
21 ards, guidelines, or requirements upon any
22 subsidiary that is not a depository institu-
23 tion and that is registered as an invest-
24 ment adviser under the Investment Advis-
25 ers Act of 1940, except that this clause

1 shall not be construed as preventing the
2 Board from imposing capital or capital
3 adequacy rules, guidelines, standards, or
4 requirements with respect to activities of a
5 registered investment adviser other than
6 investment advisory activities or activities
7 incidental to investment advisory activities.

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

19 “(I) a bank holding company; or

20 “(II) controlled by a bank hold-
21 ing company by reason of ownership
22 by the bank holding company (includ-
23 ing through all of its affiliates) of 25
24 percent or more of the shares of the
25 investment company, where the shares

1 owned by the bank holding company
2 have a market value equal to more
3 than \$1,000,000.

4 “(vi) APPROPRIATE EXCLUSIONS.—
5 The Board shall take full account of—

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

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

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

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

1 “(1) GRANDFATHERED ACTIVITIES.—

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

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

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

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

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

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

15 “(2) COMMODITIES.—

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

1 ing companies to conduct in the United States
2 as of January 1, 1997, if such wholesale finan-
3 cial holding company, or any subsidiary of such
4 holding company, was engaged directly, indi-
5 rectly, or through any such company in any of
6 such activities as of January 1, 1997, in the
7 United States.

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

21 “(3) CROSS MARKETING RESTRICTIONS.—A
22 wholesale financial holding company shall not
23 permit—

24 “(A) any company whose shares it owns or
25 controls pursuant to paragraph (1) or (2) to

1 offer or market any product or service of an af-
2 filiated wholesale financial institution; or

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

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

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

24 “(2) CONDITIONS FOR TREATMENT AS A
25 WHOLESALE FINANCIAL HOLDING COMPANY.—A for-

1 eign bank and a company that owns or controls a
2 foreign bank may not be treated as a wholesale fi-
3 nancial holding company unless the bank and com-
4 pany meet and continue to meet the following cri-
5 teria:

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

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

18 “(C) TRANSACTION WITH AFFILIATES.—
19 Transactions between a branch, agency, or com-
20 mercial lending company subsidiary of the for-
21 eign bank in the United States, and any securi-
22 ties affiliate or company in which the foreign
23 bank (or any company that owns or controls
24 such foreign bank), has invested and which en-
25 gages in any activity authorized only as a result

1 of the application of subsection (c) or (g) of
2 section 6, comply with the provisions of sections
3 23A and 23B of the Federal Reserve Act in the
4 same manner and to the same extent as such
5 transactions would be required to comply with
6 such sections if the foreign bank were a mem-
7 ber bank.

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

22 “(4) SUPERVISION OF FOREIGN BANK WHICH
23 MAINTAINS NO BANKING PRESENCE OTHER THAN
24 CONTROL OF A WHOLESALE FINANCIAL INSTITU-
25 TION.—A foreign bank that owns or controls a

1 wholesale financial institution but does not operate
2 a branch, agency, or commercial lending company in
3 the United States (and any company that owns or
4 controls such foreign bank) may request a deter-
5 mination from the Board that such bank or com-
6 pany be treated as a wholesale financial holding
7 company, except that such bank or company shall be
8 subject to the restrictions of paragraphs (2)(A) and
9 (3) of this subsection.

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

16 (b) UNINSURED BANKS.—

17 (1) UNINSURED STATE BANKS.—Section 9 of
18 the Federal Reserve Act (12 U.S.C. 321 et seq.) is
19 amended by adding at the end the following new
20 paragraph:

21 “(24) ENFORCEMENT AUTHORITY OVER UNIN-
22 SURED STATE MEMBER BANKS.—Section 3(u) of the
23 Federal Deposit Insurance Act, subsections (j) and
24 (k) of section 7 of such Act, and subsections (b)
25 through (n), (s), (u), and (v) of section 8 of such

1 Act shall apply to an uninsured State member bank
2 in the same manner and to the same extent such
3 provisions apply to an insured State member bank
4 and any reference in any such provision to ‘insured
5 depository institution’ shall be deemed to be a ref-
6 erence to ‘uninsured State member bank’ for pur-
7 poses of this paragraph.”.

8 (2) UNINSURED NATIONAL BANKS.—Section
9 5239 of the Revised Statutes of the United States
10 (12 U.S.C. 93) is amended—

11 (A) by redesignating the 2d of the 2 sub-
12 sections designated as subsection (d) as sub-
13 section (e); and

14 (B) by adding at the end the following new
15 subsection:

16 “(f) ENFORCEMENT AUTHORITY OVER UNINSURED
17 NATIONAL BANKS.—Section 3(u) of the Federal Deposit
18 Insurance Act, subsections (j) and (k) of section 7 of such
19 Act, and subsections (b) through (n), (s), (u), and (v) of
20 section 8 of such Act shall apply to an uninsured national
21 bank in the same manner and to the same extent such
22 provisions apply to an insured national bank and any ref-
23 erence in any such provision to ‘insured depository institu-
24 tion’ shall be deemed to be a reference to ‘uninsured na-
25 tional bank’ for purposes of this subsection.”.

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

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

14 (b) COMMODITY FUTURES TRADING COMMISSION.—
15 The Right to Financial Privacy Act of 1978 (12 U.S.C.
16 3401 et seq.) is amended—

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

18 (A) by redesignating subparagraphs (G)
19 and (H) as subparagraphs (H) and (I), respec-
20 tively; and

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

23 “(G) the Commodity Futures Trading
24 Commission; or”; and

25 (2) in section 1112(e) (12 U.S.C. 3412(e)), by
26 striking “and the Securities and Exchange Commis-

1 sion” and inserting “, the Securities and Exchange
2 Commission, and the Commodity Futures Trading
3 Commission”.

4 **SEC. 133. CONFORMING AMENDMENTS.**

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

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

10 “(p) WHOLESALE FINANCIAL INSTITUTION.—The
11 term ‘wholesale financial institution’ means a wholesale fi-
12 nancial institution subject to section 9B of the Federal
13 Reserve Act.

14 “(q) COMMISSION.—The term ‘Commission’ means
15 the Securities and Exchange Commission.

16 “(r) DEPOSITORY INSTITUTION.—The term ‘deposi-
17 tory institution’—

18 “(1) has the same meaning as in section 3 of
19 the Federal Deposit Insurance Act; and

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

21 (2) DEFINITION OF BANK INCLUDES WHOLE-
22 SALE FINANCIAL INSTITUTION.—Section 2(c)(1) of
23 the Bank Holding Company Act of 1956 (12 U.S.C.
24 1841(c)(1)) is amended by adding at the end the fol-
25 lowing new subparagraph:

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

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

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

12 (b) FEDERAL DEPOSIT INSURANCE ACT.—

13 (1) Section 3(q)(1) of the Federal Deposit In-
14 surance Act (12 U.S.C. 1813(q)(2)(A)) is amended
15 by inserting “national wholesale financial institution
16 authorized by the Comptroller of the Currency pur-
17 suant to section 5136B of the Revised Statutes of
18 the United States,” after “District bank,”.

19 (2) Section 3(q)(2)(A) of the Federal Deposit
20 Insurance Act (12 U.S.C. 1813(q)(2)(A)) is amend-
21 ed to read as follows:

22 “(A) any State member insured bank (ex-
23 cept a District bank) and any wholesale finan-
24 cial institution as authorized by the Board pur-

1 suant to section 9B of the Federal Reserve
2 Act;”.

3 **CHAPTER 2—WHOLESALE FINANCIAL**
4 **INSTITUTIONS**

5 **SEC. 136. WHOLESALE FINANCIAL INSTITUTIONS.**

6 (a) NATIONAL WHOLESALE FINANCIAL INSTITU-
7 TIONS.—

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

13 **“SEC. 5136B. NATIONAL WHOLESALE FINANCIAL INSTITU-**
14 **TIONS.**

15 “(a) AUTHORIZATION OF THE COMPTROLLER RE-
16 QUIRED.—

17 “(1) IN GENERAL.—A national bank may apply
18 to the Comptroller on such forms and in accordance
19 with such regulations as the Comptroller may pre-
20 scribe, for permission to operate as a wholesale fi-
21 nancial institution.

22 “(2) NATIONAL WHOLESALE FINANCIAL INSTI-
23 TUTION.—Any national bank that is approved by the
24 Comptroller of the Currency to operate as a whole-
25 sale financial institution under paragraph (1) shall

1 be known as a national wholesale financial institu-
2 tion.

3 “(b) REGULATION.—A national wholesale financial
4 institution may exercise, in accordance with such institu-
5 tion’s articles of incorporation and regulations issued by
6 the Comptroller, all the powers and privileges of a national
7 bank formed in accordance with section 5133 of the Re-
8 vised Statutes of the United States, subject to section 9B
9 of the Federal Reserve Act and the limitations and restric-
10 tions contained therein.

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

14 “(d) LIMIT ON NUMBER.—Not more than 5 national
15 wholesale financial institutions may be chartered by the
16 Comptroller of the Currency.”.

17 (2) CLERICAL AMENDMENT.—The table of sec-
18 tions for chapter one of title LXII of the Revised
19 Statutes of the United States is amended by insert-
20 ing after the item relating to section 5136A (as
21 added by section 121(d) of this title) the following
22 new item:

“5136B. National wholesale financial institutions.”.

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

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

2 “(a) APPLICATION FOR MEMBERSHIP AS WHOLE-
3 SALE FINANCIAL INSTITUTION.—

4 “(1) APPLICATION REQUIRED.—

5 “(A) IN GENERAL.—Any bank may apply
6 to the Board of Governors of the Federal Re-
7 serve System to become a wholesale financial
8 institution, or to the Comptroller of the Cur-
9 rency under section 5136B of the Revised Stat-
10 utes of the United States to be a national
11 wholesale financial institution, and, as a whole-
12 sale financial institution, to subscribe to the
13 stock of the Federal reserve bank organized
14 within the district where the applying bank is
15 located.

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

20 “(C) LIMIT ON NUMBER.—Not more than
21 5 wholesale financial institutions may be ap-
22 proved by the Board under this subsection.

23 “(2) INSURANCE TERMINATION.—No bank the
24 deposits of which are insured under the Federal De-
25 posit Insurance Act may become a wholesale finan-
26 cial institution unless it has met all requirements

1 under that Act for voluntary termination of deposit
2 insurance.

3 “(b) GENERAL REQUIREMENTS APPLICABLE TO
4 WHOLESALE FINANCIAL INSTITUTIONS.—

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

16 “(2) PROMPT CORRECTIVE ACTION.—A whole-
17 sale financial institution shall be deemed to be an in-
18 sured depository institution for purposes of section
19 38 of the Federal Deposit Insurance Act except
20 that—

21 “(A) the relevant capital levels and capital
22 measures for each capital category shall be the
23 levels specified by the Board for wholesale fi-
24 nancial institutions;

1 “(B) all references to the appropriate Fed-
2 eral banking agency or to the Corporation in
3 that section shall be deemed to be references to
4 the Board; and

5 “(C) in the case of wholesale financial in-
6 stitutions, the purpose of prompt corrective ac-
7 tion shall be to protect taxpayers and the finan-
8 cial system from risks associated with the oper-
9 ation and activities of wholesale financial insti-
10 tutions.

11 “(3) ENFORCEMENT AUTHORITY.—Subsections
12 (j) and (k) of section 7, subsections (b) through (n),
13 (s), and (v) of section 8, and section 19 of the Fed-
14 eral Deposit Insurance Act shall apply to a wholesale
15 financial institution 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 sections
18 to an insured depository institution shall be deemed
19 to include a reference to a wholesale financial insti-
20 tution.

21 “(4) CERTAIN OTHER STATUTES APPLICA-
22 BLE.—A wholesale financial institution shall be
23 deemed to be a banking institution, and the Board
24 shall be the appropriate Federal banking agency for

1 such bank and all such bank's affiliates, for pur-
2 poses of the International Lending Supervision Act.

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

10 “(6) BRANCHING.—Notwithstanding any other
11 provision of law, a wholesale financial institution
12 may establish and operate a branch at any
13 location—

14 “(A) on such terms and conditions as es-
15 tablished, in the case of a State-chartered
16 wholesale financial institution, by the Board or,
17 in the case of a national wholesale financial in-
18 stitution, by the Comptroller of the Currency;
19 and

20 “(B) in the case of a State-chartered
21 wholesale financial institution, with the ap-
22 proval of the Board, and, in the case of a na-
23 tional bank wholesale financial institution, with
24 the approval of the Comptroller of the Cur-
25 rency.

1 “(7) ACTIVITIES OF OUT-OF-STATE BRANCHES
2 OF WHOLESALE FINANCIAL INSTITUTIONS.—

3 “(A) GENERAL.—A State-chartered whole-
4 sale financial institution shall be deemed to be
5 a State bank and an insured State bank for
6 purposes of paragraphs (1), (2), and (3) of sec-
7 tion 24(j) of the Federal Deposit Insurance
8 Act, and a national wholesale financial institu-
9 tion shall be deemed to be a national bank for
10 purposes of section 5155(f) of the Revised Stat-
11 utes of the United States.

12 “(B) DEFINITIONS.—The following defini-
13 tions shall apply solely for purposes of applying
14 paragraph (1):

15 “(i) HOME STATE.—The term ‘home
16 State’ means—

17 “(I) with respect to a national
18 wholesale financial institution, the
19 State in which the main office of the
20 institution is located; and

21 “(II) with respect to a State-
22 chartered wholesale financial institu-
23 tion, the State by which the institu-
24 tion is chartered.

1 “(ii) HOST STATE.—The term ‘host
2 State’ means a State, other than the home
3 State of the wholesale financial institution,
4 in which the institution maintains, or seeks
5 to establish and maintain, a branch.

6 “(iii) OUT-OF-STATE BANK.—The
7 term ‘out-of-State bank’ means, with re-
8 spect to any State, a wholesale financial
9 institution whose home State is another
10 State.

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

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

1 ance of its deposits and any such State constitution
2 or statute is hereby preempted solely for purposes of
3 this paragraph.

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

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

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

18 “(1) LIMITATIONS ON DEPOSITS.—

19 “(A) MINIMUM AMOUNT.—

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

24 “(ii) LIMITATION ON DEPOSITS OF
25 LESS THAN \$100,000.—No wholesale finan-

1 cial institution may receive initial deposits
2 of \$100,000 or less if such deposits con-
3 stitute more than 5 percent of the institu-
4 tion's total deposits.

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

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

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

23 “(A) to account for the status of wholesale
24 financial institutions as institutions that accept

1 deposits that are not insured under the Federal
2 Deposit Insurance Act; and

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

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

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

17 “(i) the transfer of risk to the deposit
18 insurance funds; or

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

23 “(B) special clearing balance requirements;
24 and

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

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

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

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

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

21 “(A) the promotion of the safety and
22 soundness of the wholesale financial institution
23 or any insured depository institution affiliate of
24 the wholesale financial institution;

1 “(B) the protection of the deposit insur-
2 ance funds; and

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

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

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

20 “(d) CAPITAL AND MANAGERIAL REQUIREMENTS.—

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

23 “(2) NOTICE TO COMPANY.—The Board, in the
24 case of a State-chartered wholesale financial institu-
25 tion, or the Comptroller of the Currency, in the case

1 of a national wholesale financial institution, shall
2 promptly provide notice to a company that controls
3 a wholesale financial institution whenever such
4 wholesale financial institution is not well capitalized
5 or well managed.

6 “(3) AGREEMENT TO RESTORE INSTITUTION.—
7 Not later than 45 days after the date of receipt of
8 a notice under paragraph (2) (or such additional pe-
9 riod not to exceed 90 days as the Board or the
10 Comptroller of the Currency, as the case may be,
11 may permit), the company shall execute an agree-
12 ment acceptable to the Board or the Comptroller of
13 the Currency, as the case may be, to restore the
14 wholesale financial institution to compliance with all
15 of the requirements 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 or the Comptroller of
20 the Currency, as the case may be, may impose such
21 limitations on the conduct or activities of the com-
22 pany or any affiliate of the company as the Board
23 or the Comptroller of the Currency determines to be
24 appropriate under the circumstances.

1 “(5) FAILURE TO RESTORE.—If the company
2 does not execute and implement an agreement in ac-
3 cordance with paragraph (3), comply with any limi-
4 tation imposed under paragraph (4), restore the
5 wholesale financial institution to well capitalized sta-
6 tus not later than 180 days after the date of receipt
7 by the company of the notice described in paragraph
8 (2), or restore the wholesale financial institution to
9 well managed status within such period as the Board
10 may permit, the company shall, under such terms
11 and conditions as may be imposed by the Board or
12 the Comptroller of the Currency, as the case may be
13 and subject to such extension of time as may be
14 granted in the discretion of the Board or the Comp-
15 troller of the Currency, divest control of its subsidi-
16 ary depository institutions.

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

21 “(e) RESOLUTION OF WHOLESALE FINANCIAL INSTI-
22 TUTIONS.—

23 “(1) CONSERVATORSHIP OR RECEIVERSHIP.—

24 “(A) APPOINTMENT.—The Board may ap-
25 point a conservator or receiver for a State-char-

1 tered wholesale financial institution to the same
2 extent and in the same manner as the Comp-
3 troller of the Currency may appoint a conserva-
4 tor or receiver for a national bank.

5 “(B) POWERS.—The conservator or re-
6 ceiver for a wholesale financial institution shall
7 exercise the same powers, functions, and duties,
8 subject to the same limitations, as a conserva-
9 tor or receiver for a national bank.

10 “(2) BOARD AUTHORITY.—The Board shall
11 have the same authority with respect to any con-
12 servator or receiver appointed for a State-chartered
13 wholesale financial institution under paragraph (1),
14 and the wholesale financial institution for which it
15 has been appointed, as the Comptroller of the Cur-
16 rency has with respect to a conservator or receiver
17 for a national bank and the national bank for which
18 the conservator or receiver has been appointed.

19 “(3) BANKRUPTCY PROCEEDINGS.—The Comp-
20 troller of the Currency (in the case of a national
21 wholesale financial institution) and the Board may
22 direct the conservator or receiver of a wholesale fi-
23 nancial institution to file a petition pursuant to title
24 11, United States Code, in which case, title 11,
25 United States Code, shall apply to the wholesale fi-

1 nancial institution in lieu of otherwise applicable
2 Federal or State insolvency law.

3 “(f) **EXCLUSIVE JURISDICTION.**—Subsections (c) and
4 (e) of section 43 of the Federal Deposit Insurance Act
5 shall not apply to any wholesale financial institution.”.

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

8 (1) **SECTION 8 DESIGNATIONS.**—Section 8(a) of
9 the Federal Deposit Insurance Act (12 U.S.C.
10 1818(a)) is amended—

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

12 (B) by redesignating paragraphs (2)
13 through (10) as paragraphs (1) through (9), re-
14 spectively.

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

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

21 “(a) **IN GENERAL.**—Except as provided in subsection
22 (b), an insured State bank or a national bank may volun-
23 tarily terminate such bank’s status as an insured deposi-
24 tory institution in accordance with regulations of the Cor-
25 poration if—

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

3 “(A) to the Corporation and the Board of
4 Governors of the Federal Reserve System, in
5 the case of an insured State bank, or to the
6 Corporation and the Comptroller of the Cur-
7 rency, in the case of an insured national bank
8 authorized to operate as a wholesale financial
9 institution, not less than 6 months before the
10 effective date of such termination; and

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

14 “(2) either—

15 “(A) the deposit insurance fund of which
16 such bank is a member equals or exceeds the
17 fund’s designated reserve ratio as of the date
18 the bank provides a written notice under para-
19 graph (1) and the Corporation determines that
20 the fund will equal or exceed the applicable des-
21 ignated reserve ratio for the 2 semiannual as-
22 sessment periods immediately following such
23 date; or

24 “(B) the Corporation and the Board of
25 Governors of the Federal Reserve System, in

1 the case of an insured State bank, or the Cor-
2 poration and the Comptroller of the Currency,
3 in the case of an insured national bank author-
4 ized to operate as a wholesale financial institu-
5 tion, has approved the termination of the
6 bank's insured status and the bank pays an exit
7 fee in accordance with subsection (e).

8 “(b) EXCEPTION.—Subsection (a) shall not apply
9 with respect to—

10 “(1) an insured savings association; or

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

14 “(c) ELIGIBILITY FOR INSURANCE TERMINATED.—
15 Any bank that voluntarily elects to terminate the bank's
16 insured status under subsection (a) shall not be eligible
17 for insurance on any deposits or any assistance authorized
18 under this Act after the period specified in subsection
19 (f)(1).

20 “(d) INSTITUTION MUST BECOME WHOLESALe FI-
21 NANCIAL INSTITUTION OR TERMINATE DEPOSIT-TAKING
22 ACTIVITIES.—Any depository institution which voluntarily
23 terminates such institution's status as an insured deposit-
24 tory institution under this section may not, upon termi-
25 nation of insurance, accept any deposits unless the institu-

1 tion is a wholesale financial institution subject to section
2 9B of the Federal Reserve Act.

3 “(e) EXIT FEES.—

4 “(1) IN GENERAL.—Any bank that voluntarily
5 terminates such bank’s status as an insured deposi-
6 tory institution under this section shall pay an exit
7 fee in an amount that the Corporation determines is
8 sufficient to account for the institution’s pro rata
9 share of the amount (if any) which would be re-
10 quired to restore the relevant deposit insurance fund
11 to the fund’s designated reserve ratio as of the date
12 the bank provides a written notice under subsection
13 (a)(1).

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

17 “(f) TEMPORARY INSURANCE OF DEPOSITS INSURED
18 AS OF TERMINATION.—

19 “(1) TRANSITION PERIOD.—The insured depos-
20 its of each depositor in a State bank or a national
21 bank on the effective date of the voluntary termi-
22 nation of the bank’s insured status, less all subse-
23 quent withdrawals from any deposits of such deposi-
24 tor, shall continue to be insured for a period of not
25 less than 6 months and not more than 2 years, as

1 determined by the Corporation. During such period,
2 no additions to any such deposits, and no new de-
3 posits in the depository institution made after the ef-
4 fective date of such termination shall be insured by
5 the Corporation.

6 “(2) TEMPORARY ASSESSMENTS; OBLIGATIONS
7 AND DUTIES.—During the period specified in para-
8 graph (1) with respect to any bank, the bank shall
9 continue to pay assessments under section 7 as if
10 the bank were an insured depository institution. The
11 bank shall, in all other respects, be subject to the
12 authority of the Corporation and the duties and obli-
13 gations of an insured depository institution under
14 this Act during such period, and in the event that
15 the bank is closed due to an inability to meet the de-
16 mands of the bank’s depositors during such period,
17 the Corporation shall have the same powers and
18 rights with respect to such bank as in the case of
19 an insured depository institution.

20 “(g) ADVERTISEMENTS.—

21 “(1) IN GENERAL.—A bank that voluntarily
22 terminates the bank’s insured status under this sec-
23 tion shall not advertise or hold itself out as having
24 insured deposits, except that the bank may advertise
25 the temporary insurance of deposits under sub-

1 section (f) if, in connection with any such advertise-
2 ment, the advertisement also states with equal prom-
3 inence that additions to deposits and new deposits
4 made after the effective date of the termination are
5 not insured.

6 “(2) CERTIFICATES OF DEPOSIT, OBLIGATIONS,
7 AND SECURITIES.—Any certificate of deposit or
8 other obligation or security issued by a State bank
9 or a national bank after the effective date of the vol-
10 untary termination of the bank’s insured status
11 under this section shall be accompanied by a con-
12 spicuous, prominently displayed notice that such cer-
13 tificate of deposit or other obligation or security is
14 not insured under this Act.

15 “(h) NOTICE REQUIREMENTS.—

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

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

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

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

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

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

8 (1) BANKRUPTCY CODE DEBTORS.—Section
9 109(b)(2) of title 11, United States Code, is amend-
10 ed by striking “; or” and inserting the following: “,
11 except that—

12 “(A) a wholesale financial institution es-
13 tablished under section 5136B of the Revised
14 Statutes of the United States or section 9B of
15 the Federal Reserve Act may be a debtor if a
16 petition is filed at the direction of the Comp-
17 troller of the Currency (in the case of a whole-
18 sale financial institution established under sec-
19 tion 5136B of the Revised Statutes of the
20 United States) or the Board of Governors of
21 the Federal Reserve System (in the case of any
22 wholesale financial institution); and

23 “(B) a corporation organized under section
24 25A of the Federal Reserve Act may be a debt-
25 or if a petition is filed at the direction of the

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

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

6 “(d) Only a railroad and a person that may be a debt-
7 or under chapter 7 of this title, except that a stockbroker,
8 a wholesale financial institution established under section
9 5136B of the Revised Statutes of the United States or
10 section 9B of the Federal Reserve Act, a corporation orga-
11 nized under section 25A of the Federal Reserve Act, or
12 a commodity broker, may be a debtor under chapter 11
13 of this title.”.

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

17 “(22) ‘financial institution’ means a person that
18 is a commercial or savings bank, industrial savings
19 bank, savings and loan association, trust company,
20 wholesale financial institution established under sec-
21 tion 5136B of the Revised Statutes of the United
22 States or section 9B of the Federal Reserve Act, or
23 corporation organized under section 25A of the Fed-
24 eral Reserve Act and, when any such person is act-
25 ing as agent or custodian for a customer in connec-

1 tion with a securities contract, as defined in section
2 741 of this title, such customer.”.

3 (4) SUBCHAPTER V OF CHAPTER 7.—

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

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

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

11 “(e) Subchapter V of chapter 7 of this title applies
12 only in a case under such chapter concerning the liquida-
13 tion of a wholesale financial institution established under
14 section 5136B of the Revised Statutes of the United
15 States or section 9B of the Federal Reserve Act, or a cor-
16 poration organized under section 25A of the Federal Re-
17 serve Act.”.

18 (B) WHOLESALE BANK LIQUIDATION.—

19 Chapter 7 of title 11, United States Code, is
20 amended by adding at the end the following:

21 “SUBCHAPTER V—WHOLESALE BANK

22 LIQUIDATION

23 **“§ 781. Definitions for subchapter**

24 “In this subchapter—

1 “(1) the term ‘Board’ means the Board of Gov-
2 ernors of the Federal Reserve System;

3 “(2) the term ‘depository institution’ has the
4 same meaning as in section 3 of the Federal Deposit
5 Insurance Act, and includes any wholesale bank;

6 “(3) the term ‘national wholesale financial insti-
7 tution’ means a wholesale financial institution estab-
8 lished under section 5136B of the Revised Statutes
9 of the United States; and

10 “(4) the term ‘wholesale bank’ means a na-
11 tional wholesale financial institution, a wholesale fi-
12 nancial institution established under section 9B of
13 the Federal Reserve Act, or a corporation organized
14 under section 25A of the Federal Reserve Act.

15 **“§ 782. Selection of trustee**

16 “Notwithstanding any other provision of this title,
17 the conservator or receiver who files the petition shall be
18 the trustee under this chapter, unless the Comptroller of
19 the Currency (in the case of a national wholesale financial
20 institution for which it appointed the conservator or re-
21 ceiver) or the Board (in the case of any wholesale bank
22 for which it appointed the conservator or receiver) des-
23 ignates an alternative trustee. The Comptroller of the Cur-
24 rency or the Board (as applicable) may designate a succes-
25 sor trustee, if required.

1 **“§ 783. Additional powers of trustee**

2 “(a) The trustee under this subchapter has power,
3 with permission of the court—

4 “(1) to sell the wholesale bank to a depository
5 institution or consortium of depository institutions
6 (which consortium may agree on the allocation of
7 the wholesale bank among the consortium);

8 “(2) to merge the wholesale bank with a depository
9 institution;

10 “(3) to transfer contracts to the same extent as
11 could a receiver for a depository institution under
12 paragraphs (9) and (10) of section 11(e) of the Fed-
13 eral Deposit Insurance Act;

14 “(4) to transfer assets or liabilities to a depository
15 institution;

16 “(5) to distribute property not of the estate, in-
17 cluding distributions to customers that are man-
18 dated by subchapters III and IV of this chapter; or

19 “(6) to transfer assets and liabilities to a bridge
20 bank as provided in paragraphs (1), (3)(A), (5), (6),
21 and (9) through (13), and subparagraphs (A)
22 through (H) and (K) of paragraph (4) of section
23 11(n) of the Federal Deposit Insurance Act, except
24 that—

1 “(A) the bridge bank shall be treated as a
2 wholesale bank for the purpose of this sub-
3 section; and

4 “(B) any references in any such provision
5 of law to the Federal Deposit Insurance Cor-
6 poration shall be construed to be references to
7 the appointing agency and that references to
8 deposit insurance shall be omitted.

9 “(b) Any reference in this section to transfers of li-
10 abilities includes a ratable transfer of liabilities within a
11 priority class.

12 **“§ 784. Right to be heard**

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

19 **“§ 785. Expedited transfers**

20 “The trustee may make a transfer pursuant to sec-
21 tion 783 without prior judicial approval, if the Comptroller
22 of the Currency (in the case of a national wholesale finan-
23 cial institution for which it appointed the conservator or
24 receiver) or the Board (in the case of any wholesale bank
25 for which it appointed the conservator or receiver) deter-

1 mines that the transfer would be necessary to avert serious
2 adverse effects on economic conditions or financial stabil-
3 ity.”.

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

“781. Definitions for subchapter.

“782. Selection of trustee.

“783. Additional powers of trustee.

“784. Right to be heard.

“785. Expedited transfers.”.

8 (e) RESOLUTION OF EDGE CORPORATIONS.—Section
9 25A(16) of the Federal Reserve Act (12 U.S.C. 624(16))
10 is amended to read as follows:

11 “(16) APPOINTMENT OF RECEIVER OR CON-
12 SERVATOR.—

13 “(A) IN GENERAL.—The Board may ap-
14 point a conservator or receiver for a corporation
15 organized under the provisions of this section to
16 the same extent and in the same manner as the
17 Comptroller of the Currency may appoint a con-
18 servator or receiver for a national bank, and the
19 conservator or receiver for such corporation
20 shall exercise the same powers, functions, and
21 duties, subject to the same limitations, as a
22 conservator or receiver for a national bank.

1 “(B) EQUIVALENT AUTHORITY.—The
2 Board shall have the same authority with re-
3 spect to any conservator or receiver appointed
4 for a corporation organized under the provisions
5 of this section under this paragraph and any
6 such corporation as the Comptroller of the Cur-
7 rency has with respect to a conservator or re-
8 ceiver of a national bank and the national bank
9 for which a conservator or receiver has been ap-
10 pointed.

11 “(C) TITLE 11 PETITIONS.—The Board
12 may direct the conservator or receiver of a cor-
13 poration organized under the provisions of this
14 section to file a petition pursuant to title 11,
15 United States Code, in which case, title 11,
16 United States Code, shall apply to the corpora-
17 tion in lieu of otherwise applicable Federal or
18 State insolvency law.”.

19 (f) LIMITATION ON ACCESS TO DISCOUNT WINDOW
20 AND PAYMENT SYSTEM.—Section 19(b)(1) of the Federal
21 Reserve Act (12 U.S.C. 461(b)(1)) is amended by adding
22 at the end the following new subparagraph:

23 “(G) LIMITATION ON WHOLESALE FINAN-
24 CIAL INSTITUTIONS.—Not more than 10 whole-
25 sale financial institutions subject to section 9B

1 of the Federal Reserve Act may be treated by
2 the Board as depository institutions, as defined
3 in subparagraph (A), for purposes of this para-
4 graph.”.

5 **Subtitle E—Preservation of FTC** 6 **Authority**

7 **SEC. 141. AMENDMENT TO THE BANK HOLDING COMPANY** 8 **ACT OF 1956 TO MODIFY NOTIFICATION AND** 9 **POST-APPROVAL WAITING PERIOD FOR SEC-** 10 **TION 3 TRANSACTIONS.**

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

17 **SEC. 142. INTERAGENCY DATA SHARING.**

18 To the extent not prohibited by other law, the Comp-
19 troller of the Currency, the Director of the Office of Thrift
20 Supervision, the Federal Deposit Insurance Corporation,
21 and the Board of Governors of the Federal Reserve Sys-
22 tem shall make available to the Attorney General and the
23 Federal Trade Commission any data in the possession of
24 any such banking agency that the antitrust agency deems
25 necessary for antitrust review of any transaction requiring

1 notice to any such antitrust agency or the approval of such
2 agency under section 3, 4, or 6 of the Bank Holding Com-
3 pany Act of 1956, section 18(c) of the Federal Deposit
4 Insurance Act, the National Bank Consolidation and
5 Merger Act, section 10 of the Home Owners' Loan Act,
6 or the antitrust laws.

7 **SEC. 143. CLARIFICATION OF STATUS OF SUBSIDIARIES**
8 **AND AFFILIATES.**

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

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

1 (c) HART-SCOTT-RODINO AMENDMENT.—Section
2 7A(c)(7) of the Clayton Act (15 U.S.C. 18a(c)(7)) is
3 amended by inserting before the semicolon at the end
4 thereof the following: “, except that a portion of a trans-
5 action is not exempt under this paragraph if such portion
6 of the transaction (A) requires notice under section 6 of
7 the Bank Holding Company Act of 1956; and (B) does
8 not require approval under section 3 or 4 of the Bank
9 Holding Company Act of 1956”.

10 **SEC. 144. ANNUAL GAO REPORT.**

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

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

19 (1) the positive and negative effects of affili-
20 ations between various types of financial companies,
21 and of acquisitions pursuant to this Act and the
22 amendments made by this Act to other provisions of
23 law, including any positive or negative effects on
24 consumers, area markets, and submarkets thereof or
25 on registered securities brokers and dealers which

1 have been purchased by depository institutions or
2 depository institution holding companies;

3 (2) the changes in business practices and the
4 effects of any such changes on the availability of
5 venture capital, consumer credit, and other financial
6 services or products and the availability of capital
7 and credit for small businesses; and

8 (3) the acquisition patterns among depository
9 institutions, depository institution holding compa-
10 nies, securities firms, and insurance companies in-
11 cluding acquisitions among the largest 20 percent of
12 firms and acquisitions within regions or other lim-
13 ited geographical areas.

14 **Subtitle F—Applying the Principles**
15 **of National Treatment and**
16 **Equality of Competitive Oppor-**
17 **tunity to Foreign Banks and**
18 **Foreign Financial Institutions**

19 **SEC. 151. APPLYING THE PRINCIPLES OF NATIONAL TREAT-**
20 **MENT AND EQUALITY OF COMPETITIVE OP-**
21 **PORTUNITY TO FOREIGN BANKS THAT ARE**
22 **FINANCIAL HOLDING COMPANIES.**

23 Section 8(c) of the International Banking Act of
24 1978 (12 U.S.C. 3106(c)) is amended by adding at the
25 end the following new paragraph:

1 “(3) TERMINATION OF GRANDFATHERED
2 RIGHTS.—

3 “(A) IN GENERAL.—If any foreign bank or
4 foreign company files a declaration under sec-
5 tion 6(b)(1)(D) of the Bank Holding Company
6 Act of 1956, or receives a determination under
7 section 10(d)(1) of the Bank Holding Company
8 Act of 1956, any authority conferred by this
9 subsection on any foreign bank or company to
10 engage in any activity which the Board has de-
11 termined to be permissible for financial holding
12 companies under section 6 of such Act shall ter-
13minate immediately.

14 “(B) RESTRICTIONS AND REQUIREMENTS
15 AUTHORIZED.—If a foreign bank or company
16 that engages, directly or through an affiliate
17 pursuant to paragraph (1), in an activity which
18 the Board has determined to be permissible for
19 financial holding companies under section 6 of
20 the Bank Holding Company Act of 1956 has
21 not filed a declaration with the Board of its sta-
22 tus as a financial holding company under such
23 section or received a determination under sec-
24 tion 10(d)(1) by the end of the 2-year period
25 beginning on the date of enactment of the Fi-

1 nancial Services Act of 1999, the Board, giving
2 due regard to the principle of national treat-
3 ment and equality of competitive opportunity,
4 may impose such restrictions and requirements
5 on the conduct of such activities by such foreign
6 bank or company as are comparable to those
7 imposed on a financial holding company orga-
8 nized under the laws of the United States, in-
9 cluding a requirement to conduct such activities
10 in compliance with any prudential safeguards
11 established under section 5(h) of the Bank
12 Holding Company Act of 1956.”.

13 **SEC. 152. APPLYING THE PRINCIPLES OF NATIONAL TREAT-**
14 **MENT AND EQUALITY OF COMPETITIVE OP-**
15 **PORTUNITY TO FOREIGN BANKS AND FOR-**
16 **EIGN FINANCIAL INSTITUTIONS THAT ARE**
17 **WHOLESALE FINANCIAL INSTITUTIONS.**

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

21 “(i) **VOLUNTARY TERMINATION OF DEPOSIT INSUR-**
22 **ANCE.**—The provisions on voluntary termination of insur-
23 ance in this section shall apply to an insured branch of
24 a foreign bank (including a Federal branch) in the same

1 manner and to the same extent as they apply to an insured
2 State bank or a national bank.”.

3 **SEC. 153. REPRESENTATIVE OFFICES.**

4 (a) DEFINITION OF “REPRESENTATIVE OFFICE”.—
5 Section 1(b)(15) of the International Banking Act of 1978
6 (12 U.S.C. 3101(15)) is amended by striking “State agen-
7 cy, or subsidiary of a foreign bank” and inserting “or
8 State agency”.

9 (b) EXAMINATIONS.—Section 10(c) of the Inter-
10 national Banking Act of 1978 (12 U.S.C. 3107(c)) is
11 amended by adding at the end the following: “The Board
12 may also make examinations of any affiliate of a foreign
13 bank conducting business in any State if the Board deems
14 it necessary to determine and enforce compliance with this
15 Act, the Bank Holding Company Act of 1956 (12 U.S.C.
16 1841 et seq.), or other applicable Federal banking law.”.

17 **Subtitle G—Federal Home Loan**
18 **Bank System Modernization**

19 **SEC. 161. SHORT TITLE.**

20 This subtitle may be cited as the “Federal Home
21 Loan Bank System Modernization Act of 1999”.

22 **SEC. 162. DEFINITIONS.**

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

1 (1) in paragraph (1), by striking “term ‘Board’
2 means” and inserting “terms ‘Finance Board’ and
3 ‘Board’ mean”;

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

6 “(3) STATE.—The term ‘State’, in addition to
7 the States of the United States, includes the District
8 of Columbia, Guam, Puerto Rico, the United States
9 Virgin Islands, American Samoa, and the Common-
10 wealth of the Northern Mariana Islands.”; and

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

13 “(13) COMMUNITY FINANCIAL INSTITUTION.—

14 “(A) IN GENERAL.—The term ‘community
15 financial institution’ means a member—

16 “(i) the deposits of which are insured
17 under the Federal Deposit Insurance Act;
18 and

19 “(ii) that has, as of the date of the
20 transaction at issue, less than
21 \$500,000,000 in average total assets,
22 based on an average of total assets over
23 the 3 years preceding that date.

24 “(B) ADJUSTMENTS.—The \$500,000,000
25 limit referred to in subparagraph (A)(ii) shall

1 be adjusted annually by the Finance Board,
2 based on the annual percentage increase, if any,
3 in the Consumer Price Index for all urban con-
4 sumers, as published by the Department of
5 Labor.”.

6 **SEC. 163. SAVINGS ASSOCIATION MEMBERSHIP.**

7 (a) FEDERAL HOME LOAN BANK MEMBERSHIP.—
8 Section 5(f) of the Home Owners’ Loan Act (12 U.S.C.
9 1464(f)) is amended to read as follows:

10 “(f) FEDERAL HOME LOAN BANK MEMBERSHIP.—
11 On and after January 1, 1999, a Federal savings associa-
12 tion may become a member of the Federal Home Loan
13 Bank System, and shall qualify for such membership in
14 the manner provided by the Federal Home Loan Bank
15 Act.”.

16 (b) WITHDRAWAL.—Section 6(e) of the Federal
17 Home Loan Bank Act (12 U.S.C. 1426(e)) is amended
18 by striking “Any member other than a Federal savings
19 and loan association may withdraw” and inserting “Any
20 member may withdraw”.

21 **SEC. 164. ADVANCES TO MEMBERS; COLLATERAL.**

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

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

4 (2) by striking “(a) Each” and inserting the
5 following:

6 “(a) IN GENERAL.—

7 “(1) ALL ADVANCES.—Each”;

8 (3) by striking the second sentence and insert-
9 ing the following:

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

12 “(A) providing funds to any member for
13 residential housing finance; and

14 “(B) providing funds to any community fi-
15 nancial institution for small businesses, agricul-
16 tural, rural development, or low-income commu-
17 nity development lending.”;

18 (4) by striking “A Bank” and inserting the fol-
19 lowing:

20 “(3) COLLATERAL.—A Bank”;

21 (5) in paragraph (3) (as so designated by para-
22 graph (4) of this subsection)—

23 (A) in subparagraph (C) (as so redesign-
24 ated by paragraph (1) of this subsection) by

1 striking “Deposits” and inserting “Cash or de-
2 posits”;

3 (B) in subparagraph (D) (as so redesign-
4 dated by paragraph (1) of this subsection), by
5 striking the second sentence; and

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

9 “(E) Secured loans for small business, ag-
10 riculture, rural development, or low-income
11 community development, or securities represent-
12 ing a whole interest in such secured loans, in
13 the case of any community financial institu-
14 tion.”;

15 (6) in paragraph (5)—

16 (A) in the second sentence, by striking
17 “and the Board”;

18 (B) in the third sentence, by striking
19 “Board” and inserting “Federal home loan
20 bank”; and

21 (C) by striking “(5) Paragraphs (1)
22 through (4)” and inserting the following:

23 “(4) ADDITIONAL BANK AUTHORITY.—Subpara-
24 graphs (A) through (E) of paragraph (3)”;

25 (7) by adding at the end the following:

1 “(5) REVIEW OF CERTAIN COLLATERAL STAND-
2 ARDS.—The Board may review the collateral stand-
3 ards applicable to each Federal home loan bank for
4 the classes of collateral described in subparagraphs
5 (D) and (E) of paragraph (3), and may, if necessary
6 for safety and soundness purposes, require an in-
7 crease in the collateral standards for any or all of
8 those classes of collateral.

9 “(6) DEFINITIONS.—For purposes of this sub-
10 section, the terms ‘small business’, ‘agriculture’,
11 ‘rural development’, and ‘low-income community de-
12 velopment’ shall have the meanings given those
13 terms by rule or regulation of the Finance Board.”.

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

17 **“SEC. 10. ADVANCES TO MEMBERS.”.**

18 (c) CONFORMING AMENDMENTS RELATING TO MEM-
19 BERS WHICH ARE NOT QUALIFIED THRIFT LENDERS—
20 The 1st of the 2 subsections designated as subsection (e)
21 of section 10 of the Federal Home Loan Bank Act (12
22 U.S.C. 1430(e)(1)) is amended—

23 (1) in the last sentence of paragraph (1), by in-
24 serting “or, in the case of any community financial

1 institution, for the purposes described in subsection
2 (a)(2)” before the period; and

3 (2) in paragraph (5)(C), by inserting “except
4 that, in determining the actual thrift investment per-
5 centage of any community financial institution for
6 purposes of this subsection, the total investment of
7 such member in loans for small business, agri-
8 culture, or rural development, or securities rep-
9 resenting a whole interest in such loans, shall be
10 treated as a qualified thrift investment (as defined
11 in such section 10(m))” before the period.

12 **SEC. 165. ELIGIBILITY CRITERIA.**

13 Section 4(a) of the Federal Home Loan Bank Act
14 (12 U.S.C. 1424(a)) is amended—

15 (1) in paragraph (2)(A), by inserting, “(other
16 than a community financial institution)” after “in-
17 stitution”; and

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

20 “(3) LIMITED EXEMPTION FOR COMMUNITY FI-
21 NANCIAL INSTITUTIONS.—A community financial in-
22 stitution that otherwise meets the requirements of
23 paragraph (2) may become a member without regard
24 to the percentage of its total assets that is rep-

1 resented by residential mortgage loans, as described
2 in subparagraph (A) of paragraph (2).”.

3 **SEC. 166. MANAGEMENT OF BANKS.**

4 (a) BOARD OF DIRECTORS.—Section 7(d) of the Fed-
5 eral Home Loan Bank Act (12 U.S.C. 1427(d)) is
6 amended—

7 (1) by striking “(d) The term” and inserting
8 the following:

9 “(d) TERMS OF OFFICE.—The term”; and

10 (2) by striking “shall be two years”.

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

14 (c) REPEAL OF SECTIONS 22A AND 27.—The Fed-
15 eral Home Loan Bank Act (12 U.S.C. 1421 et seq.) is
16 amended by striking sections 22A (12 U.S.C. 1442a) and
17 27 (12 U.S.C. 1447).

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

20 (1) in subsection (a)—

21 (A) by striking “, but, except” and all that
22 follows through “ten years”;

23 (B) by striking “, subject to the approval
24 of the Board” each place that term appears;

1 (C) by striking “and, by its Board of direc-
2 tors,” and all that follows through “agent of
3 such bank,” and inserting “and, by the board
4 of directors of the bank, to prescribe, amend,
5 and repeal by-laws governing the manner in
6 which its affairs may be administered, consist-
7 ent with applicable laws and regulations, as ad-
8 ministered by the Finance Board. No officer,
9 employee, attorney, or agent of a Federal home
10 loan bank”; and

11 (D) by striking “Board of directors” each
12 place that term appears and inserting “board of
13 directors”; and

14 (2) in subsection (b), by striking “loans banks”
15 and inserting “loan banks”.

16 (e) POWERS AND DUTIES OF FEDERAL HOUSING FI-
17 NANCE BOARD.—

18 (1) ISSUANCE OF NOTICES OF VIOLATIONS.—
19 Section 2B(a) of the Federal Home Loan Bank Act
20 (12 U.S.C. 1422b(a)) is amended by adding at the
21 end the following new paragraphs:

22 “(5) To issue and serve a notice of charges
23 upon a Federal home loan bank or upon any execu-
24 tive officer or director of a Federal home loan bank
25 if, in the determination of the Finance Board, the

1 bank, executive officer, or director is engaging or
2 has engaged in, or the Finance Board has reason-
3 able cause to believe that the bank, executive officer,
4 or director is about to engage in, any conduct that
5 violates any provision of this Act or any law, order,
6 rule, or regulation or any condition imposed in writ-
7 ing by the Finance Board in connection with the
8 granting of any application or other request by the
9 bank, or any written agreement entered into by the
10 bank with the agency, in accordance with the proce-
11 dures provided in section 1371(c) of the Federal
12 Housing Enterprises Financial Safety and Sound-
13 ness Act of 1992. Such authority includes the same
14 authority to take affirmative action to correct condi-
15 tions resulting from violations or practices or to
16 limit activities of a bank or any executive officer or
17 director of a bank as appropriate Federal banking
18 agencies have to take with respect to insured deposi-
19 tory institutions under paragraphs (6) and (7) of
20 section 8(b) of the Federal Deposit Insurance Act,
21 and to have all other powers, rights, and duties to
22 enforce this Act with respect to the Federal home
23 loan banks and their executive officers and directors
24 as the Office of Federal Housing Enterprise Over-
25 sight has to enforce the Federal Housing Enter-

1 prises Financial Safety and Soundness Act of 1992,
2 the Federal National Mortgage Association Charter
3 Act, or the Federal Home Loan Mortgage Corpora-
4 tion Act with respect to the Federal housing enter-
5 prises under the Federal Housing Enterprises Fi-
6 nancial Safety and Soundness Act of 1992.

7 “(6) To address any insufficiencies in capital
8 levels resulting from the application of section 5(f)
9 of the Home Owners’ Loan Act.

10 “(7) To sue and be sued, by and through its
11 own attorneys.”.

12 (2) TECHNICAL AMENDMENT.—Section 111 of
13 Public Law 93–495 (12 U.S.C. 250) is amended by
14 inserting “Federal Housing Finance Board,” after
15 “Director of the Office of Thrift Supervision,”.

16 (f) ELIGIBILITY TO SECURE ADVANCES.—

17 (1) SECTION 9.—Section 9 of the Federal
18 Home Loan Bank Act (12 U.S.C. 1429) is
19 amended—

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

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

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

4 (A) in subsection (c)—

5 (i) in the first sentence, by striking
6 “Board” and inserting “Federal home loan
7 bank”; and

8 (ii) in the second sentence, by striking
9 “held by” and all that follows before the
10 period;

11 (B) in subsection (d)—

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

14 (ii) by striking “Subject to the ap-
15 proval of the Board, any” and inserting
16 “Any”; and

17 (C) in subsection (j)(1)—

18 (i) by striking “to subsidize the inter-
19 est rate on advances” and inserting “to
20 provide subsidies, including subsidized in-
21 terest rates on advances”;

22 (ii) by striking “Pursuant” and in-
23 serting the following:

24 “(A) ESTABLISHMENT.—Pursuant”; and

1 (iii) by adding at the end the follow-
2 ing new subparagraph:

3 “(B) NONDELEGATION OF APPROVAL AU-
4 THORITY.—Subject to such regulations as the
5 Finance Board may prescribe, the board of di-
6 rectors of each Federal home loan bank may
7 approve or disapprove requests from members
8 for Affordable Housing Program subsidies, and
9 may not delegate such authority.”.

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

12 (1) in the third sentence—

13 (A) by striking “net earnings” and insert-
14 ing “previously retained earnings or current net
15 earnings”; and

16 (B) by striking “, and then only with the
17 approval of the Federal Housing Finance
18 Board”; and

19 (2) by striking the fourth sentence.

20 (h) SECTION 18.—Section 18(b) of the Federal Home
21 Loan Bank Act (12 U.S.C. 1438(b)) is amended by strik-
22 ing paragraph (4).

1 **SEC. 167. RESOLUTION FUNDING CORPORATION.**

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

5 “(C) PAYMENTS BY FEDERAL HOME LOAN
6 BANKS.—

7 “(i) IN GENERAL.—To the extent that
8 the amounts available pursuant to sub-
9 paragraphs (A) and (B) are insufficient to
10 cover the amount of interest payments,
11 each Federal home loan bank shall pay to
12 the Funding Corporation in each calendar
13 year, 20.75 percent of the net earnings of
14 that bank (after deducting expenses relat-
15 ing to section 10(j) and operating ex-
16 penses).

17 “(ii) ANNUAL DETERMINATION.—The
18 Board annually shall determine the extent
19 to which the value of the aggregate
20 amounts paid by the Federal home loan
21 banks exceeds or falls short of the value of
22 an annuity of \$300,000,000 per year that
23 commences on the issuance date and ends
24 on the final scheduled maturity date of the
25 obligations, and shall select appropriate

1 present value factors for making such de-
2 terminations.

3 “(iii) PAYMENT TERM ALTER-
4 ATIONS.—The Board shall extend or short-
5 en the term of the payment obligations of
6 a Federal home loan bank under this sub-
7 paragraph as necessary to ensure that the
8 value of all payments made by the banks
9 is equivalent to the value of an annuity re-
10 ferred to in clause (ii).

11 “(iv) TERM BEYOND MATURITY.—If
12 the Board extends the term of payments
13 beyond the final scheduled maturity date
14 for the obligations, each Federal home loan
15 bank shall continue to pay 20.75 percent
16 of its net earnings (after deducting ex-
17 penses relating to section 10(j) and operat-
18 ing expenses) to the Treasury of the
19 United States until the value of all such
20 payments by the Federal home loan banks
21 is equivalent to the value of an annuity re-
22 ferred to in clause (ii). In the final year in
23 which the Federal home loan banks are re-
24 quired to make any payment to the Treas-
25 ury under this subparagraph, if the dollar

1 amount represented by 20.75 percent of
2 the net earnings of the Federal home loan
3 banks exceeds the remaining obligation of
4 the banks to the Treasury, the Finance
5 Board shall reduce the percentage pro rata
6 to a level sufficient to pay the remaining
7 obligation.”.

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

14 **Subtitle H—Customer Service and**
15 **Education**

16 **SEC. 176. CUSTOMER PROTECTION AND EDUCATION REGU-**
17 **LATIONS.**

18 The Federal Deposit Insurance Act (12 U.S.C. 1811
19 et seq.) is amended by inserting after section 46 (as added
20 by section 124 of this title) the following new section:

21 **“SEC. 47. CUSTOMER SERVICE AND EDUCATION REGULA-**
22 **TIONS.**

23 **“(a) REGULATIONS REQUIRED.—**

24 **“(1) IN GENERAL.—**The Federal banking agen-
25 **cies shall prescribe and publish in final form, before**

1 the end of the 1-year period beginning on the date
2 of enactment of the Financial Services Moderniza-
3 tion Act, customer protection regulations (which the
4 agencies jointly determine to be appropriate) that—

5 “(A) apply to retail sales practices, solici-
6 tations, advertising, or offers of any nondeposit
7 product by any insured depository institution or
8 any person who is engaged in such activities at
9 an office of the institution or on behalf of the
10 institution; and

11 “(B) are consistent with the requirements
12 of this Act and provide such additional protec-
13 tions for customers to whom such sales, solici-
14 tations, advertising, or offers are directed as the
15 agency determines to be appropriate.

16 “(2) APPLICABILITY TO SUBSIDIARIES.—The
17 regulations prescribed pursuant to paragraph (1)
18 shall extend such protections to any subsidiary of an
19 insured depository institution, as deemed appro-
20 priate by the regulators referred to in paragraph (3),
21 where such extension is determined to be necessary
22 to ensure the customer protections provided by this
23 section.

24 “(3) CONSULTATION AND JOINT REGULA-
25 TIONS.—The Federal banking agencies shall consult

1 with each other and prescribe joint regulations pur-
2 suant to paragraph (1), after consultation with the
3 State insurance regulators, as appropriate.

4 “(4) NONDEPOSIT PRODUCT DEFINED.—For
5 purposes of this section, the term ‘nondeposit
6 product’—

7 “(A) means any investment and insurance
8 product which is not a deposit;

9 “(B) includes shares issued by a registered
10 investment company; and

11 “(C) does not include—

12 “(i) any loan or any other extension
13 of credit by an insured depository institu-
14 tion;

15 “(ii) any letter of credit;

16 “(iii) any trust services;

17 “(iv) any discount; or

18 “(v) any other instrument or insur-
19 ance or investment product specifically ex-
20 cluded from the definition of such term by
21 regulations prescribed jointly by the Fed-
22 eral banking agencies, to the extent nec-
23 essary to carry out the purpose of this Act.

24 “(5) INSURANCE PRODUCT DEFINED.—For pur-
25 poses of this section, the term ‘insurance product’

1 includes an annuity contract the income of which is
2 subject to tax treatment under section 72 of the In-
3 ternal Revenue Code of 1986.

4 “(b) SALES PRACTICES.—

5 “(1) ANTICOERCION RULES.—The regulations
6 prescribed pursuant to subsection (a) shall include
7 anticoercion rules applicable to the sale of non-
8 deposit products which prohibit an insured deposi-
9 tory institution from engaging in any practice that
10 would lead a customer to believe an extension of
11 credit, in violation of section 106(b) of the Bank
12 Holding Company Act Amendments of 1970, is con-
13 ditional upon—

14 “(A) the purchase of a nondeposit product
15 from the institution or any of its affiliates; or

16 “(B) an agreement by the customer not to
17 obtain, or a prohibition on the customer from
18 obtaining, a nondeposit product from an unaf-
19 filiated entity.

20 “(2) SUITABILITY OF PRODUCT.—

21 “(A) IN GENERAL.—The regulations pre-
22 scribed pursuant to subsection (a) with respect
23 to the sale of nondeposit products shall include
24 standards to ensure that an investment product
25 sold to a customer is suitable and any other

1 nondeposit product is appropriate under the ap-
2 plicable State unfair trade practice or similar
3 laws for the customer based on financial infor-
4 mation disclosed by the customer.

5 “(B) RULES OF FAIR PRACTICE.—In pre-
6 scribing the standards under subparagraph (A)
7 with respect to the sale of investments, the
8 Federal banking agencies shall take into ac-
9 count the Rules of Fair Practice of the Na-
10 tional Association of Securities Dealers.

11 “(c) DISCLOSURES AND ADVERTISING.—The regula-
12 tions prescribed pursuant to subsection (a) shall include
13 the following provisions relating to disclosures and adver-
14 tising in connection with the initial purchase of a non-
15 deposit product:

16 “(1) DISCLOSURES.—

17 “(A) IN GENERAL.—Requirements that the
18 following disclosures be made orally and in writ-
19 ing before the completion of the initial sale and,
20 in the case of clause (iii), at the time of applica-
21 tion for an extension of credit:

22 “(i) UNINSURED STATUS.—As appro-
23 priate, the product is not insured by the
24 Federal Deposit Insurance Corporation,

1 the United States Government, or the in-
2 sured depository institution.

3 “(ii) INSURANCE PRODUCT.—In the
4 case of an insurance policy which is sold by
5 the depository institution, or any affiliate
6 of the institution, as agent, the product is
7 not an obligation of or guaranteed by the
8 depository institution.

9 “(iii) INVESTMENT RISK.—In the case
10 of an investment product, variable annuity,
11 or other product which involves an invest-
12 ment risk, that there is an investment risk
13 associated with the product, including pos-
14 sible loss of value.

15 “(iv) COERCION.—The approval of an
16 extension of credit may not be conditioned
17 on—

18 “(I) the purchase of a nondeposit
19 product from the institution in which
20 the application for credit is pending or
21 any of affiliate of the institution; or

22 “(II) an agreement by the cus-
23 tomer not to obtain, or a prohibition
24 on the customer from obtaining, a

1 nondeposit product from an unaffili-
2 ated entity.

3 “(B) MAKING DISCLOSURE READILY UN-
4 DERSTANDABLE.—Regulations prescribed under
5 subparagraph (A) shall encourage the use of
6 disclosure that is conspicuous, simple, direct,
7 and readily understandable, such as the follow-
8 ing:

9 “(i) ‘NOT FDIC-INSURED’.

10 “(ii) ‘NOT GUARANTEED BY THE
11 BANK’.

12 “(iii) ‘MAY GO DOWN IN VALUE’.

13 “(C) ADJUSTMENTS FOR ALTERNATIVE
14 METHODS OF PURCHASE.—In prescribing the
15 requirements under subparagraphs (A) and
16 (D), necessary adjustments shall be made for
17 purchase in person, by telephone, or by elec-
18 tronic media to provide for the most appro-
19 priate and complete form of disclosure and ac-
20 knowledgments.

21 “(D) CUSTOMER ACKNOWLEDGMENT.—A
22 requirement that an insured depository institu-
23 tion shall require any person selling a non-
24 deposit product at any office of, or on behalf of,
25 the institution to obtain, at the time a customer

1 receives the disclosures required under this
2 paragraph or at the time of the initial purchase
3 by the customer of such product, an acknowl-
4 edgment by such customer of the receipt of the
5 disclosure required under this paragraph with
6 respect to such product.

7 “(2) PROHIBITION ON MISREPRESENTA-
8 TIONS.—A prohibition on any practice, or any adver-
9 tising, at any office of, or on behalf of, the insured
10 depository institution, or any subsidiary as appro-
11 priate, which could mislead any person or otherwise
12 cause a reasonable person to reach an erroneous be-
13 lief with respect to—

14 “(A) the uninsured nature of any non-
15 deposit product sold, or offered for sale, by the
16 institution or any subsidiary of the institution;
17 or

18 “(B) in the case of a nondeposit product
19 that involves an investment risk, the investment
20 risk associated with any such product.

21 “(d) SEPARATION OF BANKING AND NONBANKING
22 ACTIVITIES.—

23 “(1) REGULATIONS REQUIRED.—The regula-
24 tions prescribed pursuant to subsection (a) shall in-
25 clude such provisions as the Federal banking agen-

1 cies consider appropriate to ensure that the routine
2 acceptance of deposits is kept, to the extent prac-
3 ticable, physically segregated from nondeposit prod-
4 uct activity.

5 “(2) REQUIREMENTS.—Regulations prescribed
6 pursuant to paragraph (1) shall include the follow-
7 ing requirements:

8 “(A) SEPARATE SETTING.—A clear delin-
9 eation of the setting in which, and the cir-
10 cumstances under which, transactions involving
11 nondeposit products should be conducted in a
12 location physically segregated from an area
13 where retail deposits are routinely accepted.

14 “(B) REFERRALS.—Standards which per-
15 mit any person accepting deposits from the
16 public in an area where such transactions are
17 routinely conducted in an insured depository in-
18 stitution to refer a customer who seeks to pur-
19 chase any nondeposit product to a qualified per-
20 son who sells such product, only if the person
21 making the referral receives no more than a
22 one-time nominal fee of a fixed dollar amount
23 for each referral that does not depend on
24 whether the referral results in a transaction.

1 “(C) QUALIFICATION AND LICENSING RE-
2 QUIREMENTS.—Standards prohibiting any in-
3 sured depository institution from permitting
4 any person to sell or offer for sale any non-
5 deposit product in any part of any office of the
6 institution, or on behalf of the institution, un-
7 less such person is appropriately qualified and
8 licensed.

9 “(e) CUSTOMER GRIEVANCE PROCESS.—The Federal
10 banking agencies shall jointly establish a customer com-
11 plaint mechanism, for receiving and expeditiously address-
12 ing customer complaints alleging a violation of regulations
13 issued under this section, which mechanism shall—

14 “(1) establish a group within each regulatory
15 agency to receive such complaints;

16 “(2) develop procedures for investigating such
17 complaints;

18 “(3) develop procedures for informing cus-
19 tomers of rights they may have in connection with
20 such complaints; and

21 “(4) develop procedures for addressing concerns
22 raised by such complaints, as appropriate, including
23 procedures for the recovery of losses to the extent
24 appropriate.

25 “(f) EFFECT ON OTHER AUTHORITY.—

1 “(1) IN GENERAL.—No provision of this section
2 shall be construed as granting, limiting, or otherwise
3 affecting—

4 “(A) any authority of the Securities and
5 Exchange Commission, any self-regulatory or-
6 ganization, the Municipal Securities Rule-
7 making Board, or the Secretary of the Treasury
8 under any Federal securities law; or

9 “(B) except as provided in paragraph (2),
10 any authority of any State insurance commis-
11 sioner or other State authority under any State
12 law.

13 “(2) COORDINATION WITH STATE LAW.—

14 “(A) IN GENERAL.—Except as provided in
15 subparagraph (B), regulations prescribed by a
16 Federal banking agency under this section shall
17 not apply to retail sales, solicitations, advertis-
18 ing, or offers of any nondeposit product by any
19 insured depository institution or to any person
20 who is engaged in such activities at an office of
21 such institution or on behalf of the institution,
22 in a State where the State has in effect stat-
23 utes, regulations, orders, or interpretations,
24 that are inconsistent with or contrary to the

1 regulations prescribed by the Federal banking
2 agencies.

3 “(B) PREEMPTION.—If, with respect to
4 any provision of the regulations prescribed
5 under this section, the Board of Governors of
6 the Federal Reserve System, the Comptroller of
7 the Currency, the Director of the Office of
8 Thrift Supervision, and the Board of Directors
9 of the Federal Deposit Insurance Corporation
10 determine jointly that the protection afforded
11 by such provision for consumers is greater than
12 the protection provided by a comparable provi-
13 sion of the statutes, regulations, orders, or in-
14 terpretations referred to in subparagraph (A) of
15 any State, such provision of the regulations pre-
16 scribed under this section shall supersede the
17 comparable provision of such State statute, reg-
18 ulation, order, or interpretation.”.

19 **Subtitle I—Direct Activities of**
20 **Banks**

21 **SEC. 181. AUTHORITY OF NATIONAL BANKS TO UNDER-**
22 **WRITE CERTAIN MUNICIPAL BONDS.**

23 The paragraph designated the Seventh of section
24 5136 of the Revised Statutes of the United States (12
25 U.S.C. 24(7)) is amended by adding at the end the follow-

1 ing new sentence: “In addition to the provisions in this
2 paragraph for dealing in, underwriting or purchasing secu-
3 rities, the limitations and restrictions contained in this
4 paragraph as to dealing in, underwriting, and purchasing
5 investment securities for the national bank’s own account
6 shall not apply to obligations (including limited obligation
7 bonds, revenue bonds, and obligations that satisfy the re-
8 quirements of section 142(b)(1) of the Internal Revenue
9 Code of 1986) issued by or on behalf of any state or politi-
10 cal subdivision of a state, including any municipal cor-
11 porate instrumentality of 1 or more states, or any public
12 agency or authority of any state or political subdivision
13 of a state, if the national banking association is well cap-
14 italized (as defined in section 38 of the Federal Deposit
15 Insurance Act).”.

16 **Subtitle J—Deposit Insurance** 17 **Funds**

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

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

24 (1) SAFETY AND SOUNDNESS.—The safety and
25 soundness of the funds and the adequacy of the re-

1 serve requirements applicable to the funds in light
2 of—

3 (A) the size of the insured depository insti-
4 tutions which are resulting from mergers and
5 consolidations since the effective date of the
6 Riegle-Neal Interstate Banking and Branching
7 Efficiency Act of 1994; and

8 (B) the affiliation of insured depository in-
9 stitutions with other financial institutions pur-
10 suant to this Act and the amendments made by
11 this Act.

12 (2) CONCENTRATION LEVELS.—The concentra-
13 tion levels of the funds, taking into account the
14 number of members of each fund and the geographic
15 distribution of such members, and the extent to
16 which either fund is exposed to higher risks due to
17 a regional concentration of members or an insuffi-
18 cient membership base relative to the size of member
19 institutions.

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

25 (b) REPORT REQUIRED.—

1 (1) IN GENERAL.—Before the end of the 9-
2 month period beginning on the date of the enact-
3 ment of this Act, the Board of Directors of the Fed-
4 eral Deposit Insurance Corporation shall submit a
5 report to the Congress on the study conducted pur-
6 suant to subsection (a).

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

9 (A) detailed findings of the Board of Di-
10 rectors with regard to the issues described in
11 subsection (a);

12 (B) a description of the plans developed by
13 the Board of Directors for merging the Bank
14 Insurance Fund and the Savings Association
15 Insurance Fund, including an estimate of the
16 amount of the cost of such merger which would
17 be borne by Savings Association Insurance
18 Fund members; and

19 (C) such recommendations for legislative
20 and administrative action as the Board of Di-
21 rectors determines to be necessary or appro-
22 priate to preserve the safety and soundness of
23 the deposit insurance funds, reduce the risks to
24 such funds, provide for an efficient merger of
25 such funds, and for other purposes.

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

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

7 (2) BIF AND SAIF MEMBERS.—The terms
8 “Bank Insurance Fund member” and “Savings As-
9 sociation Insurance Fund member” have the same
10 meanings as in section 7(l) of the Federal Deposit
11 Insurance Act.

12 **SEC. 187. ELIMINATION OF SAIF AND DIF SPECIAL RE-**
13 **SERVES.**

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

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

20 (1) by striking subsection (b); and

21 (2) in subsection (d)—

22 (A) by striking paragraph (4);

23 (B) in paragraph (6)(C)(i), by striking
24 “(6) and (7)” and inserting “(5), (6), and (7)”;

25 and

1 (C) in paragraph (6)(C), by striking clause
2 (ii) and inserting the following:
3 “(ii) by redesignating paragraph (8)
4 as paragraph (5).”.

5 **Subtitle K—Effective Date of Title**

6 **SEC. 191. EFFECTIVE DATE.**

7 Except with regard to any subtitle or other provision
8 of this title for which a specific effective date is provided,
9 this title and the amendments made by this title shall take
10 effect at the end of the 270-day period beginning on the
11 date of the enactment of this Act.

12 **TITLE II—FUNCTIONAL** 13 **REGULATION**

14 **Subtitle A—Brokers and Dealers**

15 **SEC. 201. DEFINITION OF BROKER.**

16 Section 3(a)(4) of the Securities Exchange Act of
17 1934 (15 U.S.C. 78c(a)(4)) is amended to read as follows:

18 “(4) BROKER.—

19 “(A) IN GENERAL.—The term ‘broker’
20 means any person engaged in the business of
21 effecting transactions in securities for the ac-
22 count of others.

23 “(B) EXCEPTION FOR CERTAIN BANK AC-
24 TIVITIES.—A bank shall not be considered to be
25 a broker because the bank engages in any of

1 the following activities under the conditions de-
2 scribed:

3 “(i) THIRD PARTY BROKERAGE AR-
4 RANGEMENTS.—The bank enters into a
5 contractual or other arrangement with a
6 broker or dealer registered under this title
7 under which the broker or dealer offers
8 brokerage services on or off the premises
9 of the bank if—

10 “(I) such broker or dealer is
11 clearly identified as the person per-
12 forming the brokerage services;

13 “(II) the broker or dealer per-
14 forms brokerage services in an area
15 that is clearly marked and, to the ex-
16 tent practicable, physically separate
17 from the routine deposit-taking activi-
18 ties of the bank;

19 “(III) any materials used by the
20 bank to advertise or promote generally
21 the availability of brokerage services
22 under the contractual or other ar-
23 rangement clearly indicate that the
24 brokerage services are being provided

1 by the broker or dealer and not by the
2 bank;

3 “(IV) any materials used by the
4 bank to advertise or promote generally
5 the availability of brokerage services
6 under the contractual or other ar-
7 rangement are in compliance with the
8 Federal securities laws before dis-
9 tribution;

10 “(V) bank employees (other than
11 associated persons of a broker or deal-
12 er who are qualified pursuant to the
13 rules of a self-regulatory organization)
14 perform only clerical or ministerial
15 functions in connection with broker-
16 age transactions including scheduling
17 appointments with the associated per-
18 sons of a broker or dealer, except that
19 bank employees may forward cus-
20 tomer funds or securities and may de-
21 scribe in general terms the range of
22 investment vehicles available from the
23 bank and the broker or dealer under
24 the contractual or other arrangement;

1 “(VI) bank employees do not di-
2 rectly receive incentive compensation
3 for any brokerage transaction unless
4 such employees are associated persons
5 of a broker or dealer and are qualified
6 pursuant to the rules of a self-regu-
7 latory organization, except that the
8 bank employees may receive com-
9 pensation for the referral of any cus-
10 tomer if the compensation is a nomi-
11 nal one-time cash fee of a fixed dollar
12 amount and the payment of the fee is
13 not contingent on whether the referral
14 results in a transaction;

15 “(VII) such services are provided
16 by the broker or dealer on a basis in
17 which all customers which receive any
18 services are fully disclosed to the
19 broker or dealer;

20 “(VIII) the bank does not carry
21 a securities account of the customer
22 except in a customary custodian or
23 trustee capacity; and

24 “(IX) the bank, broker, or dealer
25 informs each customer that the bro-

1 kerage services are provided by the
2 broker or dealer and not by the bank
3 and that the securities are not depos-
4 its or other obligations of the bank,
5 are not guaranteed by the bank, and
6 are not insured by the Federal De-
7 posit Insurance Corporation.

8 “(ii) TRUST ACTIVITIES.—The bank
9 effects transactions in a trustee capacity,
10 or effects transactions in a fiduciary capac-
11 ity in its trust department or other depart-
12 ment that is regularly examined by bank
13 examiners for compliance with fiduciary
14 principles and standards, and (in either
15 case)—

16 “(I) is primarily compensated for
17 such transactions on the basis of an
18 administration or annual fee (payable
19 on a monthly, quarterly, or other
20 basis), a percentage of assets under
21 management, or a flat or capped per
22 order processing fee equal to not more
23 than the cost incurred by the bank in
24 connection with executing securities
25 transactions for trustee and fiduciary

1 customers, or any combination of such
2 fees, consistent with fiduciary prin-
3 ciples and standards; and

4 “(II) does not publicly solicit bro-
5 kerage business, other than by adver-
6 tising that it effects transactions in
7 securities in conjunction with advertis-
8 ing its other trust activities.

9 “(iii) PERMISSIBLE SECURITIES
10 TRANSACTIONS.—The bank effects trans-
11 actions in—

12 “(I) commercial paper, bankers
13 acceptances, or commercial bills;

14 “(II) exempted securities;

15 “(III) qualified Canadian govern-
16 ment obligations as defined in section
17 5136 of the Revised Statutes, in con-
18 formity with section 15C of this title
19 and the rules and regulations there-
20 under, or obligations of the North
21 American Development 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 “(iv) CERTAIN STOCK PURCHASE
5 PLANS.—

6 “(I) EMPLOYEE BENEFIT
7 PLANS.—The bank effects trans-
8 actions, as part of its transfer agency
9 activities, in the securities of an issuer
10 as part of any pension, retirement,
11 profit-sharing, bonus, thrift, savings,
12 incentive, or other similar benefit plan
13 for the employees of that issuer or its
14 subsidiaries, if—

15 (aa) the bank does not so-
16 licit transactions or provide in-
17 vestment advice with respect to
18 the purchase or sale of securities
19 in connection with the plan; and

20 “(bb) the bank’s compensa-
21 tion for such plan or program
22 consists primarily of administra-
23 tion fees, or flat or capped per
24 order processing fees, or both.

1 “(II) DIVIDEND REINVESTMENT
2 PLANS.—The bank effects trans-
3 actions, as part of its transfer agency
4 activities, in the securities of an issuer
5 as part of that issuer’s dividend rein-
6 vestment plan, 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;

12 “(bb) the bank does not net
13 shareholders’ buy and sell orders,
14 other than for programs for odd-
15 lot holders or plans registered
16 with the Commission; and

17 “(cc) the bank’s compensa-
18 tion for such plan or program
19 consists primarily of administra-
20 tion fees, or flat or capped per
21 order processing fees, or both.

22 “(III) ISSUER PLANS.—The bank
23 effects transactions, as part of its
24 transfer agency activities, in the secu-
25 rities of an issuer as part of a plan or

1 program for the purchase or sale of
2 that issuer's shares, if—

3 “(aa) the bank does not so-
4 licit transactions or provide in-
5 vestment advice with respect to
6 the purchase or sale of securities
7 in connection with the plan or
8 program;

9 “(bb) the bank does not net
10 shareholders' buy and sell orders,
11 other than for programs for odd-
12 lot holders or plans registered
13 with the Commission; and

14 “(cc) the bank's compensa-
15 tion for such plan or program
16 consists primarily of administra-
17 tion fees, or flat or capped per
18 order processing fees, or both.

19 “(IV) PERMISSIBLE DELIVERY
20 OF MATERIALS.—The exception to
21 being considered a broker for a bank
22 engaged in activities described in sub-
23 clauses (I), (II), and (III) will not be
24 affected by a bank's delivery of writ-
25 ten or electronic plan materials to em-

1 ployees of the issuer, shareholders of
2 the issuer, or members of affinity
3 groups of the issuer, so long as such
4 materials are—

5 “(aa) comparable in scope or
6 nature to that permitted by the
7 Commission as of the date of the
8 enactment of the Financial Serv-
9 ices Modernization Act of 1999;
10 or

11 “(bb) otherwise permitted by
12 the Commission.

13 “(v) SWEEP ACCOUNTS.—The bank
14 effects transactions as part of a program
15 for the investment or reinvestment of bank
16 deposit funds into any no-load, open-end
17 management investment company reg-
18 istered under the Investment Company Act
19 of 1940 that holds itself out as a money
20 market fund.

21 “(vi) AFFILIATE TRANSACTIONS.—
22 The bank effects transactions for the ac-
23 count of any affiliate of the bank (as de-
24 fined in section 2 of the Bank Holding
25 Company Act of 1956) other than—

1 “(I) a registered broker or deal-
2 er; or

3 “(II) an affiliate that is engaged
4 in merchant banking, as described in
5 section 6(c)(3)(H) of the Bank Hold-
6 ing Company Act of 1956.

7 “(vii) PRIVATE SECURITIES OFFER-
8 INGS.—The bank—

9 “(I) effects sales as part of a pri-
10 mary offering of securities not involv-
11 ing a public offering, pursuant to sec-
12 tion 3(b), 4(2), or 4(6) of the Securi-
13 ties Act of 1933 or the rules and reg-
14 ulations issued thereunder;

15 “(II) at any time after the date
16 that is 1 year after the date of enact-
17 ment of the Financial Services Mod-
18 ernization Act of 1999, is not affili-
19 ated with a broker or dealer that has
20 been registered for more than 1 year
21 in accordance with this Act, and en-
22 gages in dealing, market making, or
23 underwriting activities, other than
24 with respect to exempted securities;
25 and

1 “(III) effects transactions exclu-
2 sively with qualified investors.

3 “(viii) SAFEKEEPING AND CUSTODY
4 ACTIVITIES.—

5 “(I) IN GENERAL.—The bank, as
6 part of customary banking activities—

7 “(aa) provides safekeeping
8 or custody services with respect
9 to securities, including the exer-
10 cise of warrants and other rights
11 on behalf of customers;

12 “(bb) facilitates the transfer
13 of funds or securities, as a custo-
14 dian or a clearing agency, in con-
15 nection with the clearance and
16 settlement of its customers’
17 transactions in securities;

18 “(cc) effects securities lend-
19 ing or borrowing transactions
20 with or on behalf of customers as
21 part of services provided to cus-
22 tomers pursuant to division (aa)
23 or (bb) or invests cash collateral
24 pledged in connection with such
25 transactions; or

1 “(dd) holds securities
2 pledged by a customer to another
3 person or securities subject to
4 purchase or resale agreements in-
5 volving a customer, or facilitates
6 the pledging or transfer of such
7 securities by book entry or as
8 otherwise provided under applica-
9 ble law.

10 “(II) EXCEPTION FOR CARRYING
11 BROKER ACTIVITIES.—The exception
12 to being considered a broker for a
13 bank engaged in activities described in
14 subclause (I) shall not apply if the
15 bank, in connection with such activi-
16 ties, acts in the United States as a
17 carrying broker (as such term, and
18 different formulations thereof, are
19 used in section 15(c)(3) and the rules
20 and regulations thereunder) for any
21 broker or dealer, unless such carrying
22 broker activities are engaged in with
23 respect to government securities (as
24 defined in paragraph (42) of this sub-
25 section).

1 “(ix) BANKING PRODUCTS.—The bank
2 effects transactions in traditional banking
3 products, as defined in section 205(a) of
4 the Financial Services Modernization Act
5 of 1999.

6 “(x) DE MINIMIS EXCEPTION.—The
7 bank effects, other than in transactions re-
8 ferred to in clauses (i) through (ix), 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) NO EFFECT OF BANK EXEMPTIONS
15 ON OTHER COMMISSION AUTHORITY.—The ex-
16 ception to being considered a broker for a bank
17 engaged in activities described in subpara-
18 graphs (B) and (C) shall not affect the author-
19 ity of the Commission under any other provi-
20 sion of this Act or any other securities law.

21 “(E) FIDUCIARY CAPACITY.—For purposes
22 of subparagraph (B)(ii), the term ‘fiduciary ca-
23 pacity’ means—

24 “(i) in the capacity as trustee, execu-
25 tor, administrator, registrar of stocks and

1 bonds, transfer agent, guardian, assignee,
2 receiver, or custodian under a uniform gift
3 to minor act, or as an investment adviser
4 if the bank receives a fee for its investment
5 advice;

6 “(ii) in any capacity in which the
7 bank possesses investment discretion on
8 behalf of another; or

9 “(iii) in any other similar capacity.

10 “(F) EXCEPTION FOR ENTITIES SUBJECT
11 TO SECTION 15(e).—The term ‘broker’ does not
12 include a bank that—

13 “(i) was, immediately prior to the en-
14 actment of the Financial Services Mod-
15 ernization Act of 1999, subject to section
16 15(e); and

17 “(ii) is subject to such restrictions
18 and requirements as the Commission con-
19 siders appropriate.”.

20 **SEC. 202. DEFINITION OF DEALER.**

21 Section 3(a)(5) of the Securities Exchange Act of
22 1934 (15 U.S.C. 78c(a)(5)) is amended to read as follows:

23 “(5) DEALER.—

24 “(A) IN GENERAL.—The term ‘dealer’
25 means any person engaged in the business of

1 buying and selling securities for such person's
2 own account through a broker or otherwise.

3 “(B) EXCEPTION FOR PERSON NOT EN-
4 GAGED IN THE BUSINESS OF DEALING.—The
5 term ‘dealer’ does not include a person that
6 buys or sells securities for such person's own
7 account, either individually or in a fiduciary ca-
8 pacity, but not as a part of a regular business.

9 “(C) EXCEPTION FOR CERTAIN BANK AC-
10 TIVITIES.—A bank shall not be considered to be
11 a dealer because the bank engages in any of the
12 following activities under the conditions de-
13 scribed:

14 “(i) PERMISSIBLE SECURITIES TRANS-
15 ACTIONS.—The bank buys or sells—

16 “(I) commercial paper, bankers
17 acceptances, or commercial bills;

18 “(II) exempted securities;

19 “(III) qualified Canadian govern-
20 ment obligations as defined in section
21 5136 of the Revised Statutes of the
22 United States, in conformity with sec-
23 tion 15C of this title and the rules
24 and regulations thereunder, or obliga-

1 tions of the North American Develop-
2 ment Bank; or

3 “(IV) any standardized, credit
4 enhanced debt security issued by a
5 foreign government pursuant to the
6 March 1989 plan of then Secretary of
7 the Treasury Brady, used by such for-
8 eign government to retire outstanding
9 commercial bank loans.

10 “(ii) INVESTMENT, TRUSTEE, AND FI-
11 DUCIARY TRANSACTIONS.—The bank buys
12 or sells securities for investment
13 purposes—

14 “(I) for the bank; or

15 “(II) for accounts for which the
16 bank acts as a trustee or fiduciary.

17 “(iii) ASSET-BACKED TRANS-
18 ACTIONS.—The bank engages in the
19 issuance or sale to qualified investors,
20 through a grantor trust or otherwise, of se-
21 curities backed by or representing an inter-
22 est in notes, drafts, acceptances, loans,
23 leases, receivables, other obligations, or
24 pools of any such obligations predomi-
25 nantly originated by the bank, or a syn-

1 dicate of banks of which the bank is a
2 member, or an affiliate of any such bank
3 other than a broker or dealer.

4 “(iv) BANKING PRODUCTS.—The bank
5 buys or sells traditional banking products,
6 as defined in section 205(a) of the Finan-
7 cial Services Modernization Act of 1999.

8 “(v) DERIVATIVE INSTRUMENTS.—
9 The bank issues, buys, or sells any deriva-
10 tive instrument to which the bank is a
11 party—

12 “(I) to or from a qualified inves-
13 tor, except that if the instrument pro-
14 vides for the delivery of one or more
15 securities (other than a derivative in-
16 strument or government security), the
17 transaction shall be effected with or
18 through a registered broker or dealer;

19 “(II) to or from other persons,
20 except that if the derivative instru-
21 ment provides for the delivery of one
22 or more securities (other than a deriv-
23 ative instrument or government secu-
24 rity), or is a security (other than a
25 government security), the transaction

1 shall be effected with or through a
2 registered broker or dealer; or

3 “(III) to or from any person if
4 the instrument is neither a security
5 nor provides for the delivery of one or
6 more securities (other than a deriva-
7 tive instrument).”.

8 **SEC. 203. REGISTRATION FOR SALES OF PRIVATE SECURI-**
9 **TIES OFFERINGS.**

10 Section 15A of the Securities Exchange Act of 1934
11 (15 U.S.C. 78o-3) is amended by inserting after sub-
12 section (i) the following new subsection:

13 “(j) REGISTRATION FOR SALES OF PRIVATE SECURI-
14 TIES OFFERINGS.—A registered securities association
15 shall create a limited qualification category for any associ-
16 ated person of a member who effects sales as part of a
17 primary offering of securities not involving a public offer-
18 ing, pursuant to section 3(b), 4(2), or 4(6) of the Securi-
19 ties Act of 1933 and the rules and regulations thereunder,
20 and shall deem qualified in such limited qualification cat-
21 egory, without testing, any bank employee who, in the six
22 month period preceding the date of enactment of this Act,
23 engaged in effecting such sales.”.

1 **SEC. 204. INFORMATION SHARING.**

2 Section 18 of the Federal Deposit Insurance Act is
3 amended by adding at the end the following new sub-
4 section:

5 “(t) **RECORDKEEPING REQUIREMENTS.**—

6 “(1) **REQUIREMENTS.**—Each appropriate Fed-
7 eral banking agency, after consultation with and
8 consideration of the views of the Commission, shall
9 establish recordkeeping requirements for banks rely-
10 ing on exceptions contained in paragraphs (4) and
11 (5) of section 3(a) of the Securities Exchange Act of
12 1934. Such recordkeeping requirements shall be suf-
13 ficient to demonstrate compliance with the terms of
14 such exceptions and be designed to facilitate compli-
15 ance with such exceptions. Each appropriate Federal
16 banking agency shall make any such information
17 available to the Commission upon request.

18 “(2) **DEFINITIONS.**—As used in this subsection
19 the term ‘Commission’ means the Securities and Ex-
20 change Commission.”.

21 **SEC. 205. DEFINITION AND TREATMENT OF BANKING PROD-**
22 **UCTS.**

23 (a) **DEFINITION OF TRADITIONAL BANKING PROD-**
24 **UCT.**—For purposes of paragraphs (4) and (5) of section
25 3(a) of the Securities Exchange Act of 1934 (15 U.S.C.

1 78c(a) (4), (5)), the term “traditional banking product”
2 means—

3 (1) a deposit account, savings account, certifi-
4 cate of deposit, or other deposit instrument issued
5 by a bank;

6 (2) a banker’s acceptance;

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

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

11 (5) a participation in a loan which the bank or
12 an affiliate of the bank (other than a broker or deal-
13 er) funds, participates in, or owns that is sold—

14 (A) to qualified investors; or

15 (B) to other persons that—

16 (i) have the opportunity to review and
17 assess any material information, including
18 information regarding the borrower’s cred-
19 itworthiness; and

20 (ii) based on such factors as financial
21 sophistication, net worth, and knowledge
22 and experience in financial matters, have
23 the capability to evaluate the information
24 available, as determined under generally

1 applicable banking standards or guidelines;

2 and

3 (6) any derivative instrument, whether or not

4 individually negotiated, involving or relating to—

5 (A) foreign currencies, except options on

6 foreign currencies that trade on a national se-

7 curities exchange;

8 (B) interest rates, except interest rate de-

9 rivative instruments that—

10 (i) are based on a security or a group

11 or index of securities (other than govern-

12 ment securities or a group or index of gov-

13 ernment securities);

14 (ii) provide for the delivery of one or

15 more securities (other than government se-

16 curities); or

17 (iii) trade on a national securities ex-

18 change; or

19 (C) commodities, other rates, indices, or

20 other assets, except derivative instruments

21 that—

22 (i) are securities or that are based on

23 a group or index of securities (other than

24 government securities or a group or index

25 of government securities);

1 (ii) provide for the delivery of one or
2 more securities (other than government se-
3 curities); or

4 (iii) trade on a national securities ex-
5 change.

6 (b) AMENDMENT TO THE SECURITIES EXCHANGE
7 ACT OF 1934.—Section 15 of the Securities Exchange Act
8 of 1934 (15 U.S.C. 78o) is amended by adding at the end
9 the following new subsection:

10 “(i) TRANSACTIONS INVOLVING HYBRID PROD-
11 UCTS.—

12 “(1) COMMISSION AUTHORITY.—

13 “(A) IN GENERAL.—The Commission may,
14 after consultation with the Board, determine,
15 by regulation published in the Federal Register,
16 that a bank that effects transactions in, or buys
17 or sells, a new product should be subject to the
18 registration requirements of this section.

19 “(B) LIMITATION.—The Commission may
20 not impose the registration requirements of this
21 section on any bank that effects transactions in,
22 or buys or sells, a product under this subsection
23 unless the Commission determines in the regu-
24 lations described in subparagraph (A) that—

1 “(i) the subject product is a new prod-
2 uct;

3 “(ii) the subject product is a security;
4 and

5 “(iii) imposing the registration re-
6 quirements of this section is necessary or
7 appropriate in the public interest and for
8 the protection of investors.

9 “(2) OBJECTION TO COMMISSION REGULA-
10 TION.—

11 “(A) FILING OF PETITION FOR REVIEW.—

12 The Board, or any aggrieved party, may obtain
13 review of any final regulation described in para-
14 graph (1) in the United States Court of Ap-
15 peals for the District of Columbia Circuit by fil-
16 ing in such court, not later than 60 days after
17 the date of publication of the final regulation,
18 a written petition requesting that the regulation
19 be set aside.

20 “(B) TRANSMITTAL OF PETITION AND

21 RECORD.—A copy of a petition described in
22 subparagraph (A) shall be transmitted as soon
23 as possible by the Clerk of the Court to an offi-
24 cer or employee of the Commission designated
25 for that purpose. Upon receipt of the petition,

1 the Commission shall file with the court the
2 regulation under review and any documents re-
3 ferred to therein, and any other relevant mate-
4 rials prescribed by the court.

5 “(C) EXCLUSIVE JURISDICTION.—On the
6 date of the filing of the petition under subpara-
7 graph (A), the court has jurisdiction, which be-
8 comes exclusive on the filing of the materials
9 set forth in subparagraph (B), to affirm and
10 enforce or to set aside the regulation at issue.

11 “(D) STANDARD OF REVIEW.—

12 “(i) IN GENERAL.—The court shall
13 determine to affirm and enforce or set
14 aside a regulation of the Commission
15 under this subsection, based on the deter-
16 mination of the court as to whether the
17 subject product—

18 “(I) is a new product, as defined
19 in this subsection;

20 “(II) is a security; and

21 “(III) would be more appro-
22 priately regulated under the Federal
23 securities laws or the Federal banking
24 laws, giving equal deference to the

1 views of the Commission and the
2 Board.

3 “(ii) CONSIDERATIONS.—In making a
4 determination under clause (i)(III), the
5 court shall consider—

6 “(I) the nature of the subject
7 new product;

8 “(II) the history, purpose, extent,
9 and appropriateness of the regulation
10 of the new product under the Federal
11 securities laws; and

12 “(III) the history, purpose, ex-
13 tent, and appropriateness of the regu-
14 lation of the new product under the
15 Federal banking laws.

16 “(E) JUDICIAL STAY.—The filing of a peti-
17 tion by the Board or an aggrieved party pursu-
18 ant to subparagraph (A) shall operate as a judi-
19 cial stay, until the date on which the court
20 makes a final determination under this para-
21 graph, of—

22 “(i) any Commission requirement that
23 a bank register as a broker or dealer under
24 this section, because the bank engages in
25 any transaction in, or buys or sells, the

1 new product that is the subject of the peti-
2 tion; and

3 “(ii) any Commission action against a
4 bank for a failure to comply with a re-
5 quirement described in clause (i).

6 “(3) DEFINITIONS.—For purposes of this
7 subsection—

8 “(A) the term ‘Board’ means the Board of
9 Governors of the Federal Reserve System; and

10 “(B) the term ‘new product’ means a prod-
11 uct or instrument offered or provided by a bank
12 that—

13 “(i) was not subject to regulation by
14 the Commission as a security under this
15 Act before the date of enactment of this
16 subsection; and

17 “(ii) is not a traditional banking prod-
18 uct, as defined in paragraphs (1) through
19 (6) of section 205(a) of the Financial Serv-
20 ices Modernization Act of 1999.”.

21 (c) CLASSIFICATION LIMITED.—Classification of a
22 particular product or instrument as a traditional banking
23 product pursuant to this section or the amendments made
24 by this section shall not be construed as finding or imply-
25 ing that such product or instrument is or is not a security

1 for any purpose under the securities laws, or is or is not
2 an account, agreement, contract, or transaction for any
3 purpose under the Commodity Exchange Act.

4 (d) NO LIMITATION ON OTHER AUTHORITY TO
5 CHALLENGE.—Nothing in this section or the amendments
6 made by this section shall affect the right or authority
7 of the Board of Governors of the Federal Reserve System,
8 any appropriate Federal banking agency, or any interested
9 party under any other provision of law to object to or seek
10 judicial review as to whether a product or instrument is
11 or is not appropriately classified as a traditional banking
12 product under paragraphs (1) through (6) of section
13 205(a).

14 (e) INCORPORATED DEFINITIONS.—For purposes of
15 this section—

16 (1) the term “appropriate Federal banking
17 agency” has the same meaning as in section 3 of the
18 Federal Deposit Insurance Act;

19 (2) the term “bank” has the same meaning as
20 in section 3(a)(6) of the Securities Exchange Act of
21 1934;

22 (3) the term “Board” means the Board of Gov-
23 ernors of the Federal Reserve System;

24 (4) the term “government securities” has the
25 same meaning as in section 3(a)(42) of the Securi-

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. 207. 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 section 15C as ap-
16 plied to a bank, a qualified Canadian govern-
17 ment obligation as defined in section 5136 of
18 the Revised Statutes.”.

19 **SEC. 208. EFFECTIVE DATE.**

20 This subtitle shall take effect at the end of the 270-
21 day period beginning on the date of the enactment of this
22 Act.

1 **SEC. 209. 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) **SERVICES AS TRUSTEE OR CUSTODIAN.**—

25 The Commission may adopt rules and regulations,
26 and issue orders, consistent with the protection of

1 investors, prescribing the conditions under which a
2 bank, or an affiliated person of a bank, either of
3 which is an affiliated person, promoter, organizer, or
4 sponsor of, or principal underwriter for, a registered
5 management company may serve as custodian of
6 that registered management company.”.

7 (b) UNIT INVESTMENT TRUSTS.—Section 26 of the
8 Investment Company Act of 1940 (15 U.S.C. 80a–26) is
9 amended—

10 (1) by redesignating subsections (b) through (e)
11 as subsections (c) through (f), respectively; and

12 (2) by inserting after subsection (a) the follow-
13 ing new subsection:

14 “(b) The Commission may adopt rules and regula-
15 tions, and issue orders, consistent with the protection of
16 investors, prescribing the conditions under which a bank,
17 or an affiliated person of a bank, either of which is an
18 affiliated person of a principal underwriter for, or deposi-
19 tor of, a registered unit investment trust, may serve as
20 trustee or custodian under subsection (a)(1).”.

21 (c) FIDUCIARY DUTY OF CUSTODIAN.—Section 36(a)
22 of the Investment Company Act of 1940 (15 U.S.C. 80a–
23 35(a)) is amended—

24 (1) in paragraph (1), by striking “or” at the
25 end;

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 as in section 3 of
18 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 as 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 as in section 3 of the Securities Exchange Act of
12 1934, but does not include an insurance company or
13 investment 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) of
18 the Investment Advisers Act of 1940 (15 U.S.C. 80b-
19 2(a)(11)) is amended in subparagraph (A), by striking
20 “investment company” and inserting “investment com-
21 pany, except that the term ‘investment adviser’ includes
22 any bank or bank holding company to the extent that such
23 bank or bank holding company serves or acts as an invest-
24 ment adviser to a registered investment company, but if,
25 in the case of a bank, such services or actions are per-

1 formed through a separately identifiable department or di-
2 vision, the department or division, and not the bank itself,
3 shall be deemed to 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 as 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 as
18 in section 3 of the Securities Exchange Act of 1934,
19 but does not include an insurance company or in-
20 vestment 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, that is reg-
14 istered under section 203 of this title; and

15 “(B) in the case of a bank holding com-
16 pany or bank that has a subsidiary or a sepa-
17 rately identifiable department or division reg-
18 istered under that section, of such bank or bank
19 holding company.

20 “(2) The Commission shall provide to the ap-
21 propriate Federal banking agency upon request the
22 results of any examination, reports, records, or other
23 information with respect to the investment advisory
24 activities of any bank holding company, bank, or
25 separately identifiable department or division of a

1 bank, any of which is registered under section 203
2 of this 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 provision of law.

8 “(c) DEFINITION.—For purposes of this section, the
9 term ‘appropriate Federal banking agency’ has the same
10 meaning as in section 3 of the Federal Deposit Insurance
11 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. CONFORMING CHANGE IN DEFINITION.**

18 Section 2(a)(5) of the Investment Company Act of
19 1940 (15 U.S.C. 80a-2(a)(5)) is amended by striking
20 “(A) a banking institution organized under the laws of the
21 United States” and inserting “(A) a depository institution
22 (as defined in section 3 of the Federal Deposit Insurance
23 Act) or a branch or agency of a foreign bank (as such
24 terms are defined in section 1(b) of the International
25 Banking Act of 1978)”.

1 **SEC. 224. CONFORMING AMENDMENT.**

2 Section 202 of the Investment Advisers Act of 1940
3 (15 U.S.C. 80b-2) is amended by adding at the end the
4 following new subsection:

5 “(c) CONSIDERATION OF PROMOTION OF EFFI-
6 CIENCY, COMPETITION, AND CAPITAL FORMATION.—
7 Whenever pursuant to this title the Commission is en-
8 gaged in rulemaking and is required to consider or deter-
9 mine whether an action is necessary or appropriate in the
10 public interest, the Commission shall also consider, in ad-
11 dition to the protection of investors, whether the action
12 will promote efficiency, competition, and capital forma-
13 tion.”.

14 **SEC. 225. EFFECTIVE DATE.**

15 This subtitle shall take effect 90 days after the date
16 of the enactment of this Act.

17 **Subtitle C—Securities and Ex-**
18 **change Commission Supervision**
19 **of Investment Bank Holding**
20 **Companies**

21 **SEC. 231. SUPERVISION OF INVESTMENT BANK HOLDING**
22 **COMPANIES BY THE SECURITIES AND EX-**
23 **CHANGE COMMISSION.**

24 (a) AMENDMENT.—Section 17 of the Securities Ex-
25 change Act of 1934 (15 U.S.C. 78q) is amended—

1 (1) by redesignating subsection (i) as subsection
2 (k); and

3 (2) by inserting after subsection (h) the follow-
4 ing new subsections:

5 “(i) INVESTMENT BANK HOLDING COMPANIES.—

6 “(1) ELECTIVE SUPERVISION OF AN INVEST-
7 MENT BANK HOLDING COMPANY NOT HAVING A
8 BANK OR SAVINGS ASSOCIATION AFFILIATE.—

9 “(A) IN GENERAL.—An investment bank
10 holding company that is not—

11 “(i) an affiliate of an insured bank
12 (other than an institution described in sub-
13 paragraph (D), (F), or (G) of section
14 2(c)(2), or held under section 4(f), of the
15 Bank Holding Company Act of 1956) or a
16 savings association;

17 “(ii) a foreign bank, foreign company,
18 or company that is described in section
19 8(a) of the International Banking Act of
20 1978; or

21 “(iii) a foreign bank that controls, di-
22 rectly or indirectly, a corporation chartered
23 under section 25A of the Federal Reserve
24 Act,

1 may elect to become supervised by filing with
2 the Commission a notice of intention to become
3 supervised, pursuant to subparagraph (B) of
4 this paragraph. Any investment bank holding
5 company filing such a notice shall be supervised
6 in accordance with this section and comply with
7 the rules promulgated by the Commission appli-
8 cable to supervised investment bank holding
9 companies.

10 “(B) NOTIFICATION OF STATUS AS A SU-
11 PERVISED INVESTMENT BANK HOLDING COM-
12 PANY.—An investment bank holding company
13 that elects under subparagraph (A) to become
14 supervised by the Commission shall file with the
15 Commission a written notice of intention to be-
16 come supervised by the Commission in such
17 form and containing such information and doc-
18 uments concerning such investment bank hold-
19 ing company as the Commission, by rule, may
20 prescribe as necessary or appropriate in fur-
21 therance of the purposes of this section. Unless
22 the Commission finds that such supervision is
23 not necessary or appropriate in furtherance of
24 the purposes of this section, such supervision
25 shall become effective 45 days after the date of

1 receipt of such written notice by the Commis-
2 sion, or within such shorter time period as the
3 Commission, by rule or order, may determine.

4 “(2) ELECTION NOT TO BE SUPERVISED BY
5 THE COMMISSION AS AN INVESTMENT BANK HOLD-
6 ING COMPANY.—

7 “(A) VOLUNTARY WITHDRAWAL.—A su-
8 pervised investment bank holding company that
9 is supervised pursuant to paragraph (1) may,
10 upon such terms and conditions as the Commis-
11 sion deems necessary or appropriate, elect not
12 to be supervised by the Commission by filing a
13 written notice of withdrawal from Commission
14 supervision. Such notice shall not become effec-
15 tive until one year after receipt by the Commis-
16 sion, or such shorter or longer period as the
17 Commission deems necessary or appropriate to
18 ensure effective supervision of the material
19 risks to the supervised investment bank holding
20 company and to the affiliated broker or dealer,
21 or to prevent evasion of the purposes of this
22 section.

23 “(B) DISCONTINUATION OF COMMISSION
24 SUPERVISION.—If the Commission finds that
25 any supervised investment bank holding com-

1 pany that is supervised pursuant to paragraph
2 (1) is no longer in existence or has ceased to be
3 an investment bank holding company, or if the
4 Commission finds that continued supervision of
5 such a supervised investment bank holding com-
6 pany is not consistent with the purposes of this
7 section, the Commission may discontinue the
8 supervision pursuant to a rule or order, if any,
9 promulgated by the Commission under this sec-
10 tion.

11 “(3) SUPERVISION OF INVESTMENT BANK
12 HOLDING COMPANIES.—

13 “(A) RECORDKEEPING AND REPORTING.—

14 “(i) IN GENERAL.—Every supervised
15 investment bank holding company and
16 each affiliate thereof shall make and keep
17 for prescribed periods such records, furnish
18 copies thereof, and make such reports, as
19 the Commission may require by rule, in
20 order to keep the Commission informed as
21 to—

22 “(I) the company’s or affiliate’s
23 activities, financial condition, policies,
24 systems for monitoring and control-
25 ling financial and operational risks,

1 and transactions and relationships be-
2 tween any broker or dealer affiliate of
3 the supervised investment bank hold-
4 ing company; and

5 “(II) the extent to which the
6 company or affiliate has complied with
7 the provisions of this Act and regula-
8 tions prescribed and orders issued
9 under this Act.

10 “(ii) FORM AND CONTENTS.—Such
11 records and reports shall be prepared in
12 such form and according to such specifica-
13 tions (including certification by an inde-
14 pendent public accountant), as the Com-
15 mission may require and shall be provided
16 promptly at any time upon request by the
17 Commission. Such records and reports may
18 include—

19 “(I) a balance sheet and income
20 statement;

21 “(II) an assessment of the con-
22 solidated capital of the supervised in-
23 vestment bank holding company;

24 “(III) an independent auditor’s
25 report attesting to the supervised in-

1 vestment bank holding company's
2 compliance with its internal risk man-
3 agement and internal control objec-
4 tives; and

5 “(IV) reports concerning the ex-
6 tent to which the company or affiliate
7 has complied with the provisions of
8 this title and any regulations pre-
9 scribed and orders issued under this
10 title.

11 “(B) USE OF EXISTING REPORTS.—

12 “(i) IN GENERAL.—The Commission
13 shall, to the fullest extent possible, accept
14 reports in fulfillment of the requirements
15 under this paragraph that the supervised
16 investment bank holding company or its af-
17 filiates have been required to provide to
18 another appropriate regulatory agency or
19 self-regulatory organization.

20 “(ii) AVAILABILITY.—A supervised in-
21 vestment bank holding company or an af-
22 filiate of such company shall provide to the
23 Commission, at the request of the Commis-
24 sion, any report referred to in clause (i).

25 “(C) EXAMINATION AUTHORITY.—

1 “(i) FOCUS OF EXAMINATION AU-
2 THORITY.—The Commission may make ex-
3 aminations of any supervised investment
4 bank holding company and any affiliate of
5 such company in order to—

6 “(I) inform the Commission
7 regarding—

8 “(aa) the nature of the oper-
9 ations and financial condition of
10 the supervised investment bank
11 holding company and its affili-
12 ates;

13 “(bb) the financial and oper-
14 ational risks within the super-
15 vised investment bank holding
16 company that may affect any
17 broker or dealer controlled by
18 such supervised investment bank
19 holding company; and

20 “(cc) the systems of the su-
21 pervised investment bank holding
22 company and its affiliates for
23 monitoring and controlling those
24 risks; and

1 “(II) monitor compliance with
2 the provisions of this subsection, pro-
3 visions governing transactions and re-
4 lationships between any broker or
5 dealer affiliated with the supervised
6 investment bank holding company and
7 any of the company’s other affiliates,
8 and applicable provisions of sub-
9 chapter II of chapter 53, title 31,
10 United States Code (commonly re-
11 ferred to as the ‘Bank Secrecy Act’)
12 and regulations thereunder.

13 “(ii) RESTRICTED FOCUS OF EXAMI-
14 NATIONS.—The Commission shall limit the
15 focus and scope of any examination of a
16 supervised investment bank holding com-
17 pany to—

18 “(I) the company; and

19 “(II) any affiliate of the company
20 that, because of its size, condition, or
21 activities, the nature or size of the
22 transactions between such affiliate
23 and any affiliated broker or dealer, or
24 the centralization of functions within
25 the holding company system, could, in

1 the discretion of the Commission,
2 have a materially adverse effect on the
3 operational or financial condition of
4 the broker or dealer.

5 “(iii) DEFERENCE TO OTHER EXAMI-
6 NATIONS.—For purposes of this subpara-
7 graph, the Commission shall, to the fullest
8 extent possible, use the reports of examina-
9 tion of an institution described in subpara-
10 graph (D), (F), or (G) of section 2(c)(2),
11 or held under section 4(f), of the Bank
12 Holding Company Act of 1956 made by
13 the appropriate regulatory agency, or of a
14 licensed insurance company made by the
15 appropriate State insurance regulator.

16 “(4) HOLDING COMPANY CAPITAL.—

17 “(A) AUTHORITY.—If the Commission
18 finds that it is necessary to adequately super-
19 vise investment bank holding companies and
20 their broker or dealer affiliates consistent with
21 the purposes of this subsection, the Commission
22 may adopt capital adequacy rules for supervised
23 investment bank holding companies.

24 “(B) METHOD OF CALCULATION.—In de-
25 veloping rules under this paragraph:

1 “(i) DOUBLE LEVERAGE.—The Com-
2 mission shall consider the use by the su-
3 pervised investment bank holding company
4 of debt and other liabilities to fund capital
5 investments in affiliates.

6 “(ii) NO UNWEIGHTED CAPITAL
7 RATIO.—The Commission shall not impose
8 under this section a capital ratio that is
9 not based on appropriate risk-weighting
10 considerations.

11 “(iii) NO CAPITAL REQUIREMENT ON
12 REGULATED ENTITIES.—The Commission
13 shall not, by rule, regulation, guideline,
14 order or otherwise, impose any capital ade-
15 quacy provision on a nonbanking affiliate
16 (other than a broker or dealer) that is in
17 compliance with applicable capital require-
18 ments of another Federal regulatory au-
19 thority or State insurance authority.

20 “(iv) APPROPRIATE EXCLUSIONS.—
21 The Commission shall take full account of
22 the applicable capital requirements of an-
23 other Federal regulatory authority or State
24 insurance regulator.

1 “(C) INTERNAL RISK MANAGEMENT MOD-
2 ELS.—The Commission may incorporate inter-
3 nal risk management models into its capital
4 adequacy rules for supervised investment bank
5 holding companies.

6 “(5) FUNCTIONAL REGULATION OF BANKING
7 AND INSURANCE ACTIVITIES OF SUPERVISED IN-
8 VESTMENT BANK HOLDING COMPANIES.—The Com-
9 mission shall defer to—

10 “(A) the appropriate regulatory agency
11 with regard to all interpretations of, and the
12 enforcement of, applicable banking laws relating
13 to the activities, conduct, ownership, and oper-
14 ations of banks, and institutions described in
15 subparagraph (D), (F), and (G) of section
16 2(c)(2), or held under section 4(f), of the Bank
17 Holding Company Act of 1956; and

18 “(B) the appropriate State insurance regu-
19 lators with regard to all interpretations of, and
20 the enforcement of, applicable State insurance
21 laws relating to the activities, conduct, and op-
22 erations of insurance companies and insurance
23 agents.

24 “(6) DEFINITIONS.—For purposes of this sub-
25 section and subsection (j)—

1 “(A) the term ‘investment bank holding
2 company’ means—

3 “(i) any person other than a natural
4 person that owns or controls one or more
5 brokers or dealers; and

6 “(ii) the associated persons of the in-
7 vestment bank holding company;

8 “(B) the term ‘supervised investment bank
9 holding company’ means any investment bank
10 holding company that is supervised by the Com-
11 mission pursuant to this subsection;

12 “(C) the terms ‘affiliate’, ‘bank’, ‘bank
13 holding company’, ‘company’, ‘control’, and
14 ‘savings association’ have the same meanings as
15 in section 2 of the Bank Holding Company Act
16 of 1956;

17 “(D) the term ‘insured bank’ has the same
18 meaning as in section 3 of the Federal Deposit
19 Insurance Act;

20 “(E) the term ‘foreign bank’ has the same
21 meaning as in section 1(b)(7) of the Inter-
22 national Banking Act of 1978; and

23 “(F) the terms ‘person associated with an
24 investment bank holding company’ and ‘associ-
25 ated person of an investment bank holding com-

1 pany’ mean any person directly or indirectly
2 controlling, controlled by, or under common
3 control with, an investment bank holding com-
4 pany.

5 “(j) AUTHORITY TO LIMIT DISCLOSURE OF INFOR-
6 MATION.—Notwithstanding any other provision of law, the
7 Commission shall not be compelled to disclose any infor-
8 mation required to be reported under subsection (h) or
9 (i) or any information supplied to the Commission by any
10 domestic or foreign regulatory agency that relates to the
11 financial or operational condition of any associated person
12 of a broker or dealer, investment bank holding company,
13 or any affiliate of an investment bank holding company.
14 Nothing in this subsection shall authorize the Commission
15 to withhold information from Congress, or prevent the
16 Commission from complying with a request for informa-
17 tion from any other Federal department or agency or any
18 self-regulatory organization requesting the information for
19 purposes within the scope of its jurisdiction, or complying
20 with an order of a court of the United States in an action
21 brought by the United States or the Commission. For pur-
22 poses of section 552 of title 5, United States Code, this
23 subsection shall be considered a statute described in sub-
24 section (b)(3)(B) of such section 552. In prescribing regu-
25 lations to carry out the requirements of this subsection,

1 the Commission shall designate information described in
2 or obtained pursuant to subparagraphs (A), (B), and (C)
3 of subsection (i)(5) as confidential information for pur-
4 poses of section 24(b)(2) of this title.”.

5 (b) CONFORMING AMENDMENTS.—

6 (1) Section 3(a)(34) of the Securities Exchange
7 Act of 1934 (15 U.S.C. 78c(a)(34)) is amended by
8 adding at the end the following new subparagraphs:

9 “(H) When used with respect to an institu-
10 tion described in subparagraph (D), (F), or (G)
11 of section 2(c)(2), or held under section 4(f), of
12 the Bank Holding Company Act of 1956—

13 “(i) the Comptroller of the Currency,
14 in the case of a national bank or a bank
15 in the District of Columbia examined by
16 the Comptroller of the Currency;

17 “(ii) the Board of Governors of the
18 Federal Reserve System, in the case of a
19 State member bank of the Federal Reserve
20 System or any corporation chartered under
21 section 25A of the Federal Reserve Act;

22 “(iii) the Federal Deposit Insurance
23 Corporation, in the case of any other bank
24 the deposits of which are insured in ac-

1 cordance with the Federal Deposit Insur-
2 ance Act; or

3 “(iv) the Commission in the case of all
4 other such institutions.”.

5 (2) Section 1112(e) of the Right to Financial
6 Privacy Act of 1978 (12 U.S.C. 3412(e)) is
7 amended—

8 (A) by striking “this title” and inserting
9 “law”; and

10 (B) by inserting “, examination reports”
11 after “financial records”.

12 **Subtitle D—Studies**

13 **SEC. 241. STUDY OF METHODS TO INFORM INVESTORS AND** 14 **CONSUMERS OF UNINSURED PRODUCTS.**

15 Not later than 1 year after the date of enactment
16 of this Act, the Comptroller General of the United States
17 shall submit a report to the Congress regarding the effi-
18 cacy, costs, and benefits of requiring that any depository
19 institution that accepts federally insured deposits and
20 that, directly or through a contractual or other arrange-
21 ment with a broker, dealer, or agent, buys from, sells to,
22 or effects transactions for retail investors in securities or
23 consumers of insurance to inform such investors and con-
24 sumers through the use of a logo or seal that the security

1 or insurance is not insured by the Federal Deposit Insur-
2 ance Corporation.

3 **SEC. 242. STUDY OF LIMITATION ON FEES ASSOCIATED**
4 **WITH ACQUIRING FINANCIAL PRODUCTS.**

5 Not later than 1 year after the date of enactment
6 of this Act, the Comptroller General of the United States
7 shall submit a report to the Congress regarding the effi-
8 cacy and benefits of uniformly limiting any commissions,
9 fees, markups, or other costs incurred by customers in the
10 acquisition of financial products.

11 **TITLE III—INSURANCE**
12 **Subtitle A—State Regulation of**
13 **Insurance**

14 **SEC. 301. STATE REGULATION OF THE BUSINESS OF INSUR-**
15 **ANCE.**

16 The Act entitled “An Act to express the intent of the
17 Congress with reference to the regulation of the business
18 of insurance” and approved March 9, 1945 (15 U.S.C.
19 1011 et seq.), commonly referred to as the “McCarran-
20 Ferguson Act” remains the law of the United States.

21 **SEC. 302. MANDATORY INSURANCE LICENSING REQUIRE-**
22 **MENTS.**

23 No person or entity shall provide insurance in a State
24 as principal or agent unless such person or entity is li-
25 censed as required by the appropriate insurance regulator

1 of such State in accordance with the relevant State insur-
2 ance law, subject to section 104.

3 **SEC. 303. FUNCTIONAL REGULATION OF INSURANCE.**

4 The insurance sales activity of any person or entity
5 shall be functionally regulated by the States, subject to
6 section 104.

7 **SEC. 304. INSURANCE UNDERWRITING IN NATIONAL**
8 **BANKS.**

9 (a) IN GENERAL.—Except as provided in section 305,
10 a national bank and the subsidiaries of a national bank
11 may not provide insurance in a State as principal except
12 that this prohibition shall not apply to authorized prod-
13 ucts.

14 (b) AUTHORIZED PRODUCTS.—For the purposes of
15 this section, a product is authorized if—

16 (1) as of January 1, 1997, the Comptroller of
17 the Currency had determined in writing that na-
18 tional banks may provide such product as principal,
19 or national banks were in fact lawfully providing
20 such product as principal;

21 (2) no court of relevant jurisdiction had, by
22 final judgment, overturned a determination of the
23 Comptroller of the Currency that national banks
24 may provide such product as principal; and

1 (3) the product is not title insurance, or an an-
2 nuity contract the income of which is subject to tax
3 treatment under section 72 of the Internal Revenue
4 Code of 1986.

5 (c) DEFINITION.—For purposes of this section, the
6 term “insurance” means—

7 (1) any product regulated as insurance as of
8 January 1, 1997, in accordance with the relevant
9 State insurance law, in the State in which the prod-
10 uct is provided;

11 (2) any product first offered after January 1,
12 1997, which—

13 (A) a State insurance regulator determines
14 shall be regulated as insurance in the State in
15 which the product is provided because the prod-
16 uct insures, guarantees, or indemnifies against
17 liability, loss of life, loss of health, or loss
18 through damage to or destruction of property,
19 including, but not limited to, surety bonds, life
20 insurance, health insurance, title insurance, and
21 property and casualty insurance (such as pri-
22 vate passenger or commercial automobile,
23 homeowners, mortgage, commercial multiperil,
24 general liability, professional liability, workers’
25 compensation, fire and allied lines, farm owners

1 multiperil, aircraft, fidelity, surety, medical
2 malpractice, ocean marine, inland marine, and
3 boiler and machinery insurance); and

4 (B) is not a product or service of a bank
5 that is—

6 (i) a deposit product;

7 (ii) a loan, discount, letter of credit,
8 or other extension of credit;

9 (iii) a trust or other fiduciary service;

10 (iv) a qualified financial contract (as
11 defined in or determined pursuant to sec-
12 tion 11(e)(8)(D)(i) of the Federal Deposit
13 Insurance Act); or

14 (v) a financial guaranty, except that
15 this subparagraph (B) shall not apply to a
16 product that includes an insurance compo-
17 nent such that if the product is offered or
18 proposed to be offered by the bank as
19 principal—

20 (I) it would be treated as a life
21 insurance contract under section 7702
22 of the Internal Revenue Code of 1986;
23 or

24 (II) in the event that the product
25 is not a letter of credit or other simi-

1 lar extension of credit, a qualified fi-
2 nancial contract, or a financial guar-
3 anty, it would qualify for treatment
4 for losses incurred with respect to
5 such product under section 832(b)(5)
6 of the Internal Revenue Code of 1986,
7 if the bank were subject to tax as an
8 insurance company under section 831
9 of that Code; or

10 (3) any annuity contract, the income on which
11 is subject to tax treatment under section 72 of the
12 Internal Revenue Code of 1986.

13 **SEC. 305. TITLE INSURANCE ACTIVITIES OF NATIONAL**
14 **BANKS AND THEIR AFFILIATES.**

15 (a) **AUTHORITY.**—Notwithstanding any other provi-
16 sion of this Act or any other law, no national bank, and
17 no subsidiary of a national bank, may engage in any activ-
18 ity involving the underwriting of title insurance, other
19 than title insurance underwriting activities in which such
20 national bank or subsidiary was actively and lawfully en-
21 gaged before the date of the enactment of this Act.

22 (b) **INSURANCE AFFILIATE.**—In the case of a na-
23 tional bank which has an affiliate which provides insur-
24 ance as principal and is not a subsidiary of the bank, the
25 national bank and any subsidiary of the national bank

1 may not engage in any activity involving the underwriting
2 of title insurance pursuant to subsection (a).

3 (c) INSURANCE SUBSIDIARY.—In the case of a na-
4 tional bank which has a subsidiary which provides insur-
5 ance as principal and has no affiliate which provides insur-
6 ance as principal and is not a subsidiary, the national
7 bank may not engage in any activity involving the under-
8 writing of title insurance pursuant to subsection (a).

9 (d) “AFFILIATE” AND “SUBSIDIARY” DEFINED.—
10 For purposes of this section, the terms “affiliate” and
11 “subsidiary” have the same meanings as in section 2 of
12 the Bank Holding Company Act of 1956.

13 (e) RULE OF CONSTRUCTION.—No provision of this
14 Act or any other Federal law shall be construed as super-
15 seding or affecting a State law which was in effect before
16 the date of the enactment of this Act and which prohibits
17 title insurance from being offered, provided, or sold in
18 such State, or from being underwritten with respect to
19 real property in such State, by any person whatsoever.

20 **SEC. 306. EXPEDITED AND EQUALIZED DISPUTE RESOLU-**
21 **TION FOR FEDERAL REGULATORS.**

22 (a) FILING IN COURT OF APPEALS.—In the case of
23 a regulatory conflict between a State insurance regulator
24 and a Federal regulator as to whether any product is or
25 is not insurance, as defined in section 304(e) of this Act,

1 or whether a State statute, regulation, order, or interpre-
2 tation regarding any insurance sales or solicitation activity
3 is properly treated as preempted under Federal law, either
4 regulator may seek expedited judicial review of such deter-
5 mination by the United States Court of Appeals for the
6 circuit in which the State is located or in the United
7 States Court of Appeals for the District of Columbia Cir-
8 cuit by filing a petition for review in such court.

9 (b) EXPEDITED REVIEW.—The United States Court
10 of Appeals in which a petition for review is filed in accord-
11 ance with subsection (a) shall complete all action on such
12 petition, including rendering a judgment, before the end
13 of the 60-day period beginning on the date on which such
14 petition is filed, unless all parties to such proceeding agree
15 to any extension of such period.

16 (c) SUPREME COURT REVIEW.—Any request for cer-
17 tiorari to the Supreme Court of the United States of any
18 judgment of a United States Court of Appeals with respect
19 to a petition for review under this section shall be filed
20 with the Supreme Court of the United States as soon as
21 practicable after such judgment is issued.

22 (d) STATUTE OF LIMITATION.—No action may be
23 filed under this section challenging an order, ruling, deter-
24 mination, or other action of a Federal regulator or State
25 insurance regulator after the later of—

1 (1) the end of the 12-month period beginning
2 on the date on which the first public notice is made
3 of such order, ruling, determination or other action
4 in its final form; or

5 (2) the end of the 6-month period beginning on
6 the date on which such order, ruling, determination,
7 or other action takes effect.

8 (e) STANDARD OF REVIEW.—The court shall decide
9 an action filed under this section based on its review on
10 the merits of all questions presented under State and Fed-
11 eral law, including the nature of the product or activity
12 and the history and purpose of its regulation under State
13 and Federal law, without unequal deference.

14 **SEC. 307. CERTAIN STATE AFFILIATION LAWS PREEMPTED**
15 **FOR INSURANCE COMPANIES AND AFFILI-**
16 **ATES.**

17 Except as provided in section 104(a)(2), no State
18 may, by law, regulation, order, interpretation, or
19 otherwise—

20 (1) prevent or significantly interfere with the
21 ability of any insurer, or any affiliate of an insurer
22 (whether such affiliate is organized as a stock com-
23 pany, mutual holding company, or otherwise), to be-
24 come a financial holding company or to acquire con-
25 trol of an insured depository institution;

1 (2) limit the amount of an insurer's assets that
2 may be invested in the voting securities of an in-
3 sured depository institution (or any company which
4 controls such institution), except that the laws of an
5 insurer's State of domicile may limit the amount of
6 such investment to an amount that is not less than
7 5 percent of the insurer's admitted assets; or

8 (3) prevent, significantly interfere with, or have
9 the authority to review, approve, or disapprove a
10 plan of reorganization by which an insurer proposes
11 to reorganize from mutual form to become a stock
12 insurer (whether as a direct or indirect subsidiary of
13 a mutual holding company or otherwise) unless such
14 State is the State of domicile of the insurer.

15 **Subtitle B—National Association of**
16 **Registered Agents and Brokers**

17 **SEC. 321. STATE FLEXIBILITY IN MULTISTATE LICENSING**
18 **REFORMS.**

19 (a) IN GENERAL.—The provisions of this subtitle
20 shall take effect unless, not later than 3 years after the
21 date of enactment of this Act, at least a majority of the
22 States—

23 (1) have enacted uniform laws and regulations
24 governing the licensure of individuals and entities

1 authorized to sell and solicit the purchase of insur-
2 ance within the State; or

3 (2) have enacted reciprocity laws and regula-
4 tions governing the licensure of nonresident individ-
5 uals and entities authorized to sell and solicit insur-
6 ance within those States.

7 (b) UNIFORMITY REQUIRED.—States shall be deemed
8 to have established the uniformity necessary to satisfy
9 subsection (a)(1) if the States—

10 (1) establish uniform criteria regarding the in-
11 tegrity, personal qualifications, education, training,
12 and experience of licensed insurance producers, in-
13 cluding the qualification and training of sales per-
14 sonnel in ascertaining the appropriateness of a par-
15 ticular insurance product for a prospective customer;

16 (2) establish uniform continuing education re-
17 quirements for licensed insurance producers;

18 (3) establish uniform ethics course require-
19 ments for licensed insurance producers in conjunc-
20 tion with the continuing education requirements
21 under paragraph (2);

22 (4) establish uniform criteria to ensure that an
23 insurance product, including any annuity contract,
24 sold to a consumer is suitable and appropriate for

1 the consumer based on financial information dis-
2 closed by the consumer; and

3 (5) do not impose any requirement upon any in-
4 surance producer to be licensed or otherwise quali-
5 fied to do business as a nonresident that has the ef-
6 fect of limiting or conditioning that producer's ac-
7 tivities because of its residence or place of oper-
8 ations, except that counter-signature requirements
9 imposed on nonresident producers shall not be
10 deemed to have the effect of limiting or conditioning
11 a producer's activities because of its residence or
12 place of operations under this section.

13 (c) RECIPROCITY REQUIRED.—States shall be
14 deemed to have established the reciprocity required to sat-
15 isfy subsection (a)(2) if the following conditions are met:

16 (1) ADMINISTRATIVE LICENSING PROCEDURE.—At least a majority of the States permit a
17 producer that has a resident license for selling or so-
18 liciting the purchase of insurance in its home State
19 to receive a license to sell or solicit the purchase of
20 insurance in such majority of States as a non-
21 resident to the same extent that such producer is
22 permitted to sell or solicit the purchase of insurance
23 in its State, if the producer's home State also
24 awards such licenses on such a reciprocal basis,
25

1 without satisfying any additional requirements other
2 than submitting—

3 (A) a request for licensure;

4 (B) the application for licensure that the
5 producer submitted to its home State;

6 (C) proof that the producer is licensed and
7 in good standing in its home State; and

8 (D) the payment of any requisite fee to the
9 appropriate authority.

10 (2) CONTINUING EDUCATION REQUIRE-
11 MENTS.—A majority of the States accept an insur-
12 ance producer's satisfaction of its home State's con-
13 tinuing education requirements for licensed insur-
14 ance producers to satisfy the States' own continuing
15 education requirements if the producer's home State
16 also recognizes the satisfaction of continuing edu-
17 cation requirements on such a reciprocal basis.

18 (3) NO LIMITING NONRESIDENT REQUIRE-
19 MENTS.—A majority of the States do not impose
20 any requirement upon any insurance producer to be
21 licensed or otherwise qualified to do business as a
22 nonresident that has the effect of limiting or condi-
23 tioning that producer's activities because of its resi-
24 dence or place of operations, except that
25 countersignature requirements imposed on non-

1 resident producers shall not be deemed to have the
2 effect of limiting or conditioning a producer's activi-
3 ties because of its residence or place of operations
4 under this section.

5 (4) RECIPROCAL RECIPROCITY.—Each of the
6 States that satisfies paragraphs (1), (2), and (3)
7 grants reciprocity to residents of all of the other
8 States that satisfy such paragraphs.

9 (d) DETERMINATION.—

10 (1) NAIC DETERMINATION.—At the end of the
11 3-year period beginning on the date of the enact-
12 ment of this Act, the National Association of Insur-
13 ance Commissioners shall determine, in consultation
14 with the insurance commissioners or chief insurance
15 regulatory officials of the States, whether the uni-
16 formity or reciprocity required by subsections (b)
17 and (c) has been achieved.

18 (2) JUDICIAL REVIEW.—The appropriate
19 United States district court shall have exclusive ju-
20 risdiction over any challenge to the National Asso-
21 ciation of Insurance Commissioners' determination
22 under this section and such court shall apply the
23 standards set forth in section 706 of title 5, United
24 States Code, when reviewing any such challenge.

1 (e) CONTINUED APPLICATION.—If, at any time, the
2 uniformity or reciprocity required by subsections (b) and
3 (c) no longer exists, the provisions of this subtitle shall
4 take effect 2 years after the date on which such uniformity
5 or reciprocity ceases to exist, unless the uniformity or reci-
6 procity required by those provisions is satisfied before the
7 expiration of that 2-year period.

8 (f) SAVINGS PROVISION.—No provision of this sec-
9 tion shall be construed as requiring that any law, regula-
10 tion, provision, or action of any State which purports to
11 regulate insurance producers, including any such law, reg-
12 ulation, provision, or action which purports to regulate un-
13 fair trade practices or establish consumer protections, in-
14 cluding countersignature laws, be altered or amended in
15 order to satisfy the uniformity or reciprocity required by
16 subsections (b) and (c), unless any such law, regulation,
17 provision, or action is inconsistent with a specific require-
18 ment of any such subsection and then only to the extent
19 of such inconsistency.

20 (g) UNIFORM LICENSING.—Nothing in this section
21 shall be construed to require any State to adopt new or
22 additional licensing requirements to achieve the uniformity
23 necessary to satisfy subsection (a)(1).

1 **SEC. 322. NATIONAL ASSOCIATION OF REGISTERED**
2 **AGENTS AND BROKERS.**

3 (a) ESTABLISHMENT.—There is established the Na-
4 tional Association of Registered Agents and Brokers
5 (hereafter in this subtitle referred to as the “Associa-
6 tion”).

7 (b) STATUS.—The Association shall—

8 (1) be a nonprofit corporation;

9 (2) have succession until dissolved by an Act of
10 Congress;

11 (3) not be an agent or instrumentality of the
12 United States Government; and

13 (4) except as otherwise provided in this Act, be
14 subject to, and have all the powers conferred upon
15 a nonprofit corporation by the District of Columbia
16 Nonprofit Corporation Act (D.C. Code, sec. 29y-
17 1001 et seq.).

18 **SEC. 323. PURPOSE.**

19 The purpose of the Association shall be to provide
20 a mechanism through which uniform licensing, appoint-
21 ment, continuing education, and other insurance producer
22 sales qualification requirements and conditions can be
23 adopted and applied on a multistate basis, while preserv-
24 ing the right of States to license, supervise, and discipline
25 insurance producers and to prescribe and enforce laws and

1 regulations with regard to insurance-related consumer
2 protection and unfair trade practices.

3 **SEC. 324. RELATIONSHIP TO THE FEDERAL GOVERNMENT.**

4 The Association shall be subject to the supervision
5 and oversight of the National Association of Insurance
6 Commissioners (hereafter in this subtitle referred to as the
7 “NAIC”).

8 **SEC. 325. MEMBERSHIP.**

9 (a) ELIGIBILITY.—

10 (1) IN GENERAL.—Any State-licensed insurance
11 producer shall be eligible to become a member in the
12 Association.

13 (2) INELIGIBILITY FOR SUSPENSION OR REV-
14 OCATION OF LICENSE.—Notwithstanding paragraph
15 (1), a State-licensed insurance producer shall not be
16 eligible to become a member if a State insurance
17 regulator has suspended or revoked such producer’s
18 license in that State during the 3-year period pre-
19 ceding the date on which such producer applies for
20 membership.

21 (3) RESUMPTION OF ELIGIBILITY.—Paragraph
22 (2) shall cease to apply to any insurance producer
23 if—

1 (A) the State insurance regulator renews
2 the license of such producer in the State in
3 which the license was suspended or revoked; or

4 (B) the suspension or revocation is subse-
5 quently overturned.

6 (b) AUTHORITY TO ESTABLISH MEMBERSHIP CRI-
7 TERIA.—The Association shall have the authority to estab-
8 lish membership criteria that—

9 (1) bear a reasonable relationship to the pur-
10 poses for which the Association was established; and

11 (2) do not unfairly limit the access of smaller
12 agencies to the Association membership.

13 (c) ESTABLISHMENT OF CLASSES AND CAT-
14 EGORIES.—

15 (1) CLASSES OF MEMBERSHIP.—The Associa-
16 tion may establish separate classes of membership,
17 with separate criteria, if the Association reasonably
18 determines that performance of different duties re-
19 quires different levels of education, training, or expe-
20 rience.

21 (2) CATEGORIES.—The Association may estab-
22 lish separate categories of membership for individ-
23 uals and for other persons. The establishment of any
24 such categories of membership shall be based either
25 on the types of licensing categories that exist under

1 State laws or on the aggregate amount of business
2 handled by an insurance producer. No special cat-
3 egories of membership, and no distinct membership
4 criteria, shall be established for members which are
5 insured depository institutions or wholesale financial
6 institutions or for their employees, agents, or affili-
7 ates.

8 (d) MEMBERSHIP CRITERIA.—

9 (1) IN GENERAL.—The Association may estab-
10 lish criteria for membership which shall include
11 standards for integrity, personal qualifications, edu-
12 cation, training, and experience.

13 (2) MINIMUM STANDARD.—In establishing cri-
14 teria under paragraph (1), the Association shall con-
15 sider the highest levels of insurance producer quali-
16 fications established under the licensing laws of the
17 States.

18 (e) EFFECT OF MEMBERSHIP.—Membership in the
19 Association shall entitle the member to licensure in each
20 State for which the member pays the requisite fees, includ-
21 ing licensing fees and, where applicable, bonding require-
22 ments, set by such State.

23 (f) ANNUAL RENEWAL.—Membership in the Associa-
24 tion shall be renewed on an annual basis.

1 (g) CONTINUING EDUCATION.—The Association shall
2 establish, as a condition of membership, continuing edu-
3 cation requirements which shall be comparable to or great-
4 er than the continuing education requirements under the
5 licensing laws of a majority of the States.

6 (h) SUSPENSION AND REVOCATION.—The Associa-
7 tion may—

8 (1) inspect and examine the records and offices
9 of the members of the Association to determine com-
10 pliance with the criteria for membership established
11 by the Association; and

12 (2) suspend or revoke the membership of an in-
13 surance producer if—

14 (A) the producer fails to meet the applica-
15 ble membership criteria of the Association; or

16 (B) the producer has been subject to dis-
17 ciplinary action pursuant to a final adjudicatory
18 proceeding under the jurisdiction of a State in-
19 surance regulator, and the Association con-
20 cludes that retention of membership in the As-
21 sociation would not be in the public interest.

22 (i) OFFICE OF CONSUMER COMPLAINTS.—

23 (1) IN GENERAL.—The Association shall estab-
24 lish an office of consumer complaints that shall—

1 (A) receive and investigate complaints
2 from both consumers and State insurance regu-
3 lators related to members of the Association;
4 and

5 (B) recommend to the Association any dis-
6 ciplinary actions that the office considers appro-
7 priate, to the extent that any such rec-
8 ommendation is not inconsistent with State law.

9 (2) RECORDS AND REFERRALS.—The office of
10 consumer complaints of the Association shall—

11 (A) maintain records of all complaints re-
12 ceived in accordance with paragraph (1) and
13 make such records available to the NAIC and
14 to each State insurance regulator for the State
15 of residence of the consumer who filed the com-
16 plaint; and

17 (B) refer, when appropriate, any such com-
18 plaint to any appropriate State insurance regu-
19 lator.

20 (3) TELEPHONE AND OTHER ACCESS.—The of-
21 fice of consumer complaints shall maintain a toll-free
22 telephone number for the purpose of this subsection
23 and, as practicable, other alternative means of com-
24 munication with consumers, such as an Internet
25 home page.

1 **SEC. 326. BOARD OF DIRECTORS.**

2 (a) ESTABLISHMENT.—There is established the
3 board of directors of the Association (hereafter in this sub-
4 title referred to as the “Board”) for the purpose of govern-
5 ing and supervising the activities of the Association and
6 the members of the Association.

7 (b) POWERS.—The Board shall have such powers and
8 authority as may be specified in the bylaws of the Associa-
9 tion.

10 (c) COMPOSITION.—

11 (1) MEMBERS.—The Board shall be composed
12 of 7 members appointed by the NAIC.

13 (2) REQUIREMENT.—At least 4 of the members
14 of the Board shall have significant experience with
15 the regulation of commercial lines of insurance in at
16 least 1 of the 20 States in which the greatest total
17 dollar amount of commercial-lines insurance is
18 placed in the United States.

19 (3) INITIAL BOARD MEMBERSHIP.—

20 (A) IN GENERAL.—If, by the end of the 2-
21 year period beginning on the date of enactment
22 of this Act, the NAIC has not appointed the
23 initial 7 members of the Board of the Associa-
24 tion, the initial Board shall consist of the 7
25 State insurance regulators of the 7 States with
26 the greatest total dollar amount of commercial-

1 lines insurance in place as of the end of such
2 period.

3 (B) ALTERNATE COMPOSITION.—If any of
4 the State insurance regulators described in sub-
5 paragraph (A) declines to serve on the Board,
6 the State insurance regulator with the next
7 greatest total dollar amount of commercial-lines
8 insurance in place, as determined by the NAIC
9 as of the end of such period, shall serve as a
10 member of the Board.

11 (C) INOPERABILITY.—If fewer than 7
12 State insurance regulators accept appointment
13 to the Board, the Association shall be estab-
14 lished without NAIC oversight pursuant to sec-
15 tion 332.

16 (d) TERMS.—The term of each director shall, after
17 the initial appointment of the members of the Board, be
18 for 3 years, with $\frac{1}{3}$ of the directors to be appointed each
19 year.

20 (e) BOARD VACANCIES.—A vacancy on the Board
21 shall be filled in the same manner as the original appoint-
22 ment of the initial Board for the remainder of the term
23 of the vacating member.

1 (f) MEETINGS.—The Board shall meet at the call of
2 the chairperson, or as otherwise provided by the bylaws
3 of the Association.

4 **SEC. 327. OFFICERS.**

5 (a) IN GENERAL.—

6 (1) POSITIONS.—The officers of the Association
7 shall consist of a chairperson and a vice chairperson
8 of the Board, a president, secretary, and treasurer
9 of the Association, and such other officers and as-
10 sistant officers as may be deemed necessary.

11 (2) MANNER OF SELECTION.—Each officer of
12 the Board and the Association shall be elected or ap-
13 pointed at such time and in such manner and for
14 such terms not exceeding 3 years as may be pre-
15 scribed in the bylaws of the Association.

16 (b) CRITERIA FOR CHAIRPERSON.—Only individuals
17 who are members of the NAIC shall be eligible to serve
18 as the chairperson of the board of directors.

19 **SEC. 328. BYLAWS, RULES, AND DISCIPLINARY ACTION.**

20 (a) ADOPTION AND AMENDMENT OF BYLAWS.—

21 (1) COPY REQUIRED TO BE FILED WITH THE
22 NAIC.—The board of directors of the Association
23 shall file with the NAIC a copy of the proposed by-
24 laws or any proposed amendment to the bylaws, ac-

1 accompanied by a concise general statement of the
2 basis and purpose of such proposal.

3 (2) EFFECTIVE DATE.—Except as provided in
4 paragraph (3), any proposed bylaw or proposed
5 amendment shall take effect—

6 (A) 30 days after the date of the filing of
7 a copy with the NAIC;

8 (B) upon such later date as the Associa-
9 tion may designate; or

10 (C) upon such earlier date as the NAIC
11 may determine.

12 (3) DISAPPROVAL BY THE NAIC.—Notwith-
13 standing paragraph (2), a proposed bylaw or amend-
14 ment shall not take effect if, after public notice and
15 opportunity to participate in a public hearing—

16 (A) the NAIC disapproves such proposal as
17 being contrary to the public interest or contrary
18 to the purposes of this subtitle and provides no-
19 tice to the Association setting forth the reasons
20 for such disapproval; or

21 (B) the NAIC finds that such proposal in-
22 volves a matter of such significant public inter-
23 est that public comment should be obtained, in
24 which case it may, after notifying the Associa-
25 tion in writing of such finding, require that the

1 procedures set forth in subsection (b) be fol-
2 lowed with respect to such proposal, in the
3 same manner as if such proposed bylaw change
4 were a proposed rule change within the mean-
5 ing of such subsection.

6 (b) ADOPTION AND AMENDMENT OF RULES.—

7 (1) FILING PROPOSED REGULATIONS WITH THE
8 NAIC.—

9 (A) IN GENERAL.—The board of directors
10 of the Association shall file with the NAIC a
11 copy of any proposed rule or any proposed
12 amendment to a rule of the Association which
13 shall be accompanied by a concise general state-
14 ment of the basis and purpose of such proposal.

15 (B) OTHER RULES AND AMENDMENTS IN-
16 EFFECTIVE.—No proposed rule or amendment
17 shall take effect unless approved by the NAIC
18 or otherwise permitted in accordance with this
19 paragraph.

20 (2) INITIAL CONSIDERATION BY THE NAIC.—

21 Not later than 35 days after the date of publication
22 of notice of filing of a proposal, or before the end
23 of such longer period not to exceed 90 days as the
24 NAIC may designate after such date, if the NAIC
25 finds such longer period to be appropriate and sets

1 forth its reasons for so finding, or as to which the
2 Association consents, the NAIC shall—

3 (A) by order approve such proposed rule or
4 amendment; or

5 (B) institute proceedings to determine
6 whether such proposed rule or amendment
7 should be modified or disapproved.

8 (3) NAIC PROCEEDINGS.—

9 (A) IN GENERAL.—Proceedings instituted
10 by the NAIC with respect to a proposed rule or
11 amendment pursuant to paragraph (2) shall—

12 (i) include notice of the grounds for
13 disapproval under consideration;

14 (ii) provide opportunity for hearing;
15 and

16 (iii) be concluded not later than 180
17 days after the date of the Association's fil-
18 ing of such proposed rule or amendment.

19 (B) DISPOSITION OF PROPOSAL.—At the
20 conclusion of any proceeding under subpara-
21 graph (A), the NAIC shall, by order, approve or
22 disapprove the proposed rule or amendment.

23 (C) EXTENSION OF TIME FOR CONSIDER-
24 ATION.—The NAIC may extend the time for

1 concluding any proceeding under subparagraph

2 (A) for—

3 (i) not more than 60 days if the
4 NAIC finds good cause for such extension
5 and sets forth its reasons for so finding; or

6 (ii) for such longer period as to which
7 the Association consents.

8 (4) STANDARDS FOR REVIEW.—

9 (A) GROUNDS FOR APPROVAL.—The NAIC
10 shall approve a proposed rule or amendment if
11 the NAIC finds that the rule or amendment is
12 in the public interest and is consistent with the
13 purposes of this Act.

14 (B) APPROVAL BEFORE END OF NOTICE
15 PERIOD.—The NAIC shall not approve any pro-
16 posed rule before the end of the 30-day period
17 beginning on the date on which the Association
18 files proposed rules or amendments in accord-
19 ance with paragraph (1), unless the NAIC finds
20 good cause for so doing and sets forth the rea-
21 sons for so finding.

22 (5) ALTERNATE PROCEDURE.—

23 (A) IN GENERAL.—Notwithstanding any
24 provision of this subsection other than subpara-
25 graph (B), a proposed rule or amendment relat-

1 ing to the administration or organization of the
2 Association shall take effect—

3 (i) upon the date of filing with the
4 NAIC, if such proposed rule or amendment
5 is designated by the Association as relating
6 solely to matters which the NAIC, consist-
7 ent with the public interest and the pur-
8 poses of this subsection, determines by rule
9 do not require the procedures set forth in
10 this paragraph; or

11 (ii) upon such date as the NAIC shall
12 for good cause determine.

13 (B) ABROGATION BY THE NAIC.—

14 (i) IN GENERAL.—At any time within
15 60 days after the date of filing of any pro-
16 posed rule or amendment under subpara-
17 graph (A)(i) or clause (ii) of this subpara-
18 graph, the NAIC may repeal such rule or
19 amendment and require that the rule or
20 amendment be refiled and reviewed in ac-
21 cordance with this paragraph, if the NAIC
22 finds that such action is necessary or ap-
23 propriate in the public interest, for the
24 protection of insurance producers or policy-

1 holders, or otherwise in furtherance of the
2 purposes of this subtitle.

3 (ii) EFFECT OF RECONSIDERATION BY
4 THE NAIC.—Any action of the NAIC pur-
5 suant to clause (i) shall—

6 (I) not affect the validity or force
7 of a rule change during the period
8 such rule or amendment was in effect;
9 and

10 (II) not be considered to be a
11 final action.

12 (c) ACTION REQUIRED BY THE NAIC.—The NAIC
13 may, in accordance with such rules as the NAIC deter-
14 mines to be necessary or appropriate to the public interest
15 or to carry out the purposes of this subtitle, require the
16 Association to adopt, amend, or repeal any bylaw, rule or
17 amendment of the Association, whenever adopted.

18 (d) DISCIPLINARY ACTION BY THE ASSOCIATION.—

19 (1) SPECIFICATION OF CHARGES.—In any pro-
20 ceeding to determine whether membership shall be
21 denied, suspended, revoked, or not renewed (here-
22 after in this section referred to as a “disciplinary ac-
23 tion”), the Association shall bring specific charges,
24 notify such member of such charges, give the mem-

1 ber an opportunity to defend against the charges,
2 and keep a record.

3 (2) SUPPORTING STATEMENT.—A determina-
4 tion to take disciplinary action shall be supported by
5 a statement setting forth—

6 (A) any act or practice in which such
7 member has been found to have been engaged;

8 (B) the specific provision of this subtitle,
9 the rules or regulations under this subtitle, or
10 the rules of the Association which any such act
11 or practice is deemed to violate; and

12 (C) the sanction imposed and the reason
13 for such sanction.

14 (e) NAIC REVIEW OF DISCIPLINARY ACTION.—

15 (1) NOTICE TO THE NAIC.—If the Association
16 orders any disciplinary action, the Association shall
17 promptly notify the NAIC of such action.

18 (2) REVIEW BY THE NAIC.—Any disciplinary
19 action taken by the Association shall be subject to
20 review by the NAIC—

21 (A) on the NAIC's own motion; or

22 (B) upon application by any person ag-
23 grieved by such action if such application is
24 filed with the NAIC not more than 30 days
25 after the later of—

1 (i) the date the notice was filed with
2 the NAIC pursuant to paragraph (1); or

3 (ii) the date the notice of the discipli-
4 nary action was received by such aggrieved
5 person.

6 (f) EFFECT OF REVIEW.—The filing of an applica-
7 tion to the NAIC for review of a disciplinary action, or
8 the institution of review by the NAIC on the NAIC's own
9 motion, shall not operate as a stay of disciplinary action
10 unless the NAIC otherwise orders.

11 (g) SCOPE OF REVIEW.—

12 (1) IN GENERAL.—In any proceeding to review
13 such action, after notice and the opportunity for
14 hearing, the NAIC shall—

15 (A) determine whether the action should be
16 taken;

17 (B) affirm, modify, or rescind the discipli-
18 nary sanction; or

19 (C) remand to the Association for further
20 proceedings.

21 (2) DISMISSAL OF REVIEW.—The NAIC may
22 dismiss a proceeding to review disciplinary action if
23 the NAIC finds that—

24 (A) the specific grounds on which the ac-
25 tion is based exist in fact;

1 (B) the action is in accordance with appli-
2 cable rules and regulations; and

3 (C) such rules and regulations are, and
4 were, applied in a manner consistent with the
5 purposes of this subtitle.

6 **SEC. 329. ASSESSMENTS.**

7 (a) **INSURANCE PRODUCERS SUBJECT TO ASSESS-**
8 **MENT.**—The Association may establish such application
9 and membership fees as the Association finds necessary
10 to cover the costs of its operations, including fees made
11 reimbursable to the NAIC under subsection (b), except
12 that, in setting such fees, the Association may not dis-
13 criminate against smaller insurance producers.

14 (b) **NAIC ASSESSMENTS.**—The NAIC may assess the
15 Association for any costs that the NAIC incurs under this
16 subtitle.

17 **SEC. 330. FUNCTIONS OF THE NAIC.**

18 (a) **ADMINISTRATIVE PROCEDURE.**—Determinations
19 of the NAIC, for purposes of making rules pursuant to
20 section 328, shall be made after appropriate notice and
21 opportunity for a hearing and for submission of views of
22 interested persons.

23 (b) **EXAMINATIONS AND REPORTS.**—

24 (1) **EXAMINATIONS.**—The NAIC may make
25 such examinations and inspections of the Association

1 and require the Association to furnish to the NAIC
2 such reports and records or copies thereof as the
3 NAIC may consider necessary or appropriate in the
4 public interest or to effectuate the purposes of this
5 subtitle.

6 (2) REPORT BY ASSOCIATION.—As soon as
7 practicable after the close of each fiscal year, the As-
8 sociation shall submit to the NAIC a written report
9 regarding the conduct of its business, and the exer-
10 cise of the other rights and powers granted by this
11 subtitle, during such fiscal year. Such report shall
12 include financial statements setting forth the finan-
13 cial position of the Association at the end of such
14 fiscal year and the results of its operations (includ-
15 ing the source and application of its funds) for such
16 fiscal year. The NAIC shall transmit such report to
17 the President and the Congress with such comment
18 thereon as the NAIC determines to be appropriate.

19 **SEC. 331. LIABILITY OF THE ASSOCIATION AND THE DIREC-**
20 **TORS, OFFICERS, AND EMPLOYEES OF THE**
21 **ASSOCIATION.**

22 (a) IN GENERAL.—The Association shall not be
23 deemed to be an insurer or insurance producer within the
24 meaning of any State law, rule, regulation, or order regu-
25 lating or taxing insurers, insurance producers, or other en-

1 tities engaged in the business of insurance, including pro-
2 visions imposing premium taxes, regulating insurer sol-
3 vency or financial condition, establishing guaranty funds
4 and levying assessments, or requiring claims settlement
5 practices.

6 (b) LIABILITY OF THE ASSOCIATION, ITS DIREC-
7 TORS, OFFICERS, AND EMPLOYEES.—Neither the Associa-
8 tion nor any of its directors, officers, or employees shall
9 have any liability to any person for any action taken or
10 omitted in good faith under or in connection with any mat-
11 ter subject to this subtitle.

12 **SEC. 332. ELIMINATION OF NAIC OVERSIGHT.**

13 (a) IN GENERAL.—The Association shall be estab-
14 lished without NAIC oversight and the provisions set forth
15 in section 324, subsections (a), (b), (c), and (e) of section
16 328, and sections 329(b) and 330 of this subtitle shall
17 cease to be effective if, at the end of the 2-year period
18 beginning on the date on which the provisions of this sub-
19 title take effect pursuant to section 321—

20 (1) at least a majority of the States represent-
21 ing at least 50 percent of the total United States
22 commercial-lines insurance premiums have not satis-
23 fied the uniformity or reciprocity requirements of
24 subsections (a), (b), and (c) of section 321; and

1 (2) the NAIC has not approved the Associa-
2 tion's bylaws as required by section 328 or is unable
3 to operate or supervise the Association, or the Asso-
4 ciation is not conducting its activities as required
5 under this Act.

6 (b) BOARD APPOINTMENTS.—If the repeals required
7 by subsection (a) are implemented, the following shall
8 apply:

9 (1) GENERAL APPOINTMENT POWER.—The
10 President, with the advice and consent of the Sen-
11 ate, shall appoint the members of the Association's
12 Board established under section 326 from lists of
13 candidates recommended to the President by the
14 National Association of Insurance Commissioners.

15 (2) PROCEDURES FOR OBTAINING NATIONAL
16 ASSOCIATION OF INSURANCE COMMISSIONERS AP-
17 POINTMENT RECOMMENDATIONS.—

18 (A) INITIAL DETERMINATION AND REC-
19 COMMENDATIONS.—After the date on which the
20 provisions of subsection (a) take effect, the
21 NAIC shall, not later than 60 days thereafter,
22 provide a list of recommended candidates to the
23 President. If the NAIC fails to provide a list by
24 that date, or if any list that is provided does
25 not include at least 14 recommended candidates

1 or comply with the requirements of section
2 326(c), the President shall, with the advice and
3 consent of the Senate, make the requisite ap-
4 pointments without considering the views of the
5 NAIC.

6 (B) SUBSEQUENT APPOINTMENTS.—After
7 the initial appointments, the NAIC shall pro-
8 vide a list of at least 6 recommended candidates
9 for the Board to the President by January 15
10 of each subsequent year. If the NAIC fails to
11 provide a list by that date, or if any list that
12 is provided does not include at least 6 rec-
13 ommended candidates or comply with the re-
14 quirements of section 326(c), the President,
15 with the advice and consent of the Senate, shall
16 make the requisite appointments without con-
17 sidering the views of the NAIC.

18 (C) PRESIDENTIAL OVERSIGHT.—

19 (i) REMOVAL.—If the President deter-
20 mines that the Association is not acting in
21 the interests of the public, the President
22 may remove the entire existing Board for
23 the remainder of the term to which the
24 members of the Board were appointed and
25 appoint, with the advice and consent of the

1 Senate, new members to fill the vacancies
2 on the Board for the remainder of such
3 terms.

4 (ii) SUSPENSION OF RULES OR AC-
5 TIONS.—The President, or a person des-
6 ignated by the President for such purpose,
7 may suspend the effectiveness of any rule,
8 or prohibit any action, of the Association
9 which the President or the designee deter-
10 mines is contrary to the public interest.

11 (c) ANNUAL REPORT.—As soon as practicable after
12 the close of each fiscal year, the Association shall submit
13 to the President and to the Congress a written report rel-
14 ative to the conduct of its business, and the exercise of
15 the other rights and powers granted by this subtitle, dur-
16 ing such fiscal year. Such report shall include financial
17 statements setting forth the financial position of the Asso-
18 ciation at the end of such fiscal year and the results of
19 its operations (including the source and application of its
20 funds) for such fiscal year.

21 **SEC. 333. RELATIONSHIP TO STATE LAW.**

22 (a) PREEMPTION OF STATE LAWS.—State laws, reg-
23 ulations, provisions, or other actions purporting to regu-
24 late insurance producers shall be preempted as provided
25 in subsection (b).

1 (b) PROHIBITED ACTIONS.—No State shall—

2 (1) impede the activities of, take any action
3 against, or apply any provision of law or regulation
4 to, any insurance producer because that insurance
5 producer or any affiliate plans to become, has ap-
6 plied to become, or is a member of the Association;

7 (2) impose any requirement upon a member of
8 the Association that it pay different fees to be li-
9 censed or otherwise qualified to do business in that
10 State, including bonding requirements, based on its
11 residency;

12 (3) impose any licensing, appointment, integ-
13 rity, personal or corporate qualifications, education,
14 training, experience, residency, or continuing edu-
15 cation requirement upon a member of the Associa-
16 tion that is different from the criteria for member-
17 ship in the Association or renewal of such member-
18 ship, except that counter-signature requirements im-
19 posed on nonresident producers shall not be deemed
20 to have the effect of limiting or conditioning a pro-
21 ducer's activities because of its residence or place of
22 operations under this section; or

23 (4) implement the procedures of such State's
24 system of licensing or renewing the licenses of insur-

1 ance producers in a manner different from the au-
2 thority of the Association under section 325.

3 (c) SAVINGS PROVISION.—Except as provided in sub-
4 sections (a) and (b), no provision of this section shall be
5 construed as altering or affecting the continuing effective-
6 ness of any law, regulation, provision, or other action of
7 any State which purports to regulate insurance producers,
8 including any such law, regulation, provision, or action
9 which purports to regulate unfair trade practices or estab-
10 lish consumer protections, including countersignature
11 laws.

12 **SEC. 334. COORDINATION WITH OTHER REGULATORS.**

13 (a) COORDINATION WITH STATE INSURANCE REGU-
14 LATORS.—The Association shall have the authority to—

15 (1) issue uniform insurance producer applica-
16 tions and renewal applications that may be used to
17 apply for the issuance or removal of State licenses,
18 while preserving the ability of each State to impose
19 such conditions on the issuance or renewal of a li-
20 cense as are consistent with section 333;

21 (2) establish a central clearinghouse through
22 which members of the Association may apply for the
23 issuance or renewal of licenses in multiple States;
24 and

1 (3) establish or utilize a national database for
2 the collection of regulatory information concerning
3 the activities of insurance producers.

4 (b) COORDINATION WITH THE NATIONAL ASSOCIA-
5 TION OF SECURITIES DEALERS.—The Association shall
6 coordinate with the National Association of Securities
7 Dealers in order to ease any administrative burdens that
8 fall on persons that are members of both associations, con-
9 sistent with the purposes of this subtitle and the Federal
10 securities laws.

11 **SEC. 335. JUDICIAL REVIEW.**

12 (a) JURISDICTION.—The appropriate United States
13 district court shall have exclusive jurisdiction over litiga-
14 tion involving the Association, including disputes between
15 the Association and its members that arise under this sub-
16 title. Suits brought in State court involving the Associa-
17 tion shall be deemed to have arisen under Federal law and
18 therefore be subject to jurisdiction in the appropriate
19 United States district court.

20 (b) EXHAUSTION OF REMEDIES.—An aggrieved per-
21 son shall be required to exhaust all available administra-
22 tive remedies before the Association and the NAIC before
23 it may seek judicial review of an Association decision.

24 (c) STANDARDS OF REVIEW.—The standards set
25 forth in section 553 of title 5, United States Code, shall

1 be applied whenever a rule or bylaw of the Association is
2 under judicial review, and the standards set forth in sec-
3 tion 554 of title 5, United States Code, shall be applied
4 whenever a disciplinary action of the Association is judi-
5 cially reviewed.

6 **SEC. 336. DEFINITIONS.**

7 For purposes of this subtitle, the following definitions
8 shall apply:

9 (1) HOME STATE.—The term “home State”
10 means the State in which the insurance producer
11 maintains its principal place of residence and is li-
12 censed to act as an insurance producer.

13 (2) INSURANCE.—The term “insurance” means
14 any product, other than title insurance, defined or
15 regulated as insurance by the appropriate State in-
16 surance regulatory authority.

17 (3) INSURANCE PRODUCER.—The term “insur-
18 ance producer” means any insurance agent or
19 broker, surplus lines broker, insurance consultant,
20 limited insurance representative, and any other per-
21 son that solicits, negotiates, effects, procures, deliv-
22 ers, renews, continues or binds policies of insurance
23 or offers advice, counsel, opinions or services related
24 to insurance.

1 (4) STATE.—The term “State” includes any
2 State, the District of Columbia, American Samoa,
3 Guam, Puerto Rico, and the United States Virgin
4 Islands.

5 (5) STATE LAW.—The term “State law” in-
6 cludes all laws, decisions, rules, regulations, or other
7 State action having the effect of law, of any State.
8 A law of the United States applicable only to the
9 District of Columbia shall be treated as a State law
10 rather than a law of the United States.

11 **TITLE IV—UNITARY SAVINGS**
12 **AND LOAN HOLDING COMPA-**
13 **NIES**

14 **SEC. 401. PREVENTION OF CREATION OF NEW S&L HOLD-**
15 **ING COMPANIES WITH COMMERCIAL AFFILI-**
16 **ATES.**

17 (a) IN GENERAL.—Section 10(c) of the Home Own-
18 ers’ Loan Act (12 U.S.C. 1467a(c)) is amended by adding
19 at the end the following new paragraph:

20 “(9) PREVENTION OF NEW AFFILIATIONS BE-
21 TWEEN S&L HOLDING COMPANIES AND COMMERCIAL
22 FIRMS.—

23 “(A) IN GENERAL.—Notwithstanding para-
24 graph (3), no company may directly or indi-
25 rectly, including through any merger, consolida-

1 tion, or other type of business combination, ac-
2 quire control of a savings association after Oc-
3 tober 7, 1998, unless the company is engaged,
4 directly or indirectly (including through a sub-
5 sidiary other than a savings association), only
6 in activities that are permitted—

7 “(i) under paragraph (1)(C) or (2); or

8 “(ii) for financial holding companies
9 under section 6(c) of the Bank Holding
10 Company Act of 1956.

11 “(B) PREVENTION OF NEW COMMERCIAL
12 AFFILIATIONS.—Notwithstanding paragraph
13 (3), no savings and loan holding company may
14 engage directly or indirectly (including through
15 a subsidiary other than a savings association)
16 in any activity other than as described in
17 clauses (i) and (ii) of subparagraph (A).

18 “(C) PRESERVATION OF AUTHORITY OF
19 EXISTING UNITARY S&L HOLDING COMPA-
20 NIES.—Subparagraphs (A) and (B) do not
21 apply with respect to any company that was a
22 savings and loan holding company on October
23 7, 1998, or that becomes a savings and loan
24 holding company pursuant to an application

1 pending before the Office of Thrift Supervision
2 on or before that date, and that—

3 “(i) meets and continues to meet the
4 requirements of paragraph (3); and

5 “(ii) continues to control not fewer
6 than 1 savings association that it con-
7 trolled on October 7, 1998, or that it ac-
8 quired pursuant to an application pending
9 before the Office of Thrift Supervision on
10 or before that date, or the successor to
11 such savings association.

12 “(D) CORPORATE REORGANIZATIONS PER-
13 MITTED.—This paragraph does not prevent a
14 transaction that—

15 “(i) involves solely a company under
16 common control with a savings and loan
17 holding company from acquiring, directly
18 or indirectly, control of the savings and
19 loan holding company or any savings asso-
20 ciation that is already a subsidiary of the
21 savings and loan holding company; or

22 “(ii) involves solely a merger, consoli-
23 dation, or other type of business combina-
24 tion as a result of which a company under
25 common control with the savings and loan

1 holding company acquires, directly or indi-
2 rectly, control of the savings and loan hold-
3 ing company or any savings association
4 that is already a subsidiary of the savings
5 and loan holding company.

6 “(E) AUTHORITY TO PREVENT EVA-
7 SIONS.—The Director may issue interpreta-
8 tions, regulations, or orders that the Director
9 determines necessary to administer and carry
10 out the purpose and prevent evasions of this
11 paragraph, including a determination that, not-
12 withstanding the form of a transaction, the
13 transaction would in substance result in a com-
14 pany acquiring control of a savings association.

15 “(F) PRESERVATION OF AUTHORITY FOR
16 FAMILY TRUSTS.—Subparagraphs (A) and (B)
17 do not apply with respect to any trust that be-
18 comes a savings and loan holding company with
19 respect to a savings association, if—

20 “(i) not less than 85 percent of the
21 beneficial ownership interests in the trust
22 are continuously owned, directly or indi-
23 rectly, by or for the benefit of members of
24 the same family, or their spouses, who are
25 lineal descendants of common ancestors

1 who controlled, directly or indirectly, such
2 savings association on October 7, 1998, or
3 a subsequent date pursuant to an applica-
4 tion pending before the Office of Thrift
5 Supervision on or before October 7, 1998;
6 and

7 “(ii) at the time at which such trust
8 becomes a savings and loan holding com-
9 pany, such ancestors or lineal descendants,
10 or spouses of such descendants, have di-
11 rectly or indirectly controlled the savings
12 association continuously since October 7,
13 1998, or a subsequent date pursuant to an
14 application pending before the Office of
15 Thrift Supervision on or before October 7,
16 1998.”.

17 (b) CONFORMING AMENDMENT.—Section 10(o)(5) of
18 the Home Owners’ Loan Act (15 U.S.C. 1467a(o)(5)) is
19 amended—

20 (1) in subparagraph (E), by striking “, except
21 subparagraph (B)”;

22 (2) by adding at the end the following new sub-
23 paragraph:

24 “(F) In the case of a mutual holding com-
25 pany which is a savings and loan holding com-

1 pany described in subsection (c)(3), engaging in
2 the activities permitted under subsection
3 (c)(9)(A)(ii).”.

4 **SEC. 402. RETENTION OF “FEDERAL” IN NAME OF CON-**
5 **VERTED FEDERAL SAVINGS ASSOCIATION.**

6 Section 2 of the Act entitled “An Act to enable na-
7 tional banking associations to increase their capital stock
8 and to change their names or locations”, approved May
9 1, 1886 (12 U.S.C. 30), is amended by adding at the end
10 the following new subsection:

11 “(d) RETENTION OF ‘FEDERAL’ IN NAME OF CON-
12 VERTED FEDERAL SAVINGS ASSOCIATION.—

13 “(1) IN GENERAL.—Notwithstanding subsection
14 (a) or any other provision of law, any depository in-
15 stitution the charter of which is converted from that
16 of a Federal savings association to a national bank
17 or a State bank after the date of the enactment of
18 the Financial Services Act of 1999 may retain the
19 term ‘Federal’ in the name of such institution if
20 such depository institution remains an insured de-
21 pository institution.

22 “(2) DEFINITIONS.—For purposes of this sub-
23 section, the terms ‘depository institution’, ‘insured
24 depository institution’, ‘national bank’, and ‘State

- 1 bank' have the same meanings as in section 3 of the
- 2 Federal Deposit Insurance Act.”.