

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 18

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

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 1995

Mr. LEACH introduced the following bill; which was referred to the Committee on Banking and Financial Services and, in addition, to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Financial Services  
5 Competitiveness Act of 1995”.

1     **TITLE I—BANK SECURITIES ACTIVITIES**  
2                     **AND AFFILIATIONS**

3                     **Subtitle A—Securities Activities**

4     **SEC. 101. ANTI-AFFILIATION PROVISION OF GLASS-**  
5                     **STEAGALL ACT REPEALED.**

6             (a) SECTION 20 REPEALED.—Section 20 (12 U.S.C.  
7 377) of the Banking Act of 1933 is repealed.

8             (b) CONFORMING AMENDMENT TO SECTION 32.—  
9 Section 32 (12 U.S.C. 78) of the Banking Act of 1933  
10 is amended by adding at the end the following sentence:  
11 “This section does not prohibit an officer, director, or em-  
12 ployee of a securities affiliate (as defined in section 2 of  
13 the Bank Holding Company Act of 1956) from serving  
14 at the same time as an officer, director, or employee of  
15 a member bank affiliated with that securities affiliate  
16 under section 10 of the Bank Holding Company Act of  
17 1956.”.

18     **SEC. 102. BANK HOLDING COMPANIES AUTHORIZED TO**  
19                     **HAVE SECURITIES AFFILIATES.**

20             Section 4(c) of the Bank Holding Company Act of  
21 1956 (12 U.S.C. 1843(c)) is amended—

22                     (1) by striking “or” at the end of paragraph  
23 (13);

24                     (2) by striking the period at the end of para-  
25 graph (14) and inserting “; or”; and

1           (3) by adding after paragraph (14) the follow-  
2           ing new paragraph:

3           “(15) shares of a securities affiliate in accord-  
4           ance with section 10.”.

5 **SEC. 103. ESTABLISHMENT AND OPERATIONS OF SECURI-**  
6           **TIES AFFILIATES.**

7           (a) IN GENERAL.—Section 10 of the Bank Holding  
8           Company Act of 1956 (12 U.S.C. 1841 et seq.) is amend-  
9           ed to read as follows:

10 **“SEC. 10. SECURITIES ACTIVITIES.**

11           “(a) ACTIVITIES PERMISSIBLE FOR SECURITIES AF-  
12           FILIATES.—A securities affiliate may engage in one or  
13           more of the following activities:

14           “(1) Underwrite, deal in, broker, place, or dis-  
15           tribute securities of any type, and engage in other  
16           securities activities as permitted by the Board.

17           “(2) Sponsor, organize, control, manage, and  
18           act as investment adviser to an investment company.

19           “(3) Engage in, or acquire the shares of a com-  
20           pany engaged in, any activity if—

21           “(A) a provision of section 4(c) permits  
22           bank holding companies generally to engage in  
23           that activity or acquire those shares; and—

24           “(B) either—

1           “(i) the Board permits the bank hold-  
2           ing company to engage in that activity or  
3           acquire those shares through the securities  
4           affiliate; or

5           “(ii) that provision permits the bank  
6           holding company to engage in that activity  
7           or acquire those shares without the  
8           Board’s approval.

9           “(b) ACQUIRING INTEREST IN SECURITIES AFFILI-  
10          ATE.—

11           “(1) NOTICE REQUIRED.—A bank holding com-  
12           pany shall not, without complying with and receiving  
13           approval pursuant to the notice procedure in section  
14           4(j), directly or indirectly acquire or retain more  
15           than 5 percent of the voting shares of, or all or sub-  
16           stantially all of the assets of, a securities affiliate (or  
17           a company that would be a securities affiliate if the  
18           Board permitted the bank holding company to ac-  
19           quire that company).

20           “(2) CRITERIA FOR APPROVAL.—The Board  
21           shall disapprove a notice required under paragraph  
22           (1) unless the Board determines that all of the fol-  
23           lowing are satisfied:

24           “(A) CAPITAL.—

1           “(i) INSURED DEPOSITORY INSTITU-  
2           TIONS.—

3                   “(I) The lead insured depository  
4                   institution of the bank holding com-  
5                   pany is well capitalized;

6                   “(II) Well capitalized insured de-  
7                   pository institutions control at least  
8                   80 percent of the total assets of in-  
9                   sured depository institutions con-  
10                  trolled by the bank holding company;  
11                  and

12                  “(III) All insured depository in-  
13                  stitutions controlled by the bank hold-  
14                  ing company are well capitalized or  
15                  adequately capitalized.

16                  “(ii) BANK HOLDING COMPANY.—The  
17                  bank holding company is (and immediately  
18                  after the acquisition would continue to be)  
19                  adequately capitalized.

20                  “(iii) FOREIGN BANKS AND COMPA-  
21                  NIES.—The Board shall establish and  
22                  apply comparable capital standards for the  
23                  ownership or control of a securities affili-  
24                  ate in the United States by a foreign bank  
25                  (as defined in section 1(b) of the Inter-

1 national Banking Act of 1978), giving due  
2 regard to the principle of national treat-  
3 ment and equality of competitive oppor-  
4 tunity in the United States.

5 “(B) MANAGERIAL RESOURCES.—

6 “(i) IN GENERAL.—The bank holding  
7 company and each of its subsidiary insured  
8 depository institutions—

9 “(I) are well managed; and

10 “(II) were well managed during  
11 the preceding 12-month period (but  
12 for purposes of this subparagraph the  
13 Board may disregard any insured de-  
14 pository institution acquired by the  
15 bank holding company during that  
16 period).

17 “(ii) SECURITIES ACTIVITIES.—The  
18 bank holding company has the managerial  
19 resources to conduct the proposed securi-  
20 ties activities safely and soundly.

21 “(C) INTERNAL CONTROLS.—The bank  
22 holding company has established adequate poli-  
23 cies and procedures to manage financial and  
24 operational risks and to provide reasonable as-

1           surance of compliance with this section and  
2           other applicable laws.

3           “(D) NO DETRIMENTAL EFFECT ON BANK  
4           HOLDING COMPANY OR ITS SUBSIDIARY IN-  
5           SURED DEPOSITORY INSTITUTIONS.—The ac-  
6           quisition would not adversely affect the safety  
7           and soundness of—

8                     “(i) the bank holding company; or

9                     “(ii) any insured depository institu-  
10           tion subsidiary of the bank holding com-  
11           pany.

12           “(E) CONCENTRATION OF RESOURCES.—  
13           The acquisition would not result in an undue  
14           concentration of resources in the commercial  
15           banking and investment banking business.

16           “(3) EXPEDITED NOTICE PROCEDURE FOR AC-  
17           QUISITION OF ADDITIONAL SECURITIES AFFILI-  
18           ATES.—

19                     “(A) ADDITIONAL SECURITIES AFFILI-  
20           ATES.—A bank holding company may, without  
21           providing the notice required under subsection  
22           (b), directly or indirectly acquire the shares or  
23           substantially all of the assets of any company  
24           that is engaged predominantly in activities de-  
25           scribed in subsection (a) (1) and (2), if—

1           “(i) the bank holding company pre-  
2           viously received the Board’s approval  
3           under subsection (b) to control a securities  
4           affiliate and continues to control the secu-  
5           rities affiliate pursuant to that approval;

6           “(ii) the bank holding company is  
7           adequately capitalized and would continue  
8           to be adequately capitalized following the  
9           acquisition; and

10          “(iii) all insured depository institu-  
11          tions controlled by the bank holding com-  
12          pany are well capitalized and would con-  
13          tinue to be well capitalized following the  
14          acquisition.

15          “(B) APPROVAL REQUIRED.—

16          “(i) ABBREVIATED NOTICE PROCE-  
17          DURE.—A bank holding company may not  
18          acquire shares or assets under subpara-  
19          graph (A) unless the company has pro-  
20          vided the Board at least 30-days written  
21          notice prior to the transaction and, during  
22          that period, the Board has not disapproved  
23          the transaction.

24          “(ii) LIMITED EXTENSION OF PE-  
25          RIOD.—The Board may extend the dis-

1 approval period provided in clause (i) for  
2 up to an additional 15 days.

3 “(iii) STANDARDS APPLIED BY THE  
4 BOARD.—In reviewing a notice under this  
5 paragraph, the Board shall consider wheth-  
6 er the activities of the company to be ac-  
7 quired are authorized under section 10 and  
8 shall apply the standards provided in sec-  
9 tion 4(j)(2).

10 “(c) ADDITIONAL INVESTMENT IN SECURITIES AF-  
11 FILIATE.—

12 “(1) PRIOR NOTICE REQUIRED.—A bank hold-  
13 ing company that has acquired control of a securi-  
14 ties affiliate under this section shall not, directly or  
15 indirectly, make any additional investment in the se-  
16 curities affiliate that is considered capital for pur-  
17 poses of any capital requirement imposed on the se-  
18 curities affiliate under the Securities Exchange Act  
19 of 1934 (other than an extension of credit under a  
20 revolving credit agreement approved by the Board),  
21 unless the bank holding company gives the Board  
22 prior written notice of the proposed investment  
23 and—

24 “(A) the Board issues a written statement  
25 of its intent not to disapprove the notice; or

1           “(B) the Board does not disapprove the  
2           notice within 30 days after the notice is filed.

3           “(2) NO PRIOR NOTICE REQUIRED FOR CER-  
4           TAIN BANK HOLDING COMPANIES.—A bank holding  
5           company is not required to provide prior notice  
6           under paragraph (1) if after making any investment  
7           described in paragraph (1)—

8           “(A) the bank holding company would ade-  
9           quately capitalized and each of the bank hold-  
10          ing company’s subsidiary insured depository in-  
11          stitutions would be well capitalized; and

12          “(B) the bank holding company and each  
13          of its subsidiary insured depository institutions  
14          are well managed (but for purposes of this  
15          clause the Board may disregard any insured de-  
16          pository institution acquired by the bank hold-  
17          ing company during the previous 12-month pe-  
18          riod). A bank holding company that makes an  
19          investment pursuant to this paragraph shall  
20          provide written notice to the Board of the addi-  
21          tional investment within 10 days after making  
22          the investment.

23          “(3) CRITERIA FOR DISAPPROVING NOTICE.—  
24          The Board may disapprove a notice filed under  
25          paragraph (1) if any insured depository institution

1 affiliate of the securities affiliate is undercapitalized,  
2 or if the Board determines that the bank holding  
3 company would be undercapitalized after making the  
4 investment or that the investment would otherwise  
5 be unsafe or unsound.

6 “(4) EMERGENCY APPROVAL.—Notwithstanding  
7 any provision of this subsection, in the event of ad-  
8 verse market conditions, or concerns regarding the  
9 financial or operational condition of the securities  
10 affiliate, the Board may approve any additional in-  
11 vestment in the securities affiliate on an emergency  
12 basis.

13 “(d) PROVISIONS APPLICABLE IF AFFILIATED IN-  
14 SURED DEPOSITORY INSTITUTION CEASES TO BE WELL  
15 CAPITALIZED.—

16 “(1) CERTAIN SECURITIES ACTIVITIES RE-  
17 STRICTED UNLESS AFFILIATED INSTITUTIONS ARE  
18 WELL CAPITALIZED.—

19 “(A) APPLICABILITY.—This paragraph  
20 shall apply to a securities affiliate if—

21 “(i) the lead insured depository insti-  
22 tution of the bank holding company is not  
23 well capitalized, or

24 “(ii) well capitalized insured deposi-  
25 tory institutions do not control at least 80

1           percent of the assets of insured depository  
2           institutions affiliated with the securities  
3           affiliate.

4           “(B) IN GENERAL.—Except as provided in  
5           subparagraph (C), the securities affiliate shall  
6           not, beginning 180 days after subparagraph (A)  
7           applies, agree to underwrite or deal in any secu-  
8           rities other than—

9                   “(i) securities expressly specified by  
10                  section 5136 of the Revised Statutes as  
11                  permissible for a national bank to under-  
12                  write or deal in;

13                   “(ii) securities backed by or represent-  
14                  ing interests in notes, drafts, acceptances,  
15                  loans, leases, receivables, other obligations,  
16                  or pools of any such obligations; or

17                   “(iii) securities issued by an open-end  
18                  investment company registered under the  
19                  Investment Company Act of 1940.

20           “(C) EXCEPTION.—The Board may permit  
21           the securities affiliate to underwrite or deal in  
22           securities not described in clauses (i) through  
23           (iii) of subparagraph (B) for a period of 1 year  
24           from the date on which subparagraph (A) ap-  
25           plies, if—

1           “(i) the bank holding company sub-  
2           mits a capital restoration plan to the  
3           Board specifying the steps the bank hold-  
4           ing company will take to meet the require-  
5           ments of section 10(b)(2)(A), and contain-  
6           ing such other information as the Board  
7           may require; and

8           “(ii) the Board approves the plan.

9           “(D) EXTENSION OF PERIOD.—Upon ap-  
10          plication by the bank holding company, the  
11          Board may extend, for not more than 1 year at  
12          a time, the period provided in subparagraph  
13          (C), but no such extension shall in the aggre-  
14          gate exceed 2 years.

15          “(2) DIVESTITURE.—

16          “(A) IN GENERAL.—The bank holding  
17          company shall divest itself of the securities af-  
18          filiate if any of the bank holding company’s  
19          subsidiary insured depository institutions has  
20          been undercapitalized for more than 24 months.

21          “(B) EXTENDING TIME.—The Board may  
22          provide additional time for divestiture not ex-  
23          ceeding 12 months if the appropriate Federal  
24          banking agency has approved the  
25          undercapitalized institution’s capital restoration

1 plan under section 38(e) of the Federal Deposit  
2 Insurance Act, and the Board determines  
3 that—

4 “(i) the bank holding company has at-  
5 tempted in good faith to sell the securities  
6 affiliate at a realistic price; and

7 “(ii) the securities affiliate poses no  
8 significant risk to any affiliated insured de-  
9 pository institution.

10 “(e) SECURITIES AFFILIATE EXCLUDED IN DETER-  
11 MINING WHETHER BANK HOLDING COMPANY IS ADE-  
12 QUATELY CAPITALIZED.—

13 “(1) IN GENERAL.—In determining whether a  
14 bank holding company is adequately capitalized—

15 “(A) the bank holding company’s capital  
16 and total assets shall each be reduced by—

17 “(i) an amount equal to the amount  
18 of the bank holding company’s equity in-  
19 vestment in any securities affiliate; and

20 “(ii) an amount equal to the amount  
21 of any extensions of credit by the bank  
22 holding company to any securities affiliate  
23 that are considered capital for purposes of  
24 any capital requirement imposed on the se-

1 securities affiliate under section 15(c)(3) of  
2 the Securities Exchange Act of 1934; and

3 “(B) the securities affiliate’s assets and li-  
4 abilities shall not be consolidated with those of  
5 the bank holding company.

6 “(2) EXCEPTION FOR NONSECURITIES ACTIVI-  
7 TIES.—Paragraph (1) does not apply to the extent  
8 that the Board determines by regulation or order  
9 that an item described in that paragraph relates to  
10 activities that are not described in paragraph (1) or  
11 (2) of subsection (a).

12 “(f) SAFEGUARDS RELATING TO SECURITIES AFFILI-  
13 ATES.—

14 “(1) EXTENSION OF CREDIT AND ASSET PUR-  
15 CHASES RESTRICTED.—

16 “(A) IN GENERAL.—No insured depository  
17 institution affiliated with a securities affiliate  
18 shall, directly or indirectly, do any of the follow-  
19 ing:

20 “(i) Extend credit in any manner to  
21 the securities affiliate.

22 “(ii) Issue a guarantee, acceptance, or  
23 letter of credit, including an endorsement  
24 or a standby letter of credit, for the benefit  
25 of the securities affiliate.

1           “(iii) Purchase for its own account fi-  
2           nancial assets of the securities affiliate, ex-  
3           cept to the extent permitted by the Board  
4           with respect to purchasing at the current  
5           market value (based on reliable and regu-  
6           larly available price quotations)—

7                   “(I) securities expressly specified  
8                   by section 5136 of the Revised Status  
9                   as permissible for a national bank to  
10                  underwrite or deal in; or

11                  “(II) securities that—

12                          “(aa) the securities affiliate  
13                          has been marking to market  
14                          daily; and

15                          “(bb) are rated investment  
16                          grade by at least 1 nationally  
17                          recognized statistical rating orga-  
18                          nization.

19                  “(B) EXCEPTION FOR CLEARING SECURI-  
20                  TIES.—Subparagraph (A)(i) does not prohibit  
21                  an extension of credit by a well capitalized in-  
22                  sured depository institution made to acquire or  
23                  sell securities if—

24                          “(i) the extension of credit is inciden-  
25                          tal to clearing transactions in those securi-

1 ties through that insured depository insti-  
2 tution;

3 “(ii) both the principal of and the in-  
4 terest on the extension of credit are fully  
5 secured by those securities;

6 “(iii) either—

7 “(I) the extension of credit is to  
8 be repaid on the same calendar day;  
9 or

10 “(II) all of the following condi-  
11 tions are satisfied:

12 “(aa) the securities cannot,  
13 in the ordinary course of busi-  
14 ness, be cleared on that calendar  
15 day;

16 “(bb) the extension of credit  
17 is to be repaid before the close of  
18 business on the next calendar  
19 day; and

20 “(cc) extensions of credit  
21 under this subclause, when ag-  
22 gregated with all other covered  
23 transactions between the institu-  
24 tion and all affiliated securities  
25 affiliates do not exceed 10 per-

1 cent of the institution's capital  
2 stock and surplus; and

3 “(iv) either—

4 “(I) the securities are securities  
5 expressly specified by section 5136 of  
6 the Revised Statutes as permissible  
7 for a national bank to underwrite or  
8 deal in; or

9 “(II) to the extent that the  
10 Board permits transactions under this  
11 paragraph in securities not described  
12 in subclause (I), the securities affiliate  
13 provides the insured depository insti-  
14 tution such addition security or other  
15 assurance of performance, if any, as  
16 the Board shall require to prevent  
17 such transactions from posing any ap-  
18 preciable risk to the institution.

19 “(C) OTHER EXCEPTIONS.—The board  
20 may make exceptions to subparagraph (A) for  
21 well capitalized insured depository institutions  
22 if—

23 “(i) the transaction is fully secured in  
24 accordance with section 23A(c) of the Fed-  
25 eral Reserve Act; and

1           “(ii) the aggregate amount of covered  
2           transactions between the institution and all  
3           securities affiliates of the bank holding  
4           company, excluding transactions permitted  
5           under subparagraph (A)(iii)(I) or  
6           (B)(iii)(I), does not exceed 10 percent of  
7           the institution’s capital stock and surplus.

8           “(2) CREDIT ENHANCEMENT RESTRICTED.—

9           “(A) IN GENERAL.—No insured depository  
10          institution affiliated with a securities affiliate  
11          shall, directly or indirectly, extend credit, or  
12          issue or enter into a standby letter of credit,  
13          asset purchase agreement, indemnity, guaran-  
14          tee, insurance, or other facility, for the purpose  
15          of enhancing the marketability of a securities  
16          issue underwritten by the securities affiliate.

17          “(B) EXCEPTIONS.—The Board may make  
18          exceptions to subparagraph (A)—

19                 “(i) for well capitalized insured depos-  
20                 itory institutions if there is substantial  
21                 participation by other lenders in the exten-  
22                 sion of credit, standby letter of credit,  
23                 asset purchase agreement, indemnity,  
24                 guarantee, insurance or other facility; and

1           “(ii) for securities expressly specified  
2           by section 5136 of the Revised Status as  
3           permissible for a national bank to under-  
4           write or deal in.

5           “(3) PROHIBITION ON FINANCING PURCHASE  
6           OF SECURITY BEING UNDERWRITTEN.—

7           “(A) IN GENERAL.—No bank holding com-  
8           pany or subsidiary of a bank holding company  
9           (other than a securities affiliate) shall know-  
10          ingly extend or arrange for the extension of  
11          credit, directly or indirectly, secured by or for  
12          the purpose of purchasing any security while, or  
13          for 30 days after, that security is the subject of  
14          a distribution in which a securities affiliate of  
15          that bank holding company participates as an  
16          underwriter or a member of a selling group.  
17          For purposes of this subparagraph, a bank  
18          holding company or subsidiary may rely on an  
19          express written acknowledgement signed by the  
20          borrower that the credit is not secured by or for  
21          the purpose of purchasing a security described  
22          in this subparagraph.

23          “(B) EXCEPTIONS.—The Board may make  
24          exceptions to subparagraph (A)—

1           “(i) for extensions of credit if the se-  
2           curities are securities expressly specified by  
3           section 5136 of the Revised Statutes as  
4           permissible for a national bank to under-  
5           write or deal in;

6           “(ii) for any other extension of credit,  
7           after consultation with and considering the  
8           views of the Securities and Exchange Com-  
9           mission, if:

10           “(I) the bank holding company is  
11           adequately capitalized,

12           “(II) the bank holding company’s  
13           lead insured depository institution is  
14           well capitalized, and

15           “(III) well capitalized insured de-  
16           pository institutions control at least  
17           80 percent of the assets of insured de-  
18           pository institutions controlled by the  
19           bank holding company and all insured  
20           depository institutions controlled by  
21           the bank holding company are well  
22           capitalized or adequately capitalized.

23           “(C) CONSISTENCY WITH THE FEDERAL  
24           SECURITIES LAWS.—Nothing in this paragraph  
25           shall permit a securities affiliate to extend or

1 maintain credit or arrange for an extension of  
2 credit except in compliance with applicable pro-  
3 visions of the Securities Exchange Act of 1934  
4 and the rules and interpretations thereunder.

5 “(4) RESTRICTION ON EXTENDING CREDIT TO  
6 MAKE PAYMENTS ON SECURITIES.—

7 “(A) IN GENERAL.—No insured depository  
8 institution affiliated with a securities affiliate  
9 shall, directly or indirectly, extend credit to an  
10 issuer of securities underwritten by the securi-  
11 ties affiliate for the purpose of paying the prin-  
12 cipal of those securities or interest or dividends  
13 on those securities. This subparagraph does not  
14 apply to an extension of credit for a docu-  
15 mented purpose (other than paying principal,  
16 interest, or dividends) if the timing, maturity,  
17 and other terms of the credit, taken as a whole,  
18 are substantially different from those of the un-  
19 derwritten securities.

20 “(B) EXCEPTIONS.—The Board may make  
21 exceptions to subparagraph (A) if the insured  
22 depository institution is well capitalized, and—

23 “(i) the securities are securities ex-  
24 pressly specified by section 5136 of the Re-

1           vised Statutes as permissible for a national  
2           bank to underwrite or deal in; or

3           “(ii) there is substantial participation  
4           by other lenders in the extension of credit.

5           “(5) DIRECTOR AND SENIOR EXECUTIVE OFFI-  
6           CER INTERLOCKS RESTRICTED.—

7           “(A) IN GENERAL.—No director or senior  
8           executive officer of a securities affiliate shall  
9           serve at the same time as a director or senior  
10          executive officer of any affiliated insured depos-  
11          itory institution.

12          “(B) EXCEPTION FOR SMALL BANK HOLD-  
13          ING COMPANIES.—Notwithstanding subpara-  
14          graph (A), a director or senior executive officer  
15          of a securities affiliate may serve at the same  
16          time as a director or senior executive officer of  
17          an affiliated insured depository institution if  
18          that institution and all affiliated insured deposi-  
19          tory institutions have, in the aggregate, total  
20          assets of not more than \$500,000,000. The dol-  
21          lar limitation in the preceding sentence shall be  
22          adjusted annually after December 31, 1995, by  
23          the annual percentage increase in the Consumer  
24          Price Index for Urban Wage Earners and Cleri-

1 cal Workers published by the Bureau of Labor  
2 Statistics.

3 “(C) BOARD’S AUTHORITY TO MAKE EX-  
4 CEPTIONS.—

5 “(i) IN GENERAL.—The Board may,  
6 by regulation or order, make exceptions to  
7 subparagraph (A).

8 “(ii) STANDARDS.—The Board—

9 “(I) shall, in determining wheth-  
10 er to make such exceptions, consider  
11 the size of the bank holding compa-  
12 nies, insured depository institutions,  
13 and securities affiliates involved, any  
14 burdens that may be imposed by sub-  
15 paragraph (A), the safety and sound-  
16 ness of the insured depository institu-  
17 tions and securities affiliates, and  
18 other appropriate factors, including  
19 unfair competition in securities activi-  
20 ties or the improper exchange of  
21 nonpublic customer information; and

22 “(II) shall not permit—

23 “(aa) more than half of the  
24 insured depository institution’s  
25 directors to be directors or senior

1 executive officers of the securities  
2 affiliate; or

3 “(bb) more than half of the  
4 securities affiliate’s directors to  
5 be directors or senior executive  
6 officers of the insured depository  
7 institution.

8 “(D) SENIOR EXECUTIVE OFFICER DE-  
9 FINED.—For purposes of this paragraph, the  
10 term ‘senior executive officer’ has the same  
11 meaning as the term ‘executive officer’ has in  
12 section 22(h) of the Federal Reserve Act.

13 “(6) DISCLOSURE REQUIRED BY SECURITIES  
14 AFFILIATE.—At the time a securities account is  
15 opened, a securities affiliate shall conspicuously dis-  
16 close in writing to each of its customers that—

17 “(A) securities sold, offered, or rec-  
18 ommended by the securities affiliate are not de-  
19 posits, are not insured by the Federal Deposit  
20 Insurance Corporation, are not guaranteed by  
21 an affiliated insured depository institution, and  
22 are not otherwise an obligation of an insured  
23 depository institution (unless such is the case);

24 “(B) the securities affiliate is not an in-  
25 sured depository institution, and is a corpora-

1           tion separate from any insured depository insti-  
2           tution; and

3           “(C) the securities affiliate may be under-  
4           writing or dealing in the securities being sold,  
5           offered or recommended, and if so, would have  
6           a financial interest in the transaction.

7           “(7) DISCLOSURE REQUIRED BY INSURED DE-  
8           POSITORY INSTITUTIONS.—No insured depository in-  
9           stitution that is affiliated with a securities affiliate  
10          shall knowingly express any opinion on the value of,  
11          or the advisability of purchasing or selling, securities  
12          being underwritten or dealt in by a securities affili-  
13          ate of that bank holding company unless the insured  
14          depository institution conspicuously discloses in writ-  
15          ing to the customer that—

16               “(A) the securities affiliate is underwriting  
17               or dealing in the securities and has a financial  
18               interest in the transaction;

19               “(B) the securities recommended are not  
20               deposits, are not insured by the Federal De-  
21               posit Insurance Corporation, are not guaran-  
22               teed by the institution or any other affiliated  
23               insured depository institution, and are not oth-  
24               erwise an obligation of an insured depository in-  
25               stitution (unless such is the case), and are sub-

1           ject to investment risks including possible loss  
2           of principal invested; and

3           “(C) the securities affiliate is not an in-  
4           sured depository institution, and is a corpora-  
5           tion separate from any insured depository insti-  
6           tution.

7           “(8) IMPROPER DISCLOSURE OF CONFIDENTIAL  
8           CUSTOMER INFORMATION PROHIBITED.—

9           “(A) IN GENERAL.—No insured depository  
10          institution subsidiary of a bank holding com-  
11          pany shall disclose to a securities affiliate of  
12          that bank holding company, nor shall a securi-  
13          ties affiliate disclose to any affiliated insured  
14          depository institution or subsidiary of such an  
15          institution, any nonpublic customer conforma-  
16          tion (including an evaluation of the credit-  
17          worthiness of an issuer or other customer of  
18          that institution or securities affiliate), unless it  
19          is clearly and conspicuously disclosed that such  
20          information may be communicated among such  
21          persons and the customer is given the oppor-  
22          tunity, prior to the time that the information is  
23          initially communicated, to direct that such in-  
24          formation not be communicated among such  
25          persons.

1           “(B) DEFINITION.—For purposes of sub-  
2 paragraph (A), the term ‘nonpublic customer  
3 information’ does not include—

4           “(i) customers’ names and addresses  
5 (unless a customer has specified other-  
6 wise);

7           “(ii) information that could be ob-  
8 tained from unaffiliated credit bureaus or  
9 similar companies in the ordinary course of  
10 business; or

11           “(iii) information that is customarily  
12 provided to unaffiliated credit bureaus or  
13 similar companies in the ordinary course of  
14 business by—

15           “(I) insured depository institu-  
16 tions not affiliated with securities af-  
17 filiates; or

18           “(II) brokers and dealers not af-  
19 filiated with insured depository insti-  
20 tutions.

21           “(9) UNDERWRITING SECURITIES REPRESENT-  
22 ING OBLIGATIONS ORIGINATED BY AFFILIATE RE-  
23 STRICTED.—A securities affiliate shall not under-  
24 write securities secured by or representing an inter-  
25 est in mortgages or other obligations originated or

1 purchased by an affiliated insured depository institu-  
2 tion or subsidiary of such an institution—

3 “(A) unless those securities—

4 “(i) are rated by at least one unaffili-  
5 ated, nationally recognized statistical rat-  
6 ing organization;

7 “(ii) are issued or guaranteed by the  
8 Federal Home Loan Mortgage Corpora-  
9 tion, the Federal National Mortgage Asso-  
10 ciation, or the Government National Mort-  
11 gage Association; or

12 “(iii) represent interests in securities  
13 described in clause (ii); or

14 “(B) except as permitted by the Board.

15 “(10) RECIPROCAL ARRANGEMENTS PROHIB-  
16 ITED.—No bank holding company and no subsidiary  
17 of a bank holding company may enter into any  
18 agreement, understanding, or other arrangement  
19 under which—

20 “(A) one bank holding company (or sub-  
21 sidiary of that bank holding company) agrees to  
22 engage in a transaction with, or on behalf of,  
23 another bank holding company (or subsidiary of  
24 that bank holding company), in exchange for

1           “(B) the agreement of the second bank  
2 holding company referred to in subparagraph  
3 (A) (or a subsidiary of that bank holding com-  
4 pany) to engage in any transaction with, or on  
5 behalf of, the first bank holding company re-  
6 ferred to in that subparagraph (or any subsidi-  
7 ary of that bank holding company), for the pur-  
8 pose of evading any requirement or restriction  
9 of Federal law on transactions between, or for  
10 the benefit of, affiliates of bank holding compa-  
11 nies.

12           “(11) SAFEGUARDS APPLY TO CERTAIN SUB-  
13 SIDIARIES.—Except as provided in this subsection:

14           “(A) SECURITIES AFFILIATE.—No subsidi-  
15 ary of a securities affiliate may do anything  
16 that this subsection prohibits the securities af-  
17 filiate from doing.

18           “(B) DEPOSITORY INSTITUTION.—No sub-  
19 sidiary of an insured depository institution or of  
20 a wholesale financial institution may do any-  
21 thing that this subsection prohibits the institu-  
22 tion from doing.

23           “(12) AUTHORITY TO MODIFY AND IMPOSE AD-  
24 DITIONAL SAFEGUARDS; INTERPRETIVE AUTHOR-  
25 ITY—

1           “(A) IN GENERAL.—The Board may, by  
2 regulation or order—

3           “(i) adopt additional limitations, re-  
4 strictions or conditions on relationships or  
5 transactions among insured depository in-  
6 stitutions, their affiliates, and their cus-  
7 tomers; and

8           “(ii) make any modification to any  
9 limitation, restriction or condition on rela-  
10 tionships or transactions among insured  
11 depository institutions, their affiliates and  
12 their customers imposed under this sub-  
13 section, including modifications in addition  
14 to those expressly provided for in this sub-  
15 section.

16           “(B) STANDARDS.—The Board may not  
17 exercise authority under subparagraph (A)(i) or  
18 subparagraph (A)(ii) unless the Board finds  
19 that such action is consistent with the purposes  
20 of this Act, including the avoidance of any sig-  
21 nificant risk to the safety and soundness of in-  
22 sured depository institutions or the Federal de-  
23 posit insurance funds, enhancement of the fi-  
24 nancial stability of bank holding companies,  
25 prevention of the subsidization of securities af-

1           filiates by insured depository institutions, avoid-  
2           ance of conflicts of interest or other abuses, and  
3           application of the principle of national treat-  
4           ment and equality of competitive opportunity  
5           between securities affiliates owned or controlled  
6           by domestic bank holding companies and securi-  
7           ties affiliates owned or controlled by foreign  
8           banks operating in the United States.

9           “(13) COMPLIANCE PROGRAMS REQUIRED.—

10           “(A) IN GENERAL.—Each appropriate  
11           Federal banking agency and the Securities and  
12           Exchange Commission shall establish a program  
13           for—

14           “(i) sharing information concerning  
15           compliance with subtitles A, B, or C of  
16           title I of the Financial Services Competi-  
17           tiveness Act of 1995 by:

18           “(I) entities that are brokers,  
19           dealers, investment advisers or invest-  
20           ment companies registered with the  
21           Securities and Exchange Commission  
22           that are affiliated with insured deposi-  
23           tory institutions, or are separately  
24           identifiable departments or divisions

1 of insured depository institutions reg-  
2 istered as investment advisers; and

3 “(II) such insured depository in-  
4 stitutions and their affiliates;

5 “(ii) enforcing compliance with sub-  
6 title A of title I of the Financial Services  
7 Competitiveness Act of 1995 and section  
8 3(a)(4) and 3(a)(5) of the Securities Ex-  
9 change Act of 1934 by entities under its  
10 supervision; and

11 “(iii) responding to any complaints  
12 from customers about inappropriate cross-  
13 marketing of securities products or inad-  
14 equate disclosure.

15 “(B) DATA COLLECTION.—

16 “(i) IN GENERAL.—The appropriate  
17 Federal banking agencies, after consulta-  
18 tion with and consideration of the views of  
19 the Securities and Exchange Commission,  
20 may require any depository institution that  
21 has effected securities transactions pursu-  
22 ant to any exception enumerated in sec-  
23 tions 3(a)(4)(C) and 3(a)(5) of the Securi-  
24 ties Exchange Act of 1934 to identify the  
25 exceptions relied upon and to submit such

1 information necessary to monitor compli-  
2 ance under sections 3(a)(4)(C) and 3(a)(5)  
3 of the Securities Exchange Act of 1934.

4 “(ii) COMMISSION ACCESS.—The ap-  
5 propriate Federal banking agency shall  
6 make any such information available to the  
7 Commission upon request.

8 “(iii) COMPLIANCE.—In implementing  
9 the provisions of this subparagraph, the  
10 appropriate Federal banking agencies shall  
11 ensure that any information requests to in-  
12 sured depository institutions take into ac-  
13 count the size and activities of the institu-  
14 tions and do not cause undue reporting  
15 burdens.

16 “(C) COMMISSION’S ENFORCEMENT AU-  
17 THORITY.—Without limiting in any way the au-  
18 thority of the appropriate Federal banking  
19 agencies under this subsection, the Securities  
20 and Exchange Commission shall have the au-  
21 thority to enforce the provisions of this sub-  
22 section against a securities affiliate to the ex-  
23 tent that those provisions govern the conduct or  
24 activities of the securities affiliate as if they

1           were provisions of the Securities Exchange Act  
2           of 1934.

3           “(D) EXAMINATION REPORTS.—The ap-  
4           propriate Federal banking agencies shall, to the  
5           extent practicable, use the reports of examina-  
6           tion of any broker, dealer, investment adviser,  
7           or investment company made by or on behalf of  
8           the Securities and Exchange Commission and  
9           reports made by or on behalf of a registered se-  
10          curities association or national securities ex-  
11          change, and shall defer to such examinations  
12          for compliance with the Federal securities laws.

13          “(E) INTERPRETATIONS OF THE FEDERAL  
14          SECURITIES LAWS.—The appropriate Federal  
15          banking agencies shall defer to the Securities  
16          and Exchange Commission regarding all inter-  
17          pretations and enforcement of the Federal secu-  
18          rities laws relating to the application of the  
19          Federal securities laws to the activities and con-  
20          duct of brokers, dealers, investment advisers,  
21          and investment companies.

22          “(F) NOTICE OF CERTAIN ACTIONS.—

23                  “(i) SECURITIES AND EXCHANGE  
24                  COMMISSION.—The Securities and Ex-  
25                  change Commission shall give notice to the

1 appropriate Federal banking agency upon  
2 the entry of an order of investigation of, or  
3 the commencement of any disciplinary or  
4 law enforcement proceedings by the Com-  
5 mission and a copy of any order entered by  
6 the Commission against—

7 “(I) any broker, dealer, or invest-  
8 ment adviser that—

9 “(aa) is registered with the  
10 Securities and Exchange Com-  
11 mission; and

12 “(bb) is affiliated with or is  
13 a separately identifiable depart-  
14 ment or division of an insured  
15 depository institution;

16 “(II) any investment company  
17 registered with the Securities and Ex-  
18 change Commission that is an affiliate  
19 of or is advised by an investment ad-  
20 viser affiliated with an insured deposi-  
21 tory institution or by a separately  
22 identifiable department or division of  
23 an insured depository institution that  
24 is a registered investment adviser; or

1           “(III) any bank holding com-  
2           pany, insured depository institution,  
3           or subsidiary of such company or in-  
4           stitution, if the proposed action re-  
5           lates to subtitles A, B, or C of title I  
6           of the Financial Services Competitive-  
7           ness Act of 1995.

8           “(ii) APPROPRIATE FEDERAL BANK-  
9           ING AGENCIES.—Upon the entry of an  
10          order of investigation of, or the commence-  
11          ment of any disciplinary or law enforce-  
12          ment proceedings to enforce the provisions  
13          of subtitle A of title I of the Financial  
14          Services Competitiveness Act of 1995 by  
15          an appropriate Federal banking agency  
16          against any broker, dealer, investment ad-  
17          viser, or investment company that is reg-  
18          istered under the Federal securities laws  
19          and is affiliated with an insured depository  
20          institution, the appropriate Federal bank-  
21          ing agency shall give notice to the Securi-  
22          ties and Exchange Commission of the pro-  
23          posed action.

24          “(iii) EXTENSION.—The notice re-  
25          quired under clause (i) or (ii) may be pro-

1           vided promptly after action by the Securi-  
2           ties and Exchange Commission or the ap-  
3           propriate Federal banking agency, if—

4                   “(I) the Commission determines  
5                   that the protection of investors re-  
6                   quires immediate action by the Com-  
7                   mission and prior notice under clause  
8                   (i) is not practical under the cir-  
9                   cumstances; or

10                   “(II) the appropriate Federal  
11                   banking agency determines that con-  
12                   cerns for the safety and soundness of  
13                   an insured depository institution or its  
14                   affiliate require immediate action by  
15                   the agency and prior notice under  
16                   clause (ii) is not practical under the  
17                   circumstances.

18                   “(G) COORDINATED ENFORCEMENT AC-  
19                   TIONS.—The Securities and Exchange Commis-  
20                   sion and the appropriate Federal banking agen-  
21                   cies shall, to the extent practicable, coordinate  
22                   supervisory actions based on applicable law  
23                   where the actions are based on the same or re-  
24                   lated events or practices.

1           “(H) INVESTMENT COMPANIES NOT AF-  
2           FILIATED WITH AN INSURED DEPOSITORY IN-  
3           STITUTION.—The appropriate Federal banking  
4           agency shall not have authority under this title  
5           or any other provision of law to inspect or ex-  
6           amine any investment company registered  
7           under the Federal securities laws that is not—

8                   “(i) affiliated with an insured depository  
9                   institution; or

10                   “(ii) advised by an investment adviser  
11                   affiliated with an insured depository insti-  
12                   tution or by a separately identifiable de-  
13                   partment or division of an insured depository  
14                   institution that is a registered invest-  
15                   ment adviser.

16           “(I) DEFINITION.—For purposes of this  
17           paragraph, the term ‘Federal securities laws’  
18           shall mean the provisions of Federal law gov-  
19           erning securities activities that are within the  
20           jurisdiction of the Securities and Exchange  
21           Commission as set forth in the Securities Act of  
22           1993, the Securities Exchange Act of 1934, the  
23           Investment Company Act of 1940, the Invest-  
24           ment Advisers Act of 1940, and the Trust In-  
25           denture Act of 1939.

1       “(g) ACTIVITIES NOT PERMISSIBLE FOR DEPOSI-  
2 TORY INSTITUTIONS OR SECURITIES AFFILIATES.—

3           “(1) A bank holding company that acquires  
4 control of a securities affiliate shall not, beginning  
5 1 year after the date of that acquisition, permit any  
6 depository institution (as defined in section 3 of the  
7 Federal Deposit Insurance Act) of which it has con-  
8 trol or any subsidiary of that institution—

9           “(A) to engage, directly or indirectly, in  
10 the United States—

11           “(i) in underwriting securities backed  
12 by or representing interests in notes,  
13 drafts, acceptances, loans, leases, receiv-  
14 ables, other obligations, or pools of any  
15 such obligations, originated or purchased  
16 by the insured depository institution or its  
17 affiliates;

18           “(ii) in underwriting or dealing in any  
19 other securities, except securities expressly  
20 specified by section 5136 of the Revised  
21 Statutes as permissible for a national bank  
22 to underwrite or deal in; or

23           “(iii) in effecting sales as part of a  
24 primary offering to an accredited investor  
25 (as defined in section 2 of the Securities

1 Act of 1933) of securities of an issuer, not  
2 involving a public offering, pursuant to  
3 section 3(b), 4(2), or 4(6) of the Securities  
4 Act of 1933 and the rules and regulations  
5 issued thereunder; or

6 “(B) to make an equity investment in any  
7 securities affiliate.

8 “(2) The limitations in paragraph (1)(A) shall  
9 not apply to activities conducted by a subsidiary held  
10 pursuant to section 25 or 25A of the Federal Re-  
11 serve Act or section 4(c)(13) of this Act.

12 “(3) Nothing in this section shall permit a secu-  
13 rities affiliate to accept deposits in contravention of  
14 section 21 of the Banking Act of 1933 (12 U.S.C.  
15 378(a)).

16 “(h) APPROVAL OF SECURITIES ACTIVITIES UNDER  
17 SECTION 4(c)(8) RESTRICTED.—The Board shall deny  
18 any notice or application by a bank holding company  
19 under authority of section 4(c)(8) to engage in, or acquire  
20 the shares of a company engaged in, underwriting or deal-  
21 ing in securities in the United States, except securities ex-  
22 pressly specified by section 5136 of the Revised Statutes  
23 as permissible for a national bank to underwrite or deal  
24 in.

1       “(i) BANKERS’ BANKS.—For purposes of this sec-  
2 tion, each shareholder of or participant in a company that  
3 controls a depository institution described in section  
4 5169(b)(1) of the Revised Statutes or in a similar statute  
5 of any State, and each subsidiary of such a shareholder  
6 or participant, shall be treated as if it were a subsidiary  
7 of that company. This subsection shall not apply to a  
8 shareholder or participant in that company (or subsidiary  
9 of that shareholder or participant) if the shareholder or  
10 participant and its affiliates do not, in the aggregate, con-  
11 trol more than 5 percent of any class of voting shares of  
12 that company.

13       “(j) SHARES ACQUIRED IN CONNECTION WITH UN-  
14 DERWRITING AND INVESTMENT BANKING ACTIVITIES.—

15               “(1) IN GENERAL.—Notwithstanding section  
16 4(a), a bank holding company may directly or indi-  
17 rectly own or control shares of any company engaged  
18 in activities not authorized pursuant to section 4 of  
19 this Act if—

20                       “(A) the shares are acquired and held by  
21 a securities affiliate as part of a bona fide un-  
22 derwriting or investment banking activity and  
23 such shares are held only for such period of  
24 time as will permit the sale thereof on a reason-

1           able basis consistent with the nature of such ac-  
2           tivity; and

3           “(B) during the period such shares are  
4           held, the bank holding company does not di-  
5           rectly or indirectly participate in the day to day  
6           management or operation of the company.

7           “(2) BOARD RULES.—The Board may establish  
8           rules governing the acquisition and retention of  
9           shares under this subsection, including limitations  
10          governing the amount and percentage of shares that  
11          may be held under this paragraph and the cir-  
12          cumstances and time period such shares may be  
13          held, in order to assure compliance with the pur-  
14          poses of this Act, including the separation of bank-  
15          ing and commerce.

16          “(k) DEFINITIONS.—For purposes of this section—

17                  “(1) CAPITAL CATEGORIES.—

18                          “(A) INSURED DEPOSITORY INSTITU-  
19                          TIONS.—With respect to insured depository in-  
20                          stitutions, the terms ‘well capitalized’, ‘ade-  
21                          quately capitalized’, and ‘undercapitalized’ have  
22                          the meaning given to those terms in section  
23                          38(b) of the Federal Deposit Insurance Act.

24                          “(B) BANK HOLDING COMPANIES.—A  
25                          bank holding company is ‘adequately capital-

1           ized’ if it meets the required minimum level for  
2           each relevant capital measure established by the  
3           Board for bank holding companies, and  
4           ‘undercapitalized’ if it fails to meet the required  
5           minimum level for any such relevant capital  
6           measure.

7           “(2) CAPITAL STOCK AND SURPLUS.—The term  
8           ‘capital stock and surplus’ has the same meaning as  
9           in section 23A of the Federal Reserve Act.

10           “(3) COVERED TRANSACTION.—The term ‘cov-  
11           ered transaction’ has the same meaning as in section  
12           23A of the Federal Reserve Act.

13           “(4) FOREIGN BANKS.—A branch or agency of  
14           a foreign bank or a commercial lending company  
15           controlled by a foreign bank (as in terms ‘agency’,  
16           ‘branch’, ‘commercial lending company’, and ‘foreign  
17           bank’ are defined in section 1 of the International  
18           Banking Act of 1978) shall be deemed to be an in-  
19           sured depository institution.

20           “(5) SECURITY.—

21           “(A) IN GENERAL.—The term ‘security’  
22           has the meaning given to that term in section  
23           3(a)(10) of the Securities Exchange Act of  
24           1934.

1           “(B) EXCEPTIONS.—For purposes of this  
2 section, other than subsection (a), the term ‘se-  
3 curity’ does not include any of the following:

4                   “(i) A contract of insurance.

5                   “(ii) A deposit account, savings ac-  
6 count, certificate of deposit, or other de-  
7 posit instrument issued by a depository in-  
8 stitution.

9                   “(iii) A share account issued by a sav-  
10 ings association if the account is insured  
11 by the Federal Deposit Insurance Corpora-  
12 tion.

13                   “(iv) A banker’s acceptance.

14                   “(v) A letter of credit issued by a de-  
15 pository institution.

16                   “(vi) A debit account at a depository  
17 institution arising from a credit card or  
18 similar arrangement.

19                   “(vii) A traditional loan or loan par-  
20 ticipation (as determined by the Board).

21           “(C) BOARD’S AUTHORITY TO EXEMPT  
22 TRADITIONAL BANKING PRODUCTS.—The Board  
23 may, after consultation and consideration of the  
24 views of the Securities and Exchange Commis-  
25 sion, by regulation exempt from the definition

1 of 'security' a banking product that national  
2 banks have traditionally and customarily origi-  
3 nated or handled (such as mortgage notes) if  
4 the exemption is consistent with the purposes of  
5 this section.

6 “(D) DEFINITION FOR LIMITED PUR-  
7 POSE.—The fact that a particular instrument is  
8 excluded pursuant to subparagraphs (B) or (C)  
9 from the definition of 'security' for purposes of  
10 this section shall not be construed as finding or  
11 implying that such instrument is or is not a 'se-  
12 curity' for purposes of section 3(a)(10) of the  
13 Securities Exchange Act of 1934.”.

14 (b) TRANSITION RULE FOR SECURITIES AFFILIATES  
15 APPROVED UNDER SECTION 4(c)(8).—

16 (1) IN GENERAL.—Effective 18 months after  
17 the date of enactment of this Act, no bank holding  
18 company may engage in, or retain the shares of any  
19 company engaged in, underwriting or dealing in se-  
20 curities based on the approval of an application  
21 under section 4(c)(8) of the Bank Holding Company  
22 Act of 1956—

23 (A) unless the bank holding company has  
24 obtained the Board's approval to retain the  
25 shares of that company under section 10; or

1 (B) except underwriting or dealing in secu-  
2 rities expressly specified by section 5136 of the  
3 Revised Statutes as permissible for a national  
4 bank to underwrite or deal in.

5 (2) EXTENDING TIME.—

6 (A) IN GENERAL.—The Board may, for  
7 good cause shown, extend the time provided  
8 under paragraph (1) for not more than 18  
9 months.

10 (B) PENDING NOTICES.—If a bank holding  
11 company has filed a notice under section 10(b)  
12 of the Bank Holding Company Act of 1956 not  
13 later than 180 days after the date of enactment  
14 of this Act, paragraph (1) shall not apply with  
15 respect to the company engaged in such under-  
16 writing or dealing until 180 days after the  
17 Board has acted on the notice.

18 (c) CONFORMING AMENDMENTS.—

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

23 “(n) SECURITIES AFFILIATE.—The term ‘securities  
24 affiliate’ means any company—

1           “(1) that is (or is required to be) registered  
2           under the Securities Exchange Act of 1934 as a  
3           broker or dealer; and

4           “(2) the acquisition or retention of the shares  
5           or assets of which the Board has approved under  
6           section 10.

7           “(o) INSURED DEPOSITORY INSTITUTION.—The  
8           term ‘insured depository institution’ has the meaning  
9           given to that term in section 3 of the Federal Deposit In-  
10          surance Act.

11          “(p) LEAD INSURED DEPOSITORY INSTITUTION.—  
12          The term ‘lead insured depository institution’ shall mean  
13          the largest insured depository institution controlled by the  
14          bank holding company, based on a comparison on the av-  
15          erage total assets controlled by each insured depository in-  
16          stitution during the previous 12-month period.

17          “(q) APPROPRIATE FEDERAL BANKING AGENCY.—  
18          The term ‘appropriate Federal banking agency’ has the  
19          same meaning as in section 3(q) of the Federal Deposit  
20          Insurance Act.”.

21                 (2) AMENDMENT REGARDING CONDITIONAL AP-  
22          PROVAL OF APPLICATIONS.—Section 4(a)(2) of the  
23          Bank Holding Company Act of 1956 (12 U.S.C.  
24          1843(a)(2)) is amended by striking “paragraph (8)”  
25          and all that follows through “issued by the Board

1 under such paragraph” and inserting “section 10,  
2 subsection (l) or subsection (c)(8), subject to all the  
3 conditions specified in those provisions or in any  
4 order or regulation issued by the Board under those  
5 provisions”.

6 (3) AMENDMENT TO NOTICE PROCEDURES.—  
7 Section 4(j) of the Bank Holding Company Act of  
8 1956 (12 U.S.C. 1843(j)) is amended—

9 (A) in paragraph (1)(A) by striking “sub-  
10 section (c)(8) or (a)(2)” and inserting in its  
11 place “subsection (c)(8), (c)(15), (l), or (a)(2)”;

12 (B) in paragraph (1)(E) by striking “sub-  
13 section (c)(8) or (a)(2)” and inserting in its  
14 place “subsection (c)(8), (c)(15), (l), or (a)(2)”;

15 (C) by redesignating paragraphs (2)(B)  
16 and (2)(C) as paragraphs (2)(C) and (2)(D) re-  
17 spectively, and inserting a new paragraph  
18 (2)(B) as follows:

19 “(B) CRITERIA FOR NOTICES INVOLVING  
20 SECURITIES AFFILIATES.—In considering any  
21 notice that involves the acquisition of shares of  
22 a securities affiliate pursuant to section  
23 4(c)(15), the Board shall apply the criteria and  
24 safeguards contained in this paragraph and in  
25 section 10.”.

1 (d) AMENDMENT TO THE FEDERAL RESERVE ACT.—  
2 Section 23B(b)(1)(B) of the Federal Reserve Act (12  
3 U.S.C. 371c–1(b)(1)(B)) is amended by inserting “and for  
4 30 days thereafter” after “during the existence of any un-  
5 derwriting or selling syndicate”.

6 (e) EXEMPTION FROM SECTION 305(b) OF THE FED-  
7 ERAL POWER ACT.—Section 305(b) of the Federal Power  
8 Act (16 U.S.C. 825d(b)) shall not apply to any person  
9 now holding or proposing to hold the position of officer  
10 or director of a public utility and officer or director of  
11 a bank, trust company, banking association, or firm per-  
12 mitted by section 10 of the Bank Holding Company Act  
13 of 1956 (as amended by subsection (a)) or section 5136(b)  
14 of the Revised Statutes (12 U.S.C. 24(b)) (as amended  
15 by section 716) to underwrite or participate in the market-  
16 ing of securities (including commercial paper) of a public  
17 utility, if that bank, trust company, banking association,  
18 or firm does not underwrite or participate in the market-  
19 ing of securities of the public utility for which the person  
20 serves or proposes to serve as an officer or director.

21 (f) RETENTION OF CERTAIN INVESTMENTS BY SECURITIES COMPANIES AFFILIATING WITH INSURED DEPOSITORY INSTITUTIONS.—Section 4 of the Bank Holding  
22 Company Act (12 U.S.C. 1843) is amended by adding at  
23 the end the following new subsection:  
24  
25

1       “(k) OWNERSHIP OF SHARES OF CERTAIN COMPA-  
2 NIES BY SECURITIES COMPANIES THAT BECOME BANK  
3 HOLDING COMPANIES.—

4           “(1) FINANCIAL COMPANIES.—Notwithstanding  
5 subsection (a), a bank holding company may retain  
6 direct or indirect ownership or control of voting  
7 shares of any company that engages solely in activi-  
8 ties that the Board determines to be financial in na-  
9 ture if—

10           “(A) the bank holding company acquired  
11 the shares of such company or of each company  
12 to which it is a successor more than two years  
13 prior to the date that such bank holding com-  
14 pany becomes a bank holding company;

15           “(B) the aggregate investment by the bank  
16 holding company in shares ownership or control  
17 of which the bank holding company would be  
18 prohibited from retaining but for this para-  
19 graph does not exceed 10 percent of the total  
20 consolidated capital and surplus of the bank  
21 holding company on the date that it becomes a  
22 bank holding company or on the date of any ad-  
23 ditional investment by the bank holding com-  
24 pany in such shares; and

1           “(C) more than 50 percent of the business  
2 of the bank holding company for each of the  
3 two calendar years prior to the date it becomes  
4 a bank holding company involved securities ac-  
5 tivities described in sections 10(a) (1) and (2),  
6 excluding from such calculation activities (other  
7 than securities activities) in which bank holding  
8 companies were permitted to engage prior to  
9 the enactment of the Financial Services Com-  
10 petitiveness Act of 1995.

11           “(2) NONFINANCIAL COMPANIES.—

12           “(A) IN GENERAL.—Notwithstanding sub-  
13 section (a), a bank holding company that is de-  
14 scribed in paragraph (1)(C) may, for a period  
15 of 5 years from the date that the company be-  
16 comes a bank holding company, retain direct or  
17 indirect ownership or control of voting shares of  
18 any company that the bank holding company  
19 owns or controls on the date it becomes a bank  
20 holding company.

21           “(B) EXTENSION OF DIVESTITURE PE-  
22 RIOD.—The Board may extend the period de-  
23 scribed in subparagraph (A) for an additional  
24 period not to exceed 5 years if the Board deter-  
25 mines that such extension is necessary to avert

1 substantial loss to the bank holding company  
2 and finds that the bank holding company has  
3 made good faith efforts to divest such shares.

4 “(C) NO EXPANSION OF NONFINANCIAL  
5 COMPANIES PRIOR TO DIVESTITURE.—Unless  
6 such acquisition or activity is permitted in ac-  
7 cordance with section 4(c)—

8 “(i) no bank holding company or com-  
9 pany whose shares are owned or controlled  
10 by a bank holding company pursuant to  
11 this paragraph (2) may acquire any inter-  
12 est in or assets of any company, and

13 “(ii) no company whose shares are  
14 owned or controlled by a bank holding  
15 company pursuant to this paragraph (2)  
16 may engage directly or indirectly in any  
17 activity that the company did not conduct  
18 on the day before the bank holding com-  
19 pany registered as a bank holding com-  
20 pany.

21 “(3) RESTRICTIONS ON JOINT MARKETING.—  
22 No insured depository institution (and no subsidiary  
23 of such institution) shall—

24 “(A) offer or market, directly or indirectly  
25 through any arrangement, any product or serv-

1 ice of any affiliate whose shares are owned or  
2 controlled by the bank holding company pursu-  
3 ant to this subsection or section 10(j), or

4 “(B) permit any of its products or services  
5 to be offered or marketed, directly or indirectly  
6 through any arrangement, by or through any  
7 affiliate whose shares are owned or controlled  
8 by the bank holding company pursuant to this  
9 subsection or section 10(j),

10 unless the product or service is permissible for bank  
11 holding companies to provide under section 10 or  
12 section 4(c)(8).”.

13 (g) AMENDMENT TO THE RIGHT TO FINANCIAL PRI-  
14 VACY ACT.—Section 1112(e) of the Right to Financial  
15 Privacy Act (12 U.S.C. 3412(e)) is amended as follows—

16 (1) by deleting “this chapter” and inserting in  
17 its place “law”; and

18 (2) by adding “, examination reports” after “fi-  
19 nancial records”.

20 (h) EXCEPTION TO RESTRICTION ON ASSET GROWTH  
21 OF NONBANK BANKS.—Section 4(f)(3)(B)(iv) of the Bank  
22 Holding Company Act of 1956 (12 U.S.C.  
23 1843(f)(3)(B)(iv)) is amended by striking the period and  
24 inserting the following: “unless—

1           “(I) the company has provided at  
2           least 60 days prior written notice to the  
3           Board and, during that period, the Board  
4           has not disapproved the proposal after ap-  
5           plying the standards provided in subsection  
6           (j)(2);

7           “(II) each insured depository institu-  
8           tion controlled by the company is at all  
9           times well-capitalized; and

10           “(III) the company engages, directly  
11           or indirectly, only in activities—

12                   “(aa) permitted pursuant to sub-  
13                   section 4(c)(8) or (15); or

14                   “(bb) determined by the Board to  
15                   be financial in nature and the com-  
16                   pany satisfies the provisions of sub-  
17                   section (k)(1) (B) and (C), or would  
18                   satisfy the provisions of subsection  
19                   (k)(1) (B) and (C) if the company  
20                   were a bank holding company.”.

21           (i) CONFORMING AMENDMENT FOR CERTAIN HOLD-  
22           ING COMPANIES.—Section 10(c) of the Home Owners’  
23           Loan Act (12 U.S.C. 1467a(c)) is amended by striking  
24           paragraphs (3), (5), and (6) and redesignating other para-  
25           graphs accordingly.

1 **SEC. 104. SECURITIES COMPANY AFFILIATIONS OF FDIC-IN-**  
2 **SURED BANKS.**

3 Section 18 of the Federal Deposit Insurance Act (12  
4 U.S.C. 1828) is amended by adding at the end the follow-  
5 ing new subsections:

6 “(s) SECURITIES AFFILIATIONS OF INSURED  
7 BANKS.—

8 “(1) IN GENERAL.—A bank shall not be an af-  
9 filiate of any company that, directly or indirectly,  
10 acts as an underwriter or dealer of any security, ex-  
11 cept—

12 “(A) as provided in section 10 of the Bank  
13 Holding Company Act of 1956; or

14 “(B) a company that underwrites or deals  
15 only in securities expressly specified by section  
16 5136 of the Revised Statutes as permissible for  
17 a national bank to underwrite or deal in.

18 “(2) EXCEPTION.—This subsection does not  
19 apply to an insured bank described in subparagraph  
20 (D), (F), or (H) or section 2(c)(2) of the Bank  
21 Holding Company Act of 1956 or to a company held  
22 pursuant to section 25 or 25A of the Federal Re-  
23 serve Act or section 4(c)(13) of the Bank Holding  
24 Company Act.

25 “(3) GRANDFATHER PROVISION.—This sub-  
26 section does not prohibit—

1           “(A) the continuation of an affiliation that  
2           existed on January 1, 1995; or

3           “(B) any new affiliation by an insured  
4           bank that has an affiliation that would be pro-  
5           hibited if the affiliation were not covered by  
6           subparagraph (A).

7           “(4) DEFINITIONS.—For purposes of this sub-  
8           section:

9           “(A) AFFILIATE.—The term ‘affiliate’ has  
10          the meaning given to that term in section 2(k)  
11          of the Bank Holding Company Act of 1956.

12          “(B) COMPANY.—The term ‘company’ has  
13          the meaning given to that term in section 2(b)  
14          of the Bank Holding Company Act of 1956.

15          “(C) BROKER.—The term ‘broker’ has the  
16          meaning given to that term in section 3(a)(4)  
17          of the Securities Exchange Act of 1934.

18          “(D) DEALER.—The term ‘dealer’ has the  
19          meaning given to that term in section 3(a)(5)  
20          of the Securities Exchange Act of 1934.

21          “(E) SECURITY.—

22                 “(i) IN GENERAL.—The term ‘secu-  
23                 rity’ has the meaning given to that term in  
24                 section 3(a)(10) of the Securities Ex-  
25                 change Act of 1934.

1           “(ii) EXCEPTIONS.—For purposes of  
2 this subsection, the term ‘security’ does  
3 not include any of the following:

4                   “(I) A contract of insurance.

5                   “(II) A deposit account, savings  
6 account, certificate of deposit, or  
7 other deposit instrument issued by a  
8 depository institution.

9                   “(III) A share account issued by  
10 a savings association if the account is  
11 insured under the Federal Deposit In-  
12 surance Act.

13                   “(IV) A banker’s acceptance.

14                   “(V) A letter of credit issued by  
15 a depository institution.

16                   “(VI) A debit account at a depos-  
17 itory institution arising from a credit  
18 card or similar arrangement.

19                   “(VII) A traditional loan or loan  
20 participation (as determined by the  
21 Board).

22           “(iii) FEDERAL RESERVE BOARD’S  
23 AUTHORITY TO EXEMPT TRADITIONAL  
24 BANKING PRODUCTS.—The Board of Gov-  
25 ernors of the Federal Reserve System may,

1 after consultation with and considering the  
2 views of the Securities and Exchange Com-  
3 mission, by regulation exempt from the  
4 definition of ‘security’ a banking product  
5 that national banks have traditionally and  
6 customarily originated or handled (such as  
7 mortgage notes) if the exemption is con-  
8 sistent with the purposes of this sub-  
9 section.

10 “(iv) DEFINITION FOR LIMITED PUR-  
11 POSE.—The fact that a particular instru-  
12 ment is excluded pursuant to clauses (ii) or  
13 (iii) from the definition of ‘security’ for  
14 purposes of this subsection shall not be  
15 construed as finding or implying that such  
16 instrument is or is not a ‘security’ for pur-  
17 poses of section 3(a)(10) of the Securities  
18 Exchange Act of 1934.

19 “(E) UNDERWRITER.—The term ‘under-  
20 writer’ has the meaning given to that term in  
21 section 2(11) of the Securities Act of 1933.

22 “(t) BROKER/DEALER REGISTRATION.—An insured  
23 bank may not use the United States mails or any means  
24 or instrumentality of interstate commerce to act as a  
25 broker or dealer without registration under the Securities

1 Exchange Act of 1934, except to the extent permitted  
2 under section 3(a)(4) or 3(a)(5), or unless otherwise ex-  
3 empt pursuant to rules promulgated by the Securities and  
4 Commission.”.

5 **SEC. 105. AUTHORITY TO TERMINATE GRANDFATHER**  
6 **RIGHTS UNDER THE INTERNATIONAL BANK-**  
7 **ING ACT OF 1978.**

8 Section 8(c) of the International Banking Act of  
9 1978 (12 U.S.C. 3106(c)) is amended by adding at the  
10 end the following new paragraph:

11 “(3) PARITY IN CONDUCT OF AUTHORIZED SE-  
12 CURITIES ACTIVITIES.—

13 “(A) IN GENERAL.—Notwithstanding any  
14 provision of paragraph (1) or any other provi-  
15 sion of law, any authority conferred under this  
16 subsection on any foreign bank or company  
17 with respect to an activity of an affiliate en-  
18 gaged in securities activities shall terminate 18  
19 months after the Board determines that such  
20 activity is authorized for bank holding compa-  
21 nies in the United States, except that—

22 “(i) the foreign bank or company may  
23 retain the shares of an affiliate engaged in  
24 securities activities, if, prior to the expira-  
25 tion of such 18 months period, the foreign

1 bank or company has obtained the Board's  
2 approval under section 10 or section  
3 4(c)(8) of the Bank Holding Company Act  
4 to retain such shares, and

5 “(ii) the Board, for good cause shown,  
6 may extend the termination period for an  
7 additional period not to exceed 18 months.

8 “(B) EXTENSION TO OBTAIN REQUIRED  
9 APPROVAL.—If the foreign bank or company  
10 has filed a notice under section 10(b) of the  
11 Bank Holding Company Act not later than 180  
12 days after the board has made a determination  
13 under subparagraph (A), the effective date of  
14 any termination of authority for that foreign  
15 bank or company under subparagraph (A) shall  
16 be 24 months after the Board has acted on the  
17 notice.”.

18 **SEC. 106. EFFECT ON STATE LAWS PROHIBITING THE AF-**  
19 **FILIATION OF BANKS AND SECURITIES COM-**  
20 **PANIES.**

21 Section 7 of the Bank Holding Company Act of 1956  
22 (12 U.S.C. 1846) is amended by inserting before the final  
23 period the following: “, except that no State may prohibit  
24 or limit the affiliation of a bank or bank holding company  
25 with a securities affiliate solely because the securities affil-

1 iate is engaged in activities described in paragraph (1) or  
2 (2) of section 10(a) of this Act.”.

3 **SEC. 107. MUNICIPAL SECURITIES**

4 At the end of section 5136 of the Revised Statutes  
5 (12 U.S.C. 24(Seventh)), add the following new sentences:

6 “Notwithstanding any other provision of this para-  
7 graph, a national banking association may deal in, under-  
8 write, and purchase for such association’s own account  
9 any obligation of, or obligation guaranteed as to principal  
10 or interest by, a State or of any political subdivision there-  
11 of, or any agency or instrumentality of a State or any po-  
12 litical subdivision thereof, if the association—

13 “(1) is well capitalized (as defined in section  
14 38(b) of the Federal Deposit Insurance Act);

15 “(2) engages in the business of banking;

16 “(3) has not been affiliated with a securities af-  
17 filiate under section 10 of the Bank Holding Com-  
18 pany Act of 1956 for more than 1 year; and

19 “(4) maintains its main office or any branch in  
20 such State or political subdivision, or within 100  
21 miles of such State or political subdivision.”.

22 **SEC. 108. INVESTMENT BANK HOLDING COMPANIES.**

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

1       “(r) WHOLESAL E FINANCIAL INSTITUTION.—The  
2 term ‘wholesale financial institution’ means any institution  
3 that is an uninsured state member bank authorized pursu-  
4 ant to section 9B of the Federal Reserve Act.

5       “(s) INVESTMENT BANK HOLDING COMPANY.—The  
6 term ‘investment bank holding company’ means any bank  
7 holding company that controls or seeks to control—

8               “(1) a wholesale financial institution, and

9               “(2) a company engaged in underwriting, dis-  
10 tributing or dealing in securities pursuant to section  
11 10.”.

12       (b) EXEMPTION.—Section 4 of the Bank Holding  
13 Company Act of 1956 (12 U.S.C. 1843) is amended by  
14 adding at the end the following new subsection:

15       “(l) PERMISSIBLE AFFILIATIONS FOR INVESTMENT  
16 BANK HOLDING COMPANIES.—

17               “(1) FINANCIAL ACTIVITIES.—

18                       “(A) ACTIVITIES AUTHORIZED.—An in-  
19 vestment bank holding company may directly or  
20 indirectly own or control shares of any company  
21 the activities of which the Board has deter-  
22 mined to be of a financial nature, without re-  
23 gard to the limitations contained in subsections  
24 (k)(1) or (k)(3).

1           “(B) INSURANCE UNDERWRITING ACTIVI-  
2 TIES LIMITED TO INCIDENTAL ACTIVITIES.—In  
3 the event that the Board determines that insur-  
4 ance underwriting activities (other than activi-  
5 ties permissible under subsection (c)(8)) are fi-  
6 nancial in nature, the aggregate investment by  
7 an investment bank holding company in shares  
8 of all companies that engage in insurance un-  
9 derwriting activities (other than insurance un-  
10 derwriting activities permissible under section  
11 (c)(8)) shall not exceed 10 percent of the total  
12 consolidated capital and surplus of the invest-  
13 ment bank holding company.

14           “(C) NOTICE REQUIRED.—An investment  
15 bank holding company may not own or control  
16 shares of any company described in subpara-  
17 graph (A) without complying with the notice  
18 procedures provided in subsection (j).

19           “(2) SECURITIES ACTIVITIES.—

20           “(A) INSTITUTIONS MUST BE WELL-CAP-  
21 ITALIZED.—The Board shall disapprove a no-  
22 tice under section 10 by an investment bank  
23 holding company to acquire a securities affiliate  
24 if any wholesale financial institution controlled  
25 by the investment bank holding company is not

1 well capitalized or would not be well capitalized  
2 following the transaction.

3 “(B) TRANSACTIONS WITH A SECURITIES  
4 AFFILIATE.—

5 “(i) IN GENERAL.—A wholesale finan-  
6 cial institution controlled by an investment  
7 bank holding company shall be a ‘bank’ for  
8 purposes of the provisions of sections 23A  
9 and 23B of the Federal Reserve Act.

10 “(ii) OTHER RESTRICTIONS DETER-  
11 MINED BY THE BOARD.—A securities affli-  
12 ate and a wholesale financial institution  
13 controlled by an investment bank holding  
14 company shall not be subject to the provi-  
15 sions of section 10(f), except that the secu-  
16 rities affiliate and wholesale financial insti-  
17 tution shall be subject to paragraphs (12)  
18 and (13) of that section as if the wholesale  
19 financial institution were an insured depos-  
20 itory institution.

21 “(3) LIMITATION ON AFFILIATION WITH IN-  
22 SURED DEPOSITORY INSTITUTIONS.—An investment  
23 bank holding company may not directly or indirectly  
24 own or control—

1           “(A) any bank, other than a wholesale fi-  
2           nancial institution;

3           “(B) any savings association;

4           “(C) any institution described in section  
5           2(c)(2); or

6           “(D) any institution that accepts—

7                 “(i) initial deposits of \$100,000 or  
8                 less, other than on an incidental or occa-  
9                 sional basis, or

10                “(ii) deposits that are insured under  
11                the Federal Deposit Insurance Act.”.

12           (c) CONFORMING AMENDMENTS.—

13                (1) INSURANCE REQUIREMENT IN THE BANK  
14                HOLDING COMPANY ACT.—Section 3(e) of the Bank  
15                Holding Company Act of 1956 (12 U.S.C. 1842(e))  
16                is amended by adding at the end the following:  
17                “‘This subsection does not apply to a wholesale fi-  
18                nancial institution that is controlled by an invest-  
19                ment bank holding company that controls no banks  
20                other than wholesale financial institutions.’”.

21                (2) APPROPRIATE FEDERAL BANKING AGENCY.—  
22                Section 3(q)(2)(A) of the Federal Deposit Insurance  
23                Act (12 U.S.C. 1813(q)(2)(A)) is amended to read  
24                as follows:

1           “(A) any State member insured bank (ex-  
2           cept a District bank) and wholesale financial in-  
3           stitution as authorized pursuant to section 9B  
4           of the Federal Reserve Act.”.

5 **SEC. 109. CONFORMING AMENDMENTS FOR INVESTMENT**  
6           **BANK HOLDING COMPANIES.**

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

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

11           “(a) APPLICATION FOR MEMBERSHIP AS WHOLE-  
12           SALE FINANCIAL INSTITUTION.—

13           “(1) APPLICATION REQUIRED.—Any bank in-  
14           corporated by special law of any State, or organized  
15           under the general laws of any State, may apply to  
16           the Board of Governors of the Federal Reserve Sys-  
17           tem to subscribe to the stock of the Federal Reserve  
18           bank organized within the district where the apply-  
19           ing bank is located as a wholesale financial institu-  
20           tion. Such application shall be treated as an applica-  
21           tion under, and shall be subject to the provisions of  
22           section 9.

23           “(2) APPROVAL OF MEMBERSHIP.—No bank  
24           may become a wholesale financial institution un-  
25           less—

1           “(A) the Board has approved an applica-  
2           tion by the bank, under such rules and regula-  
3           tions and subject to such conditions and re-  
4           quirements as the Board may prescribe, to be  
5           a wholesale financial institution; and

6           “(B) in the case of a bank that is insured  
7           under the Federal Deposit Insurance Act, the  
8           bank has met all requirements under that Act  
9           for voluntary termination of deposit insurance.

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

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

23                 “(2) PROMPT CORRECTIVE ACTION.—A whole-  
24                 sale financial institution shall be deemed to be an in-  
25                 sured depository institution for purposes of section

1 38 of the Federal Deposit Insurance Act except  
2 that—

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

8 “(B) the provisions applicable to well cap-  
9 italized insured depository institutions shall be  
10 inapplicable to wholesale financial institutions;

11 “(C) the provisions authorizing or requir-  
12 ing an institution to be placed into receivership  
13 shall not apply to a wholesale financial institu-  
14 tion, and, in its place, the Board is authorized  
15 or required, as the case may be, to terminate  
16 the wholesale financial institution’s membership  
17 in the Federal Reserve System or, where pro-  
18 vided in section 38 of the Federal Deposit  
19 Insurance Act, place the bank into  
20 conservatorship and, in the Board’s discretion,  
21 terminate the bank’s membership; and

22 “(D) for purposes of applying the provi-  
23 sions of section 38 of the Federal Deposit In-  
24 surance Act to wholesale financial institutions,  
25 all references to the appropriate Federal bank-

1           ing agency or to the Corporation that section  
2           shall be deemed to be references to the Board.

3           “(3) ENFORCEMENT AUTHORITY.—Section 7 (j)  
4           and (k), subsections (b) through (n), (s), (u), and  
5           (v) of section 8, and section 19 of the Federal De-  
6           posit Insurance Act shall apply to a wholesale finan-  
7           cial institution in the same manner and to the same  
8           extent as they apply to State member insured banks  
9           and any reference in such sections to an insured de-  
10          pository institution shall also be deemed to be a ref-  
11          erence to a wholesale financial institution.

12          “(4) CERTAIN OTHER STATUTES APPLICA-  
13          BLE.—A wholesale financial institution shall be  
14          deemed to be a banking institution and the Board  
15          shall be the appropriate Federal banking agency for  
16          such bank and all of its affiliates for purposes of the  
17          International Lending Supervision Act.

18          “(5) BANK MERGER ACT.—A wholesale finan-  
19          cial institution shall be subject to the provisions of  
20          the Bank Merger Act in the same manner as if the  
21          wholesale financial institution were a State member  
22          insured bank for purposes of that Act.

23          “(c) SPECIFIC REQUIREMENTS APPLICABLE TO  
24          WHOLESALE FINANCIAL INSTITUTIONS.—

25          “(1) LIMITATIONS ON DEPOSITS.—

1           “(A) MINIMUM AMOUNT.—Pursuant to  
2 regulations of the Board, no wholesale financial  
3 institution shall receive initial deposits of  
4 \$100,000 or less, other than on an incidental  
5 and occasional basis and where such deposits in  
6 no event represent more than 5 percent of the  
7 institution’s total deposits.

8           “(B) NO DEPOSIT INSURANCE.—No depos-  
9 its held by a wholesale financial institution shall  
10 be insured deposits under the Federal Deposit  
11 Insurance Act.

12           “(C) ADVERTISING AND DISCLOSURE.—  
13 The Board shall prescribe regulations pertain-  
14 ing to advertising and disclosure by wholesale  
15 financial institutions to ensure that each deposi-  
16 tor is notified that deposits at the wholesale fi-  
17 nancial institution are not federally insured or  
18 otherwise guaranteed by the United States Gov-  
19 ernment.

20           “(2) SPECIAL CAPITAL REQUIREMENTS APPLI-  
21 CABLE TO WHOLESAL FINANCIAL INSTITUTIONS.—

22           “(A) MINIMUM CAPITAL LEVELS.—

23           “(i) IN GENERAL.—The Board shall,  
24 by regulation, adopt capital requirements  
25 for wholesale financial institutions. The

1 capital levels for wholesale financial insti-  
2 tutions shall be sufficiently higher than the  
3 capital levels applicable to State member  
4 insured banks—

5 “(I) to account for the status of  
6 wholesale financial institutions as in-  
7 stitutions that accept deposits that  
8 are not insured under the Federal De-  
9 posit Insurance Act; and

10 “(II) to provide for the safe and  
11 sound operation of the wholesale fi-  
12 nancial institution without undue risk  
13 to creditors or other persons, includ-  
14 ing Federal Reserve banks, engaged  
15 in transactions with the bank.

16 “(ii) MINIMUM LEVERAGE RATIO.—  
17 The minimum leverage ratio of tier one  
18 capital to total assets of wholesale financial  
19 institutions shall be not less than the level  
20 required for a State member insured bank  
21 to be well capitalized.

22 “(B) CAPITAL CATEGORIES FOR PROMPT  
23 CORRECTIVE ACTION.—For purposes of apply-  
24 ing the provisions of section 38 of Federal De-  
25 posit Insurance Act, the Board shall, by regula-

1           tion, establish, for each relevant capital meas-  
2           ure specified by the Board under subparagraph  
3           (A), the levels at which a wholesale financial  
4           institution is adequately capitalized,  
5           undercapitalized, significantly undercapitalized,  
6           and critically undercapitalized.

7           “(3) ADDITIONAL REQUIREMENTS APPLICABLE  
8           TO WHOLESale FINANCIAL INSTITUTIONS.—In addi-  
9           tion to any requirements otherwise applicable to  
10          State member banks or otherwise applicable under  
11          this section, the Board may prescribe, by rule or  
12          order, for wholesale financial institutions—

13                 “(A) limitations on transactions with affili-  
14                 ates to prevent an affiliate from gaining access  
15                 to, or the benefits of, credit from a Federal Re-  
16                 serve bank, including overdrafts at a Federal  
17                 Reserve bank;

18                 “(B) special clearing balance requirements;  
19                 and

20                 “(C) any additional requirements that the  
21                 Board determines to be appropriate or nec-  
22                 essary to—

23                         “(i) promote the safety and soundness  
24                         of the wholesale financial institution, or

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

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

12                 “(i) the promotion of the safety and sound-  
13                 ness of the wholesale financial institution; and

14                 “(ii) the protection of creditors and other  
15                 persons, including Federal Reserve banks, en-  
16                 gaged in transactions with the wholesale finan-  
17                 cial institution.

18           “(5) NO EFFECT ON OTHER PROVISIONS.—This  
19           section shall not be construed to limit the Board’s  
20           authority over member banks under any other provi-  
21           sion of law, or to create any obligation for any Fed-  
22           eral Reserve bank to make, increase, renew, or ex-  
23           tend any advances or discount under this Act to any  
24           member bank or other depository institution.

1       “(d) CONSERVATORSHIP AUTHORITY.—The Board is  
2 authorized to appoint a conservator to take possession and  
3 control of a wholesale financial institution to the same ex-  
4 tent and in the same manner as the Comptroller of the  
5 Currency is authorized to appoint a conservator for a na-  
6 tional bank under section 203 of the Bank Conservation  
7 Act.

8       “(e) DEFINITIONS.—For purposes of this section—

9           “(1) the term ‘wholesale financial institution’  
10 means a bank whose application to become an unin-  
11 sured State member bank has been approved by the  
12 Board of Governors of the Federal Reserve System  
13 under this section;

14           “(2) the term ‘deposit’ has the meaning given  
15 to such term by the Board under the Federal Re-  
16 serve Act; and

17           “(3) the term ‘State member insured bank’  
18 means a State member bank, the deposits of which  
19 are insured under the Federal Deposit Insurance  
20 Act.”.

21       (b) VOLUNTARY TERMINATION OF INSURED STATUS  
22 BY CERTAIN INSTITUTIONS.—

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

1 (A) in the section heading, by inserting  
2 “**INVOLUNTARY**” after “**SEC. 8**”; and

3 (B) in subsection (a)—

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

5 (ii) by redesignating paragraphs (2)  
6 through (9) as paragraphs (1) through (8),  
7 respectively.

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

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

14 “(a) **IN GENERAL.**—Except as provided in subsection  
15 (b), an insured State-chartered bank or a national bank  
16 may voluntarily terminate its status as an insured deposi-  
17 tory institution in accordance with regulations of the Cor-  
18 poration if—

19 “(1) such institution provides written notice of  
20 its intent to terminate its insured status—

21 “(A) to the Corporation, not less than 6  
22 months before the effective date of such termi-  
23 nation; and

1           “(B) to its depositors, not less than 6  
2           months before the effective date of such termi-  
3           nation; and

4           “(2) the deposit insurance fund of which such  
5           bank is a member equals or exceeds the fund’s des-  
6           ignated reserve ratio as set forth in section  
7           7(b)(2)(A)(iv) of the Federal Deposit Insurance Act  
8           (12 U.S.C. 1817(b)(2)(A)(iv) as of the date the  
9           bank provides a written notice of its intent to termi-  
10          nate its insured status.

11          “(b) EXCEPTION.—The option to terminate insured  
12          status under subsection (a) shall not be available to—

13           “(1) an insured savings association;

14           “(2) an insured branch that is required to be  
15           insured under subsection (a) or (b) of section 6 of  
16           the International Banking Act of 1978; or

17           “(3) any institution described in section 2(c)(2)  
18           of the Bank Holding Company Act of 1956.

19          “(c) ELIGIBILITY FOR INSURANCE TERMINATED.—  
20          A depository institution that voluntarily elects to termi-  
21          nate its insured status under subsection (a) shall not re-  
22          ceive insurance of any of its deposits or any other assist-  
23          ance authorized under this Act after the period specified  
24          in subsection (f)(1).

1       “(d) INSTITUTION MUST BECOME WHOLESAL E FI-  
2       NANCIAL INSTITUTION OR TERMINATE DEPOSIT-TAKING  
3       ACTIVITIES.—Any institution that voluntarily terminates  
4       its status as an insured depository institution under this  
5       section may not, upon termination of insurance, accept  
6       any deposits unless the institution is a wholesale financial  
7       institution under section 9B of the Federal Reserve Act.

8       “(e) EXIT FEES.—

9               “(1) IN GENERAL.—Any institution that volun-  
10       tarily terminates its status as an insured depository  
11       institution under this section shall pay an exit fee in  
12       an amount that the Corporation determines is suffi-  
13       cient to account for the institution’s pro rata share  
14       of contingent and other liabilities of the relevant de-  
15       posit insurance fund.

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

19       “(f) TEMPORARY INSURANCE OF DEPOSITS INSURED  
20       AS OF TERMINATION.—

21              “(1) TRANSITION PERIOD.—The insured depos-  
22       its of each depositor in a State-chartered bank or a  
23       national bank on the effective date of the voluntary  
24       termination of the institution’s insured status, less  
25       all subsequent withdrawals from any deposits of

1 such depositor, shall continue to be insured for a pe-  
2 riod of not less than 6 months nor more than 2  
3 years, within the discretion of the Corporation. Dur-  
4 ing such period, no additions to any such deposits,  
5 and no new deposits in the depository institution  
6 made after the effective date of such termination  
7 shall be insured by the Corporation,

8 “(2) TEMPORARY ASSESSMENTS; OBLIGATIONS  
9 AND DUTIES.—During the period specified in para-  
10 graph (1), a depository institution shall continue to  
11 pay assessments required under this Act as if it  
12 were an insured depository institution. Such depository  
13 institution shall, in all other respects, be subject  
14 to the authority of the Corporation and the duties  
15 and obligations of an insured depository institution  
16 during such period as provided in this Act, and in  
17 the event that the depository institution is closed  
18 due to an inability to meet the demands of its de-  
19 positors during such period, the Corporation shall  
20 have the same powers and rights with respect to  
21 such depository institution as in the case of an in-  
22 sured depository institution.

23 “(g) ADVERTISEMENTS.—

24 “(1) IN GENERAL.—A depository institution  
25 that voluntarily terminates its insured status under

1 this section shall not advertise or hold itself out as  
2 having insured deposits, except that it may advertise  
3 the temporary insurance of deposits under sub-  
4 section (f) if, in connection with any such advertise-  
5 ment, it shall also state with equal prominence that  
6 additions to deposits and new deposits made after  
7 the effective date of the termination are not insured.

8 “(2) CERTIFICATES OF DEPOSIT, OBLIGATIONS,  
9 AND SECURITIES.—Any certificate of deposit or  
10 other obligation or security issued by a State-char-  
11 tered bank or a national bank after the effective  
12 date of the voluntary termination of its insured sta-  
13 tus under this section shall be accompanied by a  
14 conspicuous, prominently displayed notice that such  
15 certificate of deposit or other obligation or security  
16 is not insured under this Act.

17 “(h) NOTICE REQUIREMENTS.—

18 “(1) NOTICE TO THE CORPORATION.—The no-  
19 tice to the Corporation of an institution’s intent to  
20 terminate its insured status required under sub-  
21 section (a) shall be in such form as the Corporation  
22 may require.

23 “(2) NOTICE TO DEPOSITORS.—The notice to  
24 depositors of an institution’s intent to terminate its

1 insured status required under subsection (a) shall  
2 be—

3 “(A) at such depositor’s last address of  
4 record with the institution; and

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

8 **SEC. 110. EFFECTIVE DATE.**

9 The amendments made by this subtitle shall become  
10 effective 90 days after the date of enactment of this Act.

11 **Subtitle B—Brokers and Dealers**

12 **SEC. 120. DEFINITION OF BROKER.**

13 Section 3(a)(4) of the Securities Exchange Act of  
14 1934 (15 U.S.C. 78c(a)(4)) is amended to read as follows:

15 “(4) ‘BROKER’.—

16 “(A) IN GENERAL.—The term ‘broker’  
17 means any person engaged in the business of  
18 effecting transactions in securities for the ac-  
19 count of others.

20 “(B) EXCLUSION OF BANKS.—The term  
21 ‘broker’ does not include a bank unless such  
22 bank publicly solicits the business of effecting  
23 securities transactions for the account of others  
24 or is compensated for such business by the pay-  
25 ment of commissions or similar remuneration

1 based on effecting transactions in securities  
2 (other than fees calculated as a percentage of  
3 assets under management) in excess of the  
4 bank's incremental costs directly attributable to  
5 effecting such transactions (hereafter referred  
6 to as 'incentive compensation').

7 “(C) EXEMPTION FOR CERTAIN BANK AC-  
8 TIVITIES.—A bank shall not be deemed to be a  
9 'broker' because it engages in any of the follow-  
10 ing activities:

11 “(i) THIRD PARTY BROKERAGE AR-  
12 RANGEMENTS.—The bank enters into a  
13 contractual or other arrangement with a  
14 broker or dealer registered under this title  
15 under which the broker or dealer offers  
16 brokerage services on or off the premises  
17 of the bank if—

18 “(I) such broker or dealer is  
19 clearly identified as the person per-  
20 forming the brokerage services;

21 “(II) such broker or dealer per-  
22 forms brokerage services in an area  
23 that is clearly marked and physically  
24 separate from the retail deposit-taking  
25 activities of the bank;

1           “(III) any materials used to ad-  
2           vertise or promote the availability of  
3           brokerage services under the contrac-  
4           tual or other arrangement are ap-  
5           proved by the broker or dealer for  
6           compliance with the Federal securities  
7           laws prior to distribution and are  
8           deemed to be the materials of the  
9           broker or dealer;

10           “(IV) bank employees perform  
11           only clerical or ministerial functions in  
12           connection with brokerage trans-  
13           actions, unless such employees are as-  
14           sociated persons of a broker or dealer  
15           and are qualified pursuant to the re-  
16           quirements of a self-regulatory organi-  
17           zation;

18           “(V) bank employees do not re-  
19           ceive incentive compensation for any  
20           brokerage activities unless such em-  
21           ployees are associated persons of a  
22           broker or dealer and are qualified  
23           pursuant to the requirements of a  
24           self-regulatory organization;

1           “(VI) such services are provided  
2           by the broker or dealer on a basis in  
3           which all customers that receive such  
4           services are fully disclosed to that  
5           broker or dealer; and

6           “(VII) the broker or dealer in-  
7           forms each customer that the broker-  
8           age services are provided by the  
9           broker or dealer and not by the bank  
10          and that the securities are not guar-  
11          anteed by the bank, the Federal De-  
12          posit Insurance Corporation, or any  
13          other federal or state deposit guaran-  
14          tee fund relating to banks.

15          “(ii) TRUST ACTIVITIES.—The bank  
16          engages in trust activities (including  
17          effecting transactions in the course of such  
18          trust activities) permissible for national  
19          banks under the first section of the Act of  
20          September 28, 1962 or for State banks  
21          under relevant State trust statutes or law  
22          (including securities safekeeping, self-di-  
23          rected individual retirement accounts, or  
24          managed agency accounts or other func-

1 tionally equivalent accounts of a bank) un-  
2 less the bank—

3 “(I) publicly solicits brokerage  
4 business, other than by advertising  
5 that it effects transactions in securi-  
6 ties in conjunction with advertising its  
7 other trust activities; or

8 “(II) receives incentive com-  
9 pensation for such brokerage activi-  
10 ties.

11 “(iii) PERMISSIBLE SECURITIES  
12 TRANSACTIONS.—The bank effects trans-  
13 actions in exempted securities, other than  
14 municipal securities, or in commercial  
15 paper, bankers acceptances, commercial  
16 bills, qualified Canadian Government obli-  
17 gations as defined in section 5136 of the  
18 Revised Statutes, obligations of the Wash-  
19 ington Metropolitan Area Transit Author-  
20 ity which are guaranteed by the Secretary  
21 of Transportation under section 9 of the  
22 National Capital Transportation Act of  
23 1969, obligations of the North American  
24 Development Bank, and obligations of any  
25 local public agency (as defined in section

1 110(h) of the Housing Act of 1949) or any  
2 public housing agency (as defined in the  
3 United States Housing Act of 1937) that  
4 are expressly specified by section 5136 of  
5 the Revised statutes as permissible for a  
6 national bank to underwrite or deal in.

7 “(iv) MUNICIPAL SECURITIES.—The  
8 bank effects transactions in municipal se-  
9 curities, and has not been affiliated with a  
10 securities affiliate under section 10 of the  
11 Bank Holding Company Act of 1956 for  
12 more than 1 year.

13 “(v) EMPLOYEE AND SHAREHOLDER  
14 BENEFIT PLANS.—The bank effects trans-  
15 actions as part of any bonus, profit-shar-  
16 ing, pension, retirement, thrift, savings, in-  
17 centive, stock purchase, stock ownership,  
18 stock appreciation, stock option, dividend  
19 reinvestment, or similar plan for employees  
20 or shareholders of an issuer or its subsidi-  
21 aries.

22 “(vi) SWEEP ACCOUNTS.—The bank  
23 effects transactions as part of a program  
24 for the investment or reinvestment of bank  
25 deposit funds into any no-loan, open-end

1 management investment company reg-  
2 istered under the Investment Company Act  
3 of 1940 that holds itself out as a money  
4 market fund.

5 “(vii) AFFILIATE TRANSACTIONS.—  
6 The bank effects transactions for the ac-  
7 count of any affiliate of the bank, as de-  
8 fined in section 2 of the Bank Holding  
9 Company Act of 1956.

10 “(viii) PRIVATE SECURITIES OFFER-  
11 INGS.—The bank—

12 “(I) effects sales as part of a pri-  
13 mary offering of securities by an is-  
14 suer, not involving a public offering,  
15 pursuant to section 3(b), 4(2), or 4(6)  
16 of the Securities Act of 1933 and the  
17 rules and regulations issued there-  
18 under, other than securities backed by  
19 or representing an interest in obliga-  
20 tions originated or purchased by the  
21 bank, its affiliates, or its subsidiaries  
22 unless those securities are described  
23 in section 3(a)(5)(B)(ii)(IV) (aa) or  
24 (bb);

1 “(II) effects such sales exclu-  
2 sively to an accredited investor, as de-  
3 fined in section 3 of the Securities Act  
4 of 1933; and

5 “(III) if affiliated with a securi-  
6 ties affiliate, as provided under sec-  
7 tion 10 of the Bank Holding Company  
8 Act of 1956, has not been so affiliated  
9 for more than 1 year.

10 “(ix) DE MINIMIS EXEMPTION.—If the  
11 bank does not have a subsidiary or affiliate  
12 registered as a broker or dealer under sec-  
13 tion 15, the bank effects, other than in  
14 transactions referenced in clauses (i)  
15 through (viii), not more than—

16 “(I) 800 transactions in any cal-  
17 endar year in securities for which a  
18 ready market exists, and

19 “(II) 200 other transactions in  
20 securities in any calendar year.

21 “(D) EXEMPTION FOR ENTITIES SUBJECT  
22 TO SECTION 15(e).—The term ‘broker’ does not  
23 include a bank that is subject to—

24 “(i) section 15(e); and

1           “(ii) such restrictions and require-  
2           ments as the Commission deems appro-  
3           priate.”.

4 **SEC. 121. DEFINITION OF DEALER.**

5       Section 3(a)(5) of the Securities Exchange Act of  
6 1934 (15 U.S.C. 78c(a)(5)) is amended to read as follows:

7           “(5) ‘DEALER’.—

8           “(A) IN GENERAL.—The term ‘dealer’  
9           means any person engaged in the business of  
10          buying and selling securities for his own ac-  
11          count through a broker or otherwise.

12          “(B) EXCEPTIONS.—Such term does not  
13          include—

14               “(i) a person that buys or sells securi-  
15               ties for his or her own account, either indi-  
16               vidually or in a fiduciary capacity, but not  
17               as a part of a regular business; or

18               “(ii) a bank, to the extent that the  
19               bank—

20                       “(I) buys and sells commercial  
21                       paper, bankers acceptances, exempted  
22                       securities (other than municipal secu-  
23                       rities), qualified Canadian Govern-  
24                       ment obligations as defined in section  
25                       5136 of the Revised Statutes, obliga-

1 tions of the Washington Metropolitan  
2 Area Transit Authority which are  
3 guaranteed by the Secretary of Trans-  
4 portation under section 9 of the Na-  
5 tional Capital Transportation Act of  
6 1969, obligations of the North Amer-  
7 ican Development Bank, and obliga-  
8 tions of any local public agency (as  
9 defined in section 110(h) of the Hous-  
10 ing Act of 1949) or any public hous-  
11 ing agency (as defined in the United  
12 States Housing Act of 1937) that are  
13 expressly specified by section 5136 of  
14 the Revised Statutes as permissible  
15 for a national bank to underwrite or  
16 deal in;

17 “(II) buys and sells municipal se-  
18 curities and has not been affiliated  
19 with a securities affiliate, as provided  
20 under section 10 of the Bank Holding  
21 Company Act of 1956 for more than  
22 1 year;

23 “(III) buys and sells securities  
24 for investment purposes for the bank

1 or for accounts for which the bank  
2 acts as a trustee or fiduciary; or

3 “(IV) has not been affiliated with  
4 a securities affiliate under section 10  
5 of the Bank Holding Company Act of  
6 1956 for more than 1 year and en-  
7 gages in the issuance or sale through  
8 a grantor trust or otherwise of—

9 “(aa) securities backed by or  
10 representing an interest in 1–4  
11 family residential mortgages  
12 originated or purchased by the  
13 bank, its affiliates, or its subsidi-  
14 aries; or

15 “(bb) securities backed by or  
16 representing an interest in  
17 consumer receivables or  
18 consumer leases originated or  
19 purchased by the bank, its affili-  
20 ates, or its subsidiaries.”.

21 **SEC. 122. POWER TO EXEMPT FROM THE DEFINITIONS OF**  
22 **BROKER AND DEALER.**

23 Section 3 of the Securities Exchange Act of 1934 (15  
24 U.S.C. 78c) is amended by adding at the end the  
25 following:

1       “(e) EXEMPTION FROM DEFINITION OF BROKER OR  
2 DEALER.—The Commission, by regulation or order, upon  
3 its own motion or upon application, may conditionally or  
4 unconditionally exclude any person or class of persons  
5 from the definitions of ‘broker’ or ‘dealer’, if the Commis-  
6 sion finds that such exclusion is consistent with the public  
7 interest, the protection of investors, and the purposes of  
8 this title.”.

9 **SEC. 123. MARGIN REQUIREMENTS.**

10       (a) Section 7(d) of the Securities Exchange Act of  
11 1934 (15 U.S.C. 15g(d)) is amended by:

- 12           (1) deleting the word “or” after clause (D);  
13           (2) redesignating clause (E) as clause (F); and  
14           (3) inserting a new clause (E) as follows:

15           “(E) to a loan to a broker or dealer by a  
16           member bank or any other person that has en-  
17           tered into an agreement pursuant to section  
18           8(a) hereof if the proceeds of the loan are to be  
19           used in the ordinary course of the broker’s or  
20           dealer’s business other than for the purpose of  
21           funding the purchase of securities for the ac-  
22           count of such broker or dealer, or”.

23       (b) Section 8(a) of the Securities and Exchange Act  
24 of 1934 is amended:

1           (1) by deleting the phrase “nonmember bank”  
2           in clause (2) and replacing it with the phrase “per-  
3           son other than a member bank”; and

4           (2) by deleting the phrase “such bank” in the  
5           second sentence and replacing it with the phrase  
6           “such person”.

7   **SEC. 124. EFFECTIVE DATE.**

8           This subtitle shall become effective 270 days after the  
9           date of enactment of this Act.

10       **Subtitle C—Bank Investment Company**

11                               **Activities**

12   **SEC. 130. CUSTODY OF INVESTMENT COMPANY ASSETS BY**

13                               **AFFILIATED BANK.**

14           (a) **MANAGEMENT COMPANIES.**—Section 17(f) of the  
15           Investment Company Act of 1940 (15 U.S.C. 80a–17(f))  
16           is amended—

17           (1) by redesignating paragraphs (1), (2), and  
18           (3) as subparagraphs (A), (B), and (C), respectively;

19           (2) by designating the five sentences of such  
20           subsection as paragraphs (1) through (5), respec-  
21           tively, and by indenting those paragraphs appro-  
22           priately; and

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

1           “(6) Notwithstanding paragraph (1)(A), if a  
2           bank described in paragraph (1) or an affiliated per-  
3           son of such bank is an affiliated person, promoter,  
4           organizer, or sponsor of, or principal underwriter for  
5           the registered company, such bank may serve as cus-  
6           todian under this subsection in accordance with such  
7           rules, regulations, or orders as the Commission may  
8           prescribe, consistent with the protection of investors,  
9           after consulting in writing with the appropriate Fed-  
10          eral banking agency, as defined in section 3 of the  
11          Federal Deposit Insurance Act.”.

12          (b) UNIT INVESTMENT TRUSTS.—Section 26(a)(1) of  
13          the Investment Company Act of 1940 (15 U.S.C. 80a-  
14          26(a)(1)) is amended by inserting after “bank” the follow-  
15          ing: “not affiliated with such underwriter or depositor, or  
16          if such bank is so affiliated, only in accordance with such  
17          regulations or orders as the Commission may prescribe,  
18          consistent with the protection of investors, after consulting  
19          in writing with the appropriate Federal banking agency,  
20          as defined in section 3 of the Federal Deposit Insurance  
21          Act”.

22          (c) FIDUCIARY DUTY OF CUSTODIAN.—Section 36(a)  
23          of the Investment Company Act of 1940 (15 U.S.C. 80a-  
24          35(a)) is amended—

1 (1) in paragraph (1), by striking “or” at the  
2 end;

3 (2) in paragraph (2), by striking the period at  
4 the end and inserting “; or”; and

5 (3) by inserting after paragraph (2) the follow-  
6 ing:

7 “(3) as custodian.”.

8 **SEC. 131. AFFILIATED TRANSACTIONS.**

9 (a) INDEBTEDNESS TO AFFILIATED PERSON.—Sec-  
10 tion 10(f) of the Investment Company Act of 1940 (15  
11 U.S.C. 80a–10(f)) is amended in the first sentence—

12 (1) by inserting “(1)” before “a principal un-  
13 derwriter”; and

14 (2) by inserting before the period “, or (2) the  
15 proceeds of which will be used to retire an indebted-  
16 ness owed to an affiliated person of such registered  
17 company”.

18 (b) AFFILIATED PERSON OF INVESTMENT COM-  
19 PANY.—Section 10(f) of the Investment Company Act of  
20 1940 is amended by adding at the end the following: “For  
21 purposes of this subsection, a person that is under com-  
22 mon control with an investment adviser shall be deemed  
23 to be an affiliated person of the registered investment  
24 company advised by such investment adviser.”.

1 **SEC. 132. BORROWING FROM AN AFFILIATED BANK.**

2 Section 18(f) of the Investment Company Act of  
3 1940 (15 U.S.C. 80a–18(f)) is amended by adding at the  
4 end the following:

5 “(3) Notwithstanding the provisions of paragraph  
6 (1), it shall be unlawful for any registered investment com-  
7 pany to borrow from any bank if such bank or any affili-  
8 ated person thereof is an affiliated person, promoter, orga-  
9 nizer, or sponsor of, or principal underwriter for, such  
10 company, except that the Commission may, by rule, regu-  
11 lation, or order, permit such borrowing that the Commis-  
12 sion finds to be in the public interest and consistent with  
13 the protection of investors.”.

14 **SEC. 133. INDEPENDENT DIRECTORS.**

15 (a) INTERESTED PERSON.—Section 2(a)(19)(A)(v)  
16 of the Investment Company Act of 1940 (15 U.S.C. 80a–  
17 2(a)(19)(A)(v)) is amended by striking “1934 or any af-  
18 filiated person of such a broker or dealer, and” and insert-  
19 ing “1934 or any person that, at any time during the pre-  
20 ceding 6 months, has acted as custodian or transfer agent  
21 or has executed any portfolio transactions for, engaged in  
22 any principal transactions with, or loaned money to, the  
23 investment company, or any other investment company  
24 having the same investment adviser, principal underwriter,  
25 sponsor, or promoter, or any affiliated person of such a  
26 broker, dealer, or person, and”.

1 (b) AFFILIATION OF DIRECTORS.—Section 10(c) of  
2 the Investment Company Act of 1940 (15 U.S.C. 80a-  
3 10(c)) is amended by striking “bank, except” and insert-  
4 ing “bank (and its subsidiaries) or any single bank holding  
5 company (and its affiliates and subsidiaries), as those  
6 terms are defined in the Bank Holding Company Act of  
7 1956, except”.

8 (c) EFFECTIVE DATE.—The provisions of subsection  
9 (a) of this section shall become effective 1 year after the  
10 date of enactment of this subtitle.

11 **SEC. 134. ADDITIONAL SEC DISCLOSURE AUTHORITY.**

12 (a) MISREPRESENTATION.—Section 35(a) of the In-  
13 vestment Company Act of 1940 (15 U.S.C. 80a-34(a)) is  
14 amended to read as follows:

15 **“SEC. 35. MISREPRESENTATIONS.**

16 “(a) MISREPRESENTATIONS OF GUARANTEES.—

17 “(1) IN GENERAL.—It shall be unlawful for any  
18 person, in issuing or selling any security of which a  
19 registered investment company is the issuer, to rep-  
20 resent or imply in any manner whatsoever that such  
21 security or company—

22 “(A) has been guaranteed, sponsored, rec-  
23 ommended, or approved by the United States,  
24 or any agency, instrumentality or officer there-  
25 of,

1           “(B) has been insured by the Federal De-  
2           posit Insurance Corporation; or

3           “(C) is guaranteed by or is otherwise an  
4           obligation of any bank or insured institution.

5           “(2) DISCLOSURES.—The Commission shall re-  
6           quire the person issuing or selling the securities of  
7           a registered investment company to prominently dis-  
8           close, in writing or orally, as appropriate, that the  
9           investment company or any security issued by it is  
10          not insured by the Federal Deposit Insurance Cor-  
11          poration and is not guaranteed by an affiliated de-  
12          pository institution, and is not otherwise an obliga-  
13          tion of such a bank or insured institution, in any  
14          case where—

15                 “(A) a bank holding company, bank, or  
16                 separately identifiable division or department of  
17                 a bank, or any affiliate or subsidiary thereof is  
18                 an investment adviser, organizer, sponsor, pro-  
19                 moter, principal underwriter, or an affiliated  
20                 person of the investment company; or

21                 “(B) a bank or an affiliated person of a  
22                 bank is offering or selling securities of the in-  
23                 vestment company.

24          The requirement of any disclosures referred to above  
25          shall be subject to regulations adopted by the Com-

1 mission, after consultation with the appropriate Fed-  
2 eral banking agencies (as defined in section 3 of the  
3 Federal Deposit Insurance Act).”.

4 (b) DECEPTIVE USE OF NAMES.—Section 35(d) of  
5 the Investment Company Act of 1940 (15 U.S.C. 80a-  
6 34(d)) is amended by inserting after the first sentence the  
7 following: “It shall be deceptive and misleading for any  
8 registered investment company which has an insured de-  
9 pository institution (as defined in section 3 of the Federal  
10 Deposit Insurance Act) or any affiliated person thereof as  
11 an affiliated person, promoter, or principal underwriter,  
12 to adopt, as part of the name or title of such company,  
13 or of any security of which it is the issuer, any word which  
14 is the same as or similar to, or a variation of, the name  
15 or title of such insured depository institution or affiliate  
16 thereof. The Commission, by rules or regulations upon its  
17 own motion or by order upon application, may condi-  
18 tionally or unconditionally exempt an investment company  
19 from the preceding sentence if the Commission finds that  
20 such exemption is consistent with the public interest, the  
21 protection of investors, and the purposes of this title.”.

1 **SEC. 135. DEFINITION OF BROKER UNDER THE INVEST-**  
2 **MENT COMPANY ACT OF 1940.**

3 Section 2(a)(6) of the Investment Company Act of  
4 1940 (15 U.S.C. 80a-2(a)(6)) is amended to read as  
5 follows:

6 “(6) ‘Broker’ has the same meaning as in the  
7 Securities Exchange Act of 1934, except that it does  
8 not include any person solely by reason of the fact  
9 that such person is an underwriter for 1 or more in-  
10 vestment companies.”.

11 **SEC. 136. DEFINITION OF DEALER UNDER THE INVEST-**  
12 **MENT COMPANY ACT OF 1940.**

13 Section 2(a)(11) of the Investment Company Act of  
14 1940 (15 U.S.C. 80a-2(a)(11)) is amended to read as fol-  
15 lows:

16 “(11) ‘Dealer’ has the same meaning as in the  
17 Securities Exchange Act of 1934, but does not in-  
18 clude an insurance company or investment com-  
19 pany.”.

20 **SEC. 137. REMOVAL OF THE EXCLUSION FROM THE DEFINI-**  
21 **TION OF INVESTMENT ADVISER FOR BANKS**  
22 **THAT ADVISE INVESTMENT COMPANIES.**

23 (a) INVESTMENT ADVISER.—Section 202(a)(11) of  
24 the Investment Advisers Act of 1940 (15 U.S.C. 80b-  
25 2(a)(11)) is amended in subparagraph (A), by striking  
26 “investment company” and inserting “investment com-

1 pany, except that the term ‘investment adviser’ includes  
2 any bank or bank holding company to the extent that such  
3 bank or bank holding company acts as an investment ad-  
4 viser to a registered investment company, or if, in the case  
5 of a bank, such services are performed through a sepa-  
6 rately identifiable department or division, the department  
7 or division, and not the bank itself shall be deemed to be  
8 the ‘investment adviser’ ”; and

9 (b) SEPARATELY IDENTIFIABLE DEPARTMENT OR  
10 DIVISION.—Section 202(a) of the Investment Advisers Act  
11 of 1940 (15 U.S.C. 80b–2(a)) is amended by adding at  
12 the end the following:

13 “(25) ‘Separately identifiable department or di-  
14 vision’ of a bank means a unit—

15 “(A) that is under the direct supervision of  
16 an officer or officers designated by the board of  
17 directors of the bank as responsible for the day-  
18 to-day conduct of the bank’s investment adviser  
19 activities for 1 or more investment companies,  
20 including the supervision of all bank employees  
21 engaged in the performance of such activities;  
22 and

23 “(B) for which all of the records relating  
24 to its investment adviser activities, are sepa-  
25 rately maintained in or extractable from such

1 unit's own facilities or the facilities of the bank,  
2 and such records are so maintained or other-  
3 wise accessible as to permit independent exam-  
4 ination and enforcement of this Act and rules  
5 and regulations promulgated under this Act.”.

6 **SEC. 138. DEFINITION OF BROKER UNDER THE INVEST-**  
7 **MENT ADVISERS ACT OF 1940.**

8 Section 202(a)(3) of the Investment Advisers Act of  
9 1940 (15 U.S.C. 80b-2(a)(3)) is amended to read as  
10 follows:

11 “(3) ‘Broker’ has the same meaning as in the  
12 Securities Exchange Act of 1934.”.

13 **SEC. 139. DEFINITION OF DEALER UNDER THE INVEST-**  
14 **MENT ADVISERS ACT OF 1940.**

15 Section 202(a)(7) of the Investment Advisers Act of  
16 1940 (15 U.S.C. 80b-2(a)(7)) is amended to read as  
17 follows:

18 “(7) ‘Dealer’ has the same meaning as in the  
19 Securities Exchange Act of 1934, but does not in-  
20 clude an insurance company or investment com-  
21 pany.”.

22 **SEC. 140. INTERAGENCY CONSULTATION.**

23 The Investment Advisers Act of 1940 (15 U.S.C.  
24 80b-1 et seq.) is amended by inserting after section 210  
25 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 as each may have with respect to the in-  
8 vestment advisory activities of any bank holding  
9 company, bank, or department or division of a bank,  
10 any of which is registered under section 203 of this  
11 title, or, in the case of a bank holding company or  
12 bank, has a subsidiary, department, or division reg-  
13 istered under that section, to the extent necessary  
14 for the Commission to carry out its statutory re-  
15 sponsibilities.

16 “(2) The Commission shall provide to the ap-  
17 propriate Federal banking agency upon request the  
18 results of any examination, reports, records, or other  
19 information with respect to the investment advisory  
20 activities of any bank holding company, bank, or de-  
21 partment or division of a bank, any of which is reg-  
22 istered under section 203 of this title, to the extent  
23 necessary for the agency to carry out its statutory  
24 responsibilities.

25 “(b) EFFECT ON OTHER AUTHORITY.—Nothing  
26 herein shall limit in any respect the authority of the appro-

1 piate Federal banking agency with respect to such bank  
2 holding company, bank, or department or division under  
3 any provision of law.

4 “(c) DEFINITION.—For purposes of this section, the  
5 term ‘appropriate Federal banking agency’ shall have the  
6 same meaning as in section 3 of the Federal Deposit In-  
7 surance Act.”.

8 **SEC. 141. TREATMENT OF BANK COMMON TRUST FUNDS.**

9 (a) SECURITIES ACT OF 1933.—Section 3(a)(2) of  
10 the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is  
11 amended by striking “or any interest or participation in  
12 any common trust fund or similar fund maintained by a  
13 bank exclusively for the collective investment and reinvest-  
14 ment of assets contributed thereto by a bank in its capac-  
15 ity as trustee, executor, administrator, or guardian” and  
16 inserting “or any interest or participation in any common  
17 trust fund or similar fund that is excluded from the defini-  
18 tion of the term ‘investment company’ under section  
19 3(c)(3) of the Investment Company Act of 1940”.

20 (b) SECURITIES EXCHANGE ACT OF 1934.—Section  
21 3(a)(12)(A)(iii) of the Securities Exchange Act of 1934  
22 (15 U.S.C. 78c(a)(12)(A)(iii)) is amended to read as fol-  
23 lows:

24 “(iii) any interest or participation in  
25 any common trust fund or similar fund

1           that is excluded from the definition of the  
2           term ‘investment company’ under section  
3           3(c)(3) of the Investment Company Act of  
4           1940.’’.

5           (c) INVESTMENT COMPANY ACT OF 1940.—Section  
6           3(c)(3) of the Investment Company Act of 1940 (15  
7           U.S.C. 80a-3(c)(3)) is amended by inserting before the  
8           period the following: “, if—

9                   “(A) such fund is employed by the bank  
10                   solely as an aid to the administration of trusts,  
11                   estates, or other accounts created and main-  
12                   tained for a fiduciary purpose;

13                   “(B) except in connection with the ordi-  
14                   nary advertising of the bank’s fiduciary serv-  
15                   ices, interests in such fund are not—

16                           “(i) advertised; or

17                           “(ii) offered for sale to the general  
18                   public; and

19                   “(C) such fund is not charged any fees or  
20                   expenses that, when added to any other com-  
21                   pensation charged by the bank to a participa-  
22                   tion account, would exceed the total amount of  
23                   compensation that would have been charged to  
24                   such participant account if no assets of the ac-  
25                   count had been invested in interests in the

1 fund, except that any reasonable and necessary  
2 expenses related to the prudent operation of the  
3 fund, as determined by the appropriate Federal  
4 banking agency (as defined in section 3(q) of  
5 the Federal Deposit Insurance Act), shall be  
6 permitted to be charged directly to the fund.”.

7 (d) TAX EFFECT.—It is the sense of the Congress  
8 that the public interest would be furthered by enacting  
9 legislation to amend section 584 of the Internal Revenue  
10 Code of 1986 by inserting after subsection (g) the follow-  
11 ing new subsection:

12 “(h) CONVERSION, MERGERS, OR REORGANIZATION  
13 OF COMMON TRUST FUNDS.—Notwithstanding any other  
14 provision of the Internal Revenue Code, any transfer of  
15 all or substantially all of the assets of a common trust  
16 fund taxable under this section to a registered investment  
17 company taxable under subchapter M shall not result in  
18 a gain or loss to the participants in such common trust  
19 fund where the transfer is a result of a merger, conversion,  
20 reorganization, transfer, or other similar transaction or se-  
21 ries of transactions.”.

1 **SEC. 142. 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 any investment adviser  
10 to a registered investment company, or an affiliated  
11 person of that investment adviser, also holds shares  
12 of the investment company in a trustee or fiduciary  
13 capacity, that investment adviser or affiliated person  
14 may own, directly or indirectly, a controlling interest  
15 in that registered investment company only—

16 “(A) if it passes the power to vote the  
17 shares of the investment company through to—

18 “(i) the beneficial owners of the  
19 shares;

20 “(ii) any person acting in a fiduciary  
21 capacity who is not an affiliated person of  
22 that investment adviser or any affiliated  
23 person thereof; or

24 “(iii) any person authorized to receive  
25 statements and information with respect to  
26 the trust who is not an affiliated person of

1           that investment adviser or any affiliated  
2           person thereof;

3           “(B) if it votes the shares of the invest-  
4           ment company held by it in the same proportion  
5           as shares held by all other shareholders of the  
6           investment company; or

7           “(C) as otherwise permitted under such  
8           rules, regulations, or orders as the Commission  
9           may prescribe for the protection of investors.

10          “(2) EXEMPTION.—Paragraph (1) shall not  
11          apply to any investment adviser to a registered in-  
12          vestment company, or an affiliated person of that in-  
13          vestment adviser, holding shares of the investment  
14          company in a trustee or fiduciary capacity if that  
15          registered investment company consists solely of as-  
16          sets of—

17                 “(A) any common trust fund or similar  
18                 fund described in section 3(c)(3) of the Invest-  
19                 ment Company Act of 1940;

20                 “(B) any employees’ stock bonus, pension,  
21                 or profit-sharing trust that qualifies under sec-  
22                 tion 401 of the Internal Revenue Code of 1986;

23                 “(C) any governmental plan described in  
24                 section 3(a)(2)(C) of the Securities Act of  
25                 1933; or

1           “(D) any collective trust fund maintained  
2           by a bank and consisting solely of assets of  
3           trusts or governmental plans described in sub-  
4           paragraph (B) or (C).”.

5 **SEC. 143. PURCHASE OF INVESTMENT COMPANY SECURI-**  
6 **TIES AS FIDUCIARY.**

7           (a) IN GENERAL.—Section 17 of the Investment  
8           Company Act of 1940 (15 U.S.C. 80a-17) is amended by  
9           adding at the end the following:

10          “(k) PURCHASE OF INVESTMENT COMPANY SECURI-  
11          TIES AS FIDUCIARY.—

12           “(1) IN GENERAL.—An investment adviser to a  
13           registered investment company, or an affiliated per-  
14           son of the investment adviser, promoter, organizer,  
15           or sponsor of the registered investment company, or  
16           principal underwriter for the registered company  
17           may purchase securities issued by such investment  
18           company for the account of a beneficiary as fidu-  
19           ciary, only if disclosure of such information as the  
20           Commission shall prescribe under paragraph (2) has  
21           been provided to the person (other than to the in-  
22           vestment advisor to the registered investment com-  
23           pany, or an affiliated person of the investment advi-  
24           sor, promoter, organizer, or sponsor of the registered  
25           investment company, or principal underwriter for the

1 registered company who may purchase securities of  
2 the registered company as fiduciary for the account)  
3 to whom periodic financial statements are customar-  
4 ily provided.

5 “(2) DISCLOSURE RULES.—The Commission  
6 shall prescribe, by rule, regulation, or order, the  
7 manner, form, and content of the information re-  
8 quired to be disclosed under paragraph (1), as the  
9 Commission determines necessary or appropriate in  
10 the public interest and for the protection of inves-  
11 tors.

12 “(3) PROSPECTIVE EFFECT.—This subsection  
13 shall be effective for purchase for fiduciary accounts  
14 made after the effective date of this subtitle.”.

15 (b) EXAMINATION OF TRUST DEPARTMENT SECURI-  
16 TIES PURCHASES.—Section 10(d) of the Federal Deposit  
17 Insurance Act (12 U.S.C. 1820(d)) is amended by adding  
18 at the end the following:

19 “(6) TRUST DEPARTMENT EXAMINATION.—In  
20 performing an examination under this subsection,  
21 the appropriate Federal banking agency shall exam-  
22 ine purchases by an insured depository institution’s  
23 trust department or division of the securities of an  
24 affiliated investment company, or an investment  
25 company that is an affiliated person of an affiliated

1 person of the institution (as those terms are defined  
2 in sections 2 and 3 of the Investment Company Act  
3 of 1940), to assure compliance with applicable Fed-  
4 eral and State trust laws.”.

5 **SEC. 144. CONFORMING CHANGE IN DEFINITION.**

6 Section 2(a)(5) of the Investment Company Act of  
7 1940 (15 U.S.C. 80a-2(a)(5)) is amended by striking  
8 “(A) a banking organization organized under the laws of  
9 the United States” and inserting “(A) a depository insti-  
10 tution, as that term is defined in section 3 of the Federal  
11 Deposit Insurance Act or a U.S. branch or agency of a  
12 foreign bank”.

13 **SEC. 145. EFFECTIVE DATE.**

14 This subtitle shall become effective 270 days after the  
15 date of enactment of this Act.

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