

105TH CONGRESS  
1ST SESSION

# H. R. 10

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

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 1997

Mr. LEACH (for himself, Mrs. ROUKEMA, Mr. CASTLE, and Mr. LAZIO of New York) 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, securities firms, and other financial service providers, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Financial Services Competitiveness Act of 1997”.

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1 (b) TABLE OF CONTENTS.—The table of contents of  
 2 this Act is as follows:

Section 1. Short title; table of contents.

TITLE I—BANK SECURITIES ACTIVITIES AND AFFILIATIONS  
 WITH SECURITIES FIRMS AND OTHER FINANCIAL COMPANIES

Subtitle A—Securities Activities

- Sec. 101. Anti-affiliation provision of the Banking Act of 1933 repealed.
- Sec. 102. Financial services holding companies authorized to have securities affiliates.
- Sec. 103. Establishment and operations of securities affiliates.
- Sec. 104. Safeguards relating to securities affiliates.
- Sec. 105. Ownership of shares of certain companies by financial services holding companies.
- Sec. 106. Provisions applicable to limited purpose banks.
- Sec. 107. Securities company affiliations of FDIC-insured banks.
- Sec. 108. Authority to terminate grandfather rights under the International Banking Act of 1978.
- Sec. 109. Effect on State laws prohibiting the affiliation of bank, securities and insurance companies.
- Sec. 110. National Bank special operating subsidiaries.
- Sec. 111. Interagency agreement relating to retail sales of certain nondeposit investment products.
- Sec. 112. Effective date.

Subtitle B—Investment Bank Holding Companies

- Sec. 116. Investment bank holding companies.
- Sec. 117. Wholesale financial institutions.

Subtitle C—Financial Activities

- Sec. 121. Financial activities.
- Sec. 122. Reserved.
- Sec. 123. Streamlined examination and reporting requirements for all financial services holding companies.
- Sec. 124. Holding company supervision for financial services holding companies engaged primarily in nonbanking activities.
- Sec. 125. Conversion of unitary savings and loan holding companies to financial services holding companies.
- Sec. 126. Reserved.
- Sec. 127. Coordination with State law.
- Sec. 128. Conforming amendments to the Bank Holding Company Act of 1956.
- Sec. 129. Conforming amendments to the Bank Holding Company Act Amendments of 1970.
- Sec. 130. Credit cards for business purposes.

Subtitle D—Interagency Banking and Financial Services Advisory Committee

- Sec. 141. Interagency banking and financial services advisory committee.

Subtitle E—Application and Registration Fees

Sec. 151. Authority to impose fees.

## TITLE II—FUNCTIONAL REGULATIONS

### Subtitle A—Brokers and Dealers

Sec. 201. Definition of broker.

Sec. 202. Definition of dealer.

Sec. 203. Power to exempt from the definitions of broker and dealer.

Sec. 204. Effective date.

### Subtitle B—Bank Investment Company Activities

Sec. 211. Custody of investment company assets by affiliated bank.

Sec. 212. Lending to an affiliated investment company.

Sec. 213. Independent directors.

Sec. 214. Additional SEC disclosure authority.

Sec. 215. Definition of broker under the Investment Company Act of 1940.

Sec. 216. Definition of dealer under the Investment Company Act of 1940.

Sec. 217. Removal of the exclusion from the definition of investment adviser for banks that advise investment companies.

Sec. 218. Definition of broker under the Investment Advisers Act of 1940.

Sec. 219. Definition of dealer under the Investment Advisers Act of 1940.

Sec. 220. Interagency consultation.

Sec. 221. Treatment of bank common trust funds.

Sec. 222. Investment advisers prohibited from having controlling interest in registered investment company.

Sec. 223. Conforming change in definition.

Sec. 224. Effective date.

## TITLE III—BANK INSURANCE ACTIVITIES

Sec. 301. National bank and holding company insurance activities.

Sec. 302. National bank community development insurance activities.

Sec. 303. Redomestication of mutual life insurers.

## TITLE IV—THRIFT CHARTER CONVERSION

### Subtitle A—Status of Banks and Savings Associations

Sec. 400. Short title.

Sec. 401. Termination of Federal savings associations; Treatment of State savings associations as banks for purposes of Federal banking law.

Sec. 402. Treatment of certain activities and affiliations of bank holding companies resulting from this Act.

Sec. 403. Transition provisions for activities of savings associations which convert into or become treated as banks.

Sec. 404. Registration of bank holding companies resulting from conversions of savings associations to banks or treatment of savings associations as banks.

Sec. 405. Additional transition provisions and special rules.

Sec. 406. Technical and conforming amendments.

Sec. 407. References to savings associations and State banks in Federal law.

Sec. 408. Repeal of Home Owner's Loan Act.

Sec. 409. Effective date; definitions.

### Subtitle B—Transfer of Functions, Personnel, and Property

- Sec. 421. Reorganization of OTS into OCC.  
 Sec. 422. Savings provision.  
 Sec. 423. Cost of funds indexes.  
 Sec. 424. References in Federal law to Director of the Office of Thrift Supervision.  
 Sec. 425. Reconfiguration of FDIC Board of Directors as a result of removal of Director of the Office of Thrift Supervision.

Subtitle C—Merger of Deposit Insurance Funds

- Sec. 431. Merger of the BIF and SAIF.

TITLE V—TECHNICAL CORRECTIONS

- Sec. 501. Foreign bank residency requirements.  
 Sec. 502. Interstate branching.

1 **TITLE I—BANK SECURITIES AC-**  
 2 **TIVITIES AND AFFILIATIONS**  
 3 **WITH SECURITIES FIRMS AND**  
 4 **OTHER FINANCIAL COMPA-**  
 5 **NIES**

6 **Subtitle A—Securities Activities**

7 **SEC. 101. ANTI-AFFILIATION PROVISION OF THE BANKING**  
 8 **ACT OF 1933 REPEALED.**

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

12 (b) CONFORMING AMENDMENT TO SECTION 32.—  
 13 Section 32 (12 U.S.C. 78) of the Banking Act of 1933  
 14 is amended by adding at the end the following sentence:  
 15 “This section shall not apply so as to prohibit an officer,  
 16 director, or employee of a securities affiliate (as defined  
 17 in section 2 of the Financial Services Holding Company  
 18 Act of 1997) or a special operating subsidiary (as defined

1 in section 5136D of Revised Statutes or referenced in un-  
2 designated paragraph 20 of section 9 of the Federal Re-  
3 serve Act) that is subject to the Financial Services Hold-  
4 ing Company Act from serving at the same time as an  
5 officer, director, or employee of a member bank affiliated  
6 with that securities affiliate pursuant to section 10 of such  
7 Act or with that special operating subsidiary as defined  
8 in section 5136D of the Revised Statutes or referenced  
9 in undesignated paragraph 20 of section 9 of the Federal  
10 Reserve Act. This section shall not apply so as to prohibit  
11 an officer, director, or employee of an investment company  
12 registered under the Investment Company Act of 1940 or  
13 an investment adviser registered under the Investment Ad-  
14 visers Act of 1940 from serving at the same time as an  
15 officer, director, or employee of a member bank.”.

16 **SEC. 102. FINANCIAL SERVICES HOLDING COMPANIES AU-**  
17 **THORIZED TO HAVE SECURITIES AFFILIATES.**

18 Section 4(c) of the Bank Holding Company Act of  
19 1956 (12 U.S.C. 1843(c)) is amended—

20 (1) by striking “or” at the end of paragraph  
21 (13);

22 (2) by striking the period at the end of para-  
23 graph (14) and inserting “; or “; and

24 (3) by adding after paragraph (14) the follow-  
25 ing new paragraph:

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

3 **SEC. 103. ESTABLISHMENT AND OPERATIONS OF SECURI-**  
4           **TIES AFFILIATES.**

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

8 **“§ 10. Securities activities**

9           “(a) ACTIVITIES PERMISSIBLE FOR SECURITIES AF-  
10 FILIATES.—

11           “(1) IN GENERAL.—A securities affiliate may  
12 engage in one or more of the following activities:

13           “(A) Underwrite, deal in, broker, place, or  
14 distribute securities of any type, provide invest-  
15 ment advice regarding securities of any type,  
16 and engage in other securities activities.

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

20           “(C) Engage in, or acquire the shares of a  
21 company engaged in any activity if—

22           “(i) a provision of section 4(c) permits  
23 financial services holding companies gen-  
24 erally to engage in that activity or acquire  
25 those shares; and

1 “(ii) either—

2 “(I) the Board permits the finan-  
3 cial services holding company to en-  
4 gage in that activity or acquire those  
5 shares through the securities affiliate;  
6 or

7 “(II) a provision of section 4(c)  
8 permits the financial services holding  
9 company to engage in such activity or  
10 acquire such shares without the  
11 Board’s approval.

12 “(2) FACTOR TO BE CONSIDERED.—In making  
13 determinations pursuant to this section, the Board  
14 shall take into account the need for securities firms  
15 affiliated with banks to be innovative and competi-  
16 tive.

17 “(b) ACQUIRING INTEREST IN SECURITIES AFFILI-  
18 ATE.—

19 “(1) NOTICE REQUIRED.—A financial services  
20 holding company shall not, without complying with  
21 and receiving approval pursuant to the notice proce-  
22 dure in section 4(j)(1), directly or indirectly acquire  
23 or retain more than 5 percent of the voting shares

1 of, or all or substantially all of the assets of, a secu-  
2 rities affiliate (or a company that would be a securi-  
3 ties affiliate if the Board permitted the financial  
4 services holding company to acquire that company).

5 “(2) CRITERIA FOR APPROVAL.—The Board  
6 shall disapprove a notice required under paragraph  
7 (1) unless the Board determines that the require-  
8 ments of the following subparagraphs have been  
9 met:

10 “(A) CAPITAL.—

11 “(i) DEPOSITORY INSTITUTIONS.—

12 “(I) The lead depository institu-  
13 tion of the financial services holding  
14 company is well capitalized.

15 “(II) Well capitalized depository  
16 institutions control at least 80 percent  
17 of the aggregate total risk-weighted  
18 assets of depository institutions con-  
19 trolled by the financial services hold-  
20 ing company.

21 “(III) All depository institutions  
22 controlled by the financial services  
23 holding company are well capitalized  
24 or adequately capitalized.

1           “(ii) RECENTLY ACQUIRED DEPOSI-  
2           TORY INSTITUTIONS.—Depository institu-  
3           tions acquired by a financial services hold-  
4           ing company during the 12-month period  
5           preceding the submission of a notice under  
6           paragraph (1) may be excluded for pur-  
7           poses of clause (i)(II) if—

8                     “(I) the financial services holding  
9                     company has submitted a plan to the  
10                    appropriate Federal banking agency  
11                    to restore the capital of the institution  
12                    and the plan has been accepted by  
13                    such agency; and

14                   “(II) all such institutions that  
15                    are excluded for the purposes of  
16                    clause (i)(II) represent, in the aggre-  
17                    gate, less than 25 percent of the ag-  
18                    gregate total risk-weighted assets of  
19                    all depository institutions controlled  
20                    by the financial services holding com-  
21                    pany.

22           “(iii) FINANCIAL SERVICES HOLDING  
23           COMPANY.—The financial services holding

1 company is (and immediately after the ac-  
2 quisition of a securities affiliate would con-  
3 tinue to be) adequately capitalized under  
4 the capital standards applicable, if any, to  
5 such financial services holding company.

6 “(iv) FOREIGN BANKS AND COMPA-  
7 NIES.—For purposes of applying this sub-  
8 section and other provisions of this section,  
9 the Board shall establish and apply com-  
10 parable capital standards for the acquisi-  
11 tion retention, and operation of a securities  
12 affiliate in the United States by a foreign  
13 bank that operates a branch or agency or  
14 owns or controls a bank or commercial  
15 lending company in the United States, and  
16 any company that owns or controls such a  
17 foreign bank, giving due regard to the  
18 principle of national treatment and equal-  
19 ity of competitive opportunity.

20 “(B) ALTERNATIVE CAPITAL TREATMENT  
21 FOR WELL CAPITALIZED FINANCIAL SERVICES  
22 HOLDING COMPANIES.—

23 “(i) IN GENERAL.—A financial serv-  
24 ices holding company and the depository  
25 institution subsidiaries of such company

1 shall be deemed to have met the capital re-  
2 quirements set forth in subparagraph (A)  
3 if—

4 “(I) the holding company files a  
5 written notice with the Board of such  
6 company’s election to meet such cap-  
7 ital requirements in the manner pro-  
8 vided in this subparagraph;

9 “(II) all depository institutions  
10 controlled by the financial services  
11 holding company are at least ade-  
12 quately capitalized; and

13 “(III) the financial services hold-  
14 ing company is (and immediately after  
15 the acquisition of a securities affiliate  
16 would continue to be) well capitalized.

17 “(ii) LOSSES INCURRED BY FDIC.—A  
18 financial services holding company which  
19 makes an election under clause (i) in con-  
20 nection with the acquisition of control of  
21 any securities affiliate shall be liable for  
22 any loss incurred by the Federal Deposit  
23 Insurance Corporation, or any loss which  
24 the Federal Deposit Insurance Corporation

1 reasonably anticipates incurring in connec-  
2 tion with—

3 “(I) the default of any insured  
4 depository institution controlled by  
5 the financial services holding com-  
6 pany; or

7 “(II) any assistance provided by  
8 the Corporation to any insured deposi-  
9 tory institution in danger of default  
10 that is controlled by the financial  
11 services holding company.

12 “(C) MANAGERIAL RESOURCES.—

13 “(i) IN GENERAL.—The financial  
14 services holding company and each deposi-  
15 tory institution subsidiary of such com-  
16 pany—

17 “(I) are well managed; and

18 “(II) were well managed during  
19 the 12-month period preceding the ac-  
20 quisition of a securities affiliate (but  
21 for purposes of this subparagraph the  
22 Board may disregard any depository  
23 institution acquired by the financial  
24 services holding company during that  
25 period).

1           “(ii) SECURITIES ACTIVITIES.—The  
2           financial services holding company has the  
3           managerial resources to conduct the pro-  
4           posed securities activities safely and sound-  
5           ly.

6           “(D) INTERNAL CONTROLS.—The financial  
7           services holding company has established ade-  
8           quate policies and procedures to manage finan-  
9           cial and operational risks, to provide reasonable  
10          assurance of compliance with this section and  
11          other applicable laws, and to provide reasonable  
12          assurance of maintenance of corporate sepa-  
13          rateness within the financial services holding  
14          company.

15          “(E) NO DETRIMENTAL EFFECT ON FI-  
16          NANCIAL SERVICES HOLDING COMPANY OR ITS  
17          SUBSIDIARY DEPOSITORY INSTITUTIONS.—The  
18          acquisition of a securities affiliate would not ad-  
19          versely affect the safety and soundness of—

20                 “(i) the financial services holding  
21                 company; or

22                 “(ii) any depository institution sub-  
23                 sidiary of the financial services holding  
24                 company.

1           “(F) CONCENTRATION OF RESOURCES.—

2           The acquisition of a securities affiliate would  
3           not result in an undue concentration of re-  
4           sources in the financial services business.

5           “(G) RESPONSIVENESS TO COMMUNITY

6           NEEDS.—The lead insured depository institu-  
7           tion subsidiary of the financial services holding  
8           company and insured depository institutions  
9           controlling at least 80 percent of the aggregate  
10          total risk-weighted assets of insured depository  
11          institutions controlled by the financial services  
12          holding company have achieved a ‘satisfactory  
13          record of meeting community credit needs’, or  
14          better, during the most recent examination of  
15          such insured depository institutions.

16          “(3) LIMITED NOTICE PROCEDURES FOR PRO-

17          POSALS BY WELL CAPITALIZED AND WELL MANAGED

18          COMPANIES TO ACQUIRE ADDITIONAL SECURITIES

19          AFFILIATES.—A financial services holding company

20          may, without providing the notice required under

21          paragraph (1), directly or indirectly acquire the

22          shares or substantially all of the assets of any com-

23          pany that is engaged in activities described in sub-

24          paragraph (A) or (B) of subsection (a)(1), if—

1           “(A) the financial services holding com-  
2           pany previously received the Board’s approval  
3           under paragraph (1) to control a securities af-  
4           filiate and continues to control the securities af-  
5           filiate pursuant to that approval;

6           “(B) the acquisition proposal qualifies  
7           under section 4(j)(4);

8           “(C) the financial services holding com-  
9           pany provides the written notification required  
10          in section 4(j)(5); and

11          “(D) the acquisition would not result in an  
12          undue concentration of resources in the finan-  
13          cial services business.

14          “(4) APPLICATION FEE.—Notwithstanding any  
15          other provision of this Act, no financial services  
16          holding company may acquire any securities affiliate  
17          or make any additional investment in a securities af-  
18          filiate in accordance with subsection (c) unless the  
19          Board has received, from the company, full payment  
20          of a fee which the Board shall impose in accordance  
21          with section 5(h).

22          “(c) ADDITIONAL INVESTMENT IN SECURITIES AF-  
23          FILIATE.—

24          “(1) PRIOR NOTICE REQUIRED.—A financial  
25          services holding company that has acquired control

1 of a securities affiliate under this section shall not,  
2 directly or indirectly, make any additional invest-  
3 ment in the securities affiliate that is considered  
4 capital for purposes of any capital requirement im-  
5 posed on the securities affiliate under the Securities  
6 Exchange Act of 1934 (other than an extension of  
7 credit under a revolving credit agreement approved  
8 by the Board), unless the financial services holding  
9 company gives the Board prior written notice of the  
10 proposed investment and the Board—

11 “(A) issues a written statement of the  
12 Board’s intent not to disapprove the notice; or

13 “(B) does not disapprove the notice within  
14 30 days after the notice is filed.

15 “(2) NO PRIOR NOTICE REQUIRED FOR CER-  
16 TAIN FINANCIAL SERVICES HOLDING COMPANIES.—

17 “(A) IN GENERAL.—A financial services  
18 holding company shall not be required to pro-  
19 vide prior notice under paragraph (1) if after  
20 making any investment described in paragraph  
21 (1)—

22 “(i) the financial services holding  
23 company would be adequately capitalized  
24 under the capital standards applicable, if

1 any, to such financial services holding com-  
2 pany and each of the financial services  
3 holding company's subsidiary depository  
4 institutions would be well capitalized; and

5 “(ii) the financial services holding  
6 company and each of its subsidiary depository  
7 institutions are well managed (but for  
8 purposes of this clause the Board may dis-  
9 regard any depository institution acquired  
10 by the financial services holding company  
11 during the previous 12-month period).

12 “(B) SUBSEQUENT NOTICE.—A financial  
13 services holding company that makes an invest-  
14 ment pursuant to subparagraph (A) shall pro-  
15 vide written notice to the Board of the addi-  
16 tional investment within 10 days after making  
17 the investment.

18 “(3) CRITERIA FOR DISAPPROVING NOTICE.—  
19 The Board may disapprove a notice filed under  
20 paragraph (1) if—

21 “(A) any depository institution affiliate of  
22 the securities affiliate is undercapitalized; or

1           “(B) the Board determines that the finan-  
2           cial services holding company would be under-  
3           capitalized under the capital standards applica-  
4           ble, if any, to such financial services holding  
5           company after making the investment or that  
6           the investment would otherwise be unsafe or  
7           unsound.

8           “(4) EMERGENCY APPROVAL.—Notwithstanding  
9           any provision of this subsection, in the event of ad-  
10          verse market conditions, or concerns regarding the  
11          financial or operational condition of the securities  
12          affiliate, the Board may approve any additional in-  
13          vestment in the securities affiliate on an emergency  
14          basis if such additional investment does not ad-  
15          versely affect the safety and soundness of all insured  
16          depository institution affiliates of such securities af-  
17          filiate and does not diminish the ability of the finan-  
18          cial services holding company to maintain an appro-  
19          priate amount of capital in all such insured deposit-  
20          tory institutions.

21          “(d) PROVISIONS APPLICABLE IF AFFILIATED DE-  
22          POSITORY INSTITUTION CEASES TO BE WELL CAPITAL-  
23          IZED.—

1           “(1) HOLDING COMPANY ACTION REQUIRED IF  
2 AFFILIATED INSTITUTIONS ARE NOT WELL CAPITAL-  
3 IZED.—

4           “(A) APPLICABILITY.—This paragraph  
5 shall apply if—

6           “(i) the lead depository institution of  
7 the financial services holding company is  
8 not well capitalized, or

9           “(ii) well capitalized depository insti-  
10 tutions do not control at least 80 percent  
11 of the aggregate total risk-weighted assets  
12 of depository institutions affiliated with the  
13 securities affiliate.

14           “(B) CAPITAL MAINTENANCE AGREE-  
15 MENT.—Within 30 days after subparagraph (A)  
16 becomes applicable with respect to any financial  
17 services holding company, such company shall  
18 execute an agreement with the Board—

19           “(i) to meet the capital requirements  
20 of subparagraph (A) within a reasonable  
21 period of time; or

22           “(ii) to divest control of the depository  
23 institution in an orderly manner within  
24 180 days, or within such additional period

1 of time as the Board may determine is rea-  
2 sonably required in order to effect such di-  
3 vestiture.

4 “(C) RESTRICTIONS ON CERTAIN SECURI-  
5 TIES ACTIVITIES.—If a financial services hold-  
6 ing company fails to meet the requirements of,  
7 or comply with the agreement executed pursu-  
8 ant to, subparagraph (B), a securities affiliate  
9 of such financial services holding company shall  
10 not, beginning 180 days after subparagraph (A)  
11 becomes applicable with respect to such com-  
12 pany, agree to underwrite or deal in, any securi-  
13 ties other than—

14 “(i) securities expressly authorized by  
15 section 5136 of the Revised Statutes of the  
16 United States as permissible for a national  
17 bank to underwrite or deal in;

18 “(ii) securities backed by or represent-  
19 ing interests in notes, drafts, acceptances,  
20 loans, leases, receivables, other obligations,  
21 or pools of any such obligations; or

22 “(iii) securities issued by an open-end  
23 investment company registered under the  
24 Investment Company Act of 1940.

1           “(D) EXCEPTION.—The Board may permit  
2           the securities affiliate of a financial services  
3           holding company described in subparagraph (C)  
4           to underwrite or deal in securities not described  
5           in clauses (i) through (iii) of such subparagraph  
6           for a period of 1 year from the date on which  
7           subparagraph (A) first becomes applicable with  
8           respect to such company, if—

9                   “(i) the financial services holding  
10                  company submits a capital restoration plan  
11                  to the Board specifying the steps the fi-  
12                  nancial services holding holding company  
13                  will take to meet the requirements of sub-  
14                  section (b)(2)(A), and containing such  
15                  other information as the Board may re-  
16                  quire; and

17                   “(ii) the Board approves the plan.

18           “(E) EXTENSION OF PERIOD.—

19                   “(i) IN GENERAL.—Upon application  
20                  by a financial services holding company,  
21                  the Board may extend, for not more than  
22                  1 year at a time, the period provided in  
23                  subparagraph (C).

1                   “(ii) MAXIMUM EXTENSION.—No ex-  
2                   tension under clause (i) of the period pro-  
3                   vided in subparagraph (C) shall, in the ag-  
4                   gregate, exceed 2 years.

5                   “(2) DIVESTITURE OF SECURITIES AFFILI-  
6                   ATE.—

7                   “(A) IN GENERAL.—A financial services  
8                   holding company shall divest itself of the securi-  
9                   ties affiliate if any of the financial services  
10                  holding company’s subsidiary depository institu-  
11                  tions has been undercapitalized for more than 6  
12                  months.

13                  “(B) EXTENDING TIME.—The Board may  
14                  provide additional time, not exceeding 18  
15                  months, for a divestiture under subparagraph  
16                  (A) if—

17                         “(i) the appropriate Federal banking  
18                         agency or, in the case of a foreign bank or  
19                         company that owns or controls a foreign  
20                         bank, the Board, has approved the under-  
21                         capitalized institution’s capital restoration  
22                         plan; and

23                         “(ii) the Board determines that the  
24                         securities affiliate poses no significant risk  
25                         to any affiliated depository institution.

1       “(e) SECURITIES AFFILIATE EXCLUDED IN DETER-  
2 MINING WHETHER FINANCIAL SERVICES HOLDING COM-  
3 PANY IS ADEQUATELY CAPITALIZED.—

4               “(1) IN GENERAL.—In determining whether a  
5 financial services holding company is adequately cap-  
6 italized—

7                       “(A) the financial services holding compa-  
8 ny’s capital and total assets shall each be re-  
9 duced by—

10                               “(i) an amount equal to the amount  
11 of the financial services holding company’s  
12 equity investment in any securities affili-  
13 ate; and

14                               “(ii) an amount equal to the amount  
15 of any extensions of credit by the financial  
16 services holding company to any securities  
17 affiliate that are considered capital for  
18 purposes of any capital requirement im-  
19 posed on the securities affiliate under sec-  
20 tion 15(e)(3) of the Securities Exchange  
21 Act of 1934; and

22                       “(B) the securities affiliate’s assets and li-  
23 abilities shall not be consolidated with those of  
24 the financial services holding company.

1           “(2) EXCEPTION FOR NONSECURITIES ACTIVI-  
2           TIES.—Paragraph (1) shall not apply to the extent  
3           that the Board determines by regulation or order  
4           that—

5                   “(A) an item described in such paragraph  
6                   relates to activities which are not described in  
7                   subparagraph (A) or (B) of subsection (a)(1);  
8                   or

9                   “(B) another method of adjusting capital  
10                  is more appropriate to ensure the safety and  
11                  soundness of depository institutions.

12           “(3) EXCEPTION FOR COMPANIES ENGAGED  
13           PREDOMINANTLY IN SECURITIES ACTIVITIES.—Para-  
14           graph (1) shall not apply to an investment bank  
15           holding company which is predominantly engaged in  
16           securities activities on a consolidated basis.

17           “(f) SAFEGUARDS.—Each financial services holding  
18           company and each subsidiary of any such company shall  
19           comply with all applicable safeguard requirements of sec-  
20           tion 11.

21           “(g) ACTIVITIES NOT PERMISSIBLE FOR DEPOSI-  
22           TORY INSTITUTIONS.—

1           “(1) IN GENERAL.—A financial services holding  
2 company that acquires control of a securities affili-  
3 ate shall not, after the end of the 1-year period be-  
4 ginning on the date of such acquisition, permit any  
5 depository institution or any subsidiary (except a  
6 special operating subsidiary as defined in section  
7 5136D of the Revised Statutes or referenced in un-  
8 designated paragraph 20 of section 9 of the Federal  
9 Reserve Act or section 24(d)(1)(C) of the Federal  
10 Deposit Insurance Act), of any depository institu-  
11 tion, which is controlled by such holding company—

12                   “(A) to engage, directly or indirectly, in  
13 the United States—

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

20                           “(ii) in underwriting or dealing in any  
21 other securities, except securities expressly  
22 authorized by section 5136 of the Revised  
23 Statutes of the United States as permis-  
24 sible for a national bank to underwrite or  
25 deal in; or

1           “(B) to make an equity investment in any  
2 securities affiliate.

3           “(2) EXCEPTION FOR CERTAIN EDGE ACT AND  
4 AGREEMENT CORPORATIONS.—The limitations in  
5 paragraph (1)(A) shall not apply with respect to ac-  
6 tivities conducted by a subsidiary of a financial serv-  
7 ices holding company which is held pursuant to sec-  
8 tion 25 or 25A of the Federal Reserve Act or section  
9 4(c)(13) of this Act.

10           “(3) RULE OF CONSTRUCTION.—No provision  
11 of this subsection shall be construed as permitting a  
12 securities affiliate to accept deposits in contravention  
13 of section 21 of the Banking Act of 1933.

14           “(h) APPROVAL OF SECURITIES ACTIVITIES UNDER  
15 SECTION 4(C)(8) RESTRICTED.—The Board shall deny  
16 any notice or application by a financial services holding  
17 company under authority of section 4(c)(8) to engage in,  
18 or acquire the shares of a company engaged in, underwrit-  
19 ing or dealing in securities in the United States, other  
20 than securities expressly authorized by section 5136 of the  
21 Revised Statutes of the United States as permissible for  
22 a national bank to underwrite or deal in.

23           “(i) BANKERS’ BANKS.—

1           “(1) IN GENERAL.—For purposes of this sec-  
2           tion, each shareholder of or participant in a com-  
3           pany that controls a depository institution described  
4           in section 5169(b)(1) of the Revised Statutes of the  
5           United States or in a similar statute of any State,  
6           and each subsidiary of such a shareholder or partici-  
7           pant, shall be treated as if such shareholder, partici-  
8           pant, or subsidiary were a subsidiary of that com-  
9           pany.

10           “(2) EXCEPTION.—This subsection shall not  
11           apply with respect to a shareholder or participant in  
12           a company described in subparagraph (A) (or any  
13           subsidiary of such shareholder or participant) if the  
14           shareholder or participant, and the affiliates of any  
15           such shareholder or participant, do not, in the ag-  
16           gregate, control more than 5 percent of any class of  
17           voting shares of such company.

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

20           “(1) IN GENERAL.—Notwithstanding section  
21           4(a), a financial services holding company may di-  
22           rectly or indirectly acquire or control, whether as  
23           principal, on behalf of one or more entities (includ-  
24           ing entities, other than a depository institution or

1 subsidiary of a depository institution, that the finan-  
2 cial services holding company controls), or otherwise,  
3 shares, assets, or ownership interests (including  
4 without limitation debt or equity securities, partner-  
5 ship interests, trust certificates, or other instru-  
6 ments representing ownership) of a company or  
7 other entity, whether or not constituting control of  
8 such company or entity, engaged in activities not au-  
9 thorized pursuant to section 4 if—

10 “(A) the shares, assets, or ownership inter-  
11 ests are not acquired or held by a depository in-  
12 stitution or a subsidiary of a depository institu-  
13 tion;

14 “(B) such shares, assets, or ownership in-  
15 terests are acquired and held by a securities af-  
16 filiate or an affiliate of a securities affiliate as  
17 part of a bona fide underwriting or investment  
18 banking activity, which includes investment ac-  
19 tivities engaged in for the purpose of apprecia-  
20 tion and ultimate resale or other disposition of  
21 the investment, and such shares, assets, or own-  
22 ership interests are held for such a period of  
23 time as will permit the sale or disposition there-  
24 of on a reasonable basis consistent with the na-  
25 ture of such activities; and

1           “(C) during the period such shares, assets,  
2           or ownership interests are held, the financial  
3           services holding company does not actively man-  
4           age or operate the company or entity except in-  
5           sofar as necessary to achieve the objectives of  
6           subparagraph (B).

7           “(2) NO EXPANSION OF UNDERWRITING ACTIVI-  
8           TIES.—No provision of this subsection shall be con-  
9           strued as authorizing any financial services holding  
10          company, or any subsidiary of any such company, to  
11          underwrite or deal in any security.

12          “(3) ACQUISITION FEE.—No financial services  
13          holding company may acquire any company or other  
14          entity under paragraph (1) unless the Board has re-  
15          ceived, from the holding company, full payment of a  
16          fee which the Board shall impose in accordance with  
17          section 5(h).

18          “(k) REGISTRATION FEES.—In the case of any finan-  
19          cial services holding company which controls—

20                 “(1) a securities affiliate; or

21                 “(2) any company or entity pursuant to sub-  
22          section (j), the Board shall assess an annual reg-  
23          istration fee in accordance with section 5(h) on such

1 holding company with respect to each affiliate, com-  
2 pany, or other entity referred to in paragraph (1) or  
3 (2) which is controlled by such holding company.

4 “(1) DEFINITIONS.—For purposes of this section and  
5 sections 11 and 12, the following definitions shall apply:

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

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

12 “(3) SECURITY.—

13 “(A) IN GENERAL.—The term ‘security’  
14 has the meaning given to such term in section  
15 3(a)(10) of the Securities Exchange Act of  
16 1934.

17 “(B) EXCEPTIONS.—Notwithstanding any  
18 other provision of law, the term ‘security’ does  
19 not include any of the following for purposes of  
20 this section other than subsection (a):

21 “(i) A contract of insurance.

22 “(ii) A deposit account, savings ac-  
23 count, certificate of deposit, or other de-  
24 posit instrument issued by a depository in-  
25 stitution.

1           “(iii) A share account issued by a sav-  
2           ings association if the account is insured  
3           by the Federal Deposit Insurance Corpora-  
4           tion.

5           “(iv) A banker’s acceptance.

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

8           “(vi) A debit account at a depository  
9           institution arising from a credit card or  
10          similar arrangement.

11          “(vii) A loan or loan participation (as  
12          determined by the Board), including any  
13          debt security issued in connection with sov-  
14          ereign debt restructuring which a bank  
15          purchases and sells pursuant to such  
16          bank’s lending authority.

17          “(viii) A qualified financial contract  
18          (as defined in section 11(e)(8)(D)(i) of the  
19          Federal Deposit Insurance Act), as deter-  
20          mined by the Board, after consultation  
21          with and consideration of the views of the  
22          Securities and Exchange Commission, ex-  
23          cept that, for purposes of this section other  
24          than subsection (a), such term does not in-  
25          clude—

1           “(I) any securities contract (as  
2 defined in section 11(e)(8)(D)(ii) of  
3 such Act) that is based on or directly  
4 relates to a security that is not ex-  
5 pressly authorized by section 5136 of  
6 the Revised Statutes of the United  
7 States as permissible for a national  
8 bank to underwrite or deal in unless  
9 the Board determines, after consulta-  
10 tion with and consideration of the  
11 views of the Securities and Exchange  
12 Commission, that such securities con-  
13 tract is appropriate for a bank to un-  
14 derwrite or deal in, taking into ac-  
15 count other qualified financial con-  
16 tracts which a bank is permitted to  
17 underwrite or deal in; and

18           “(II) any agreement, contract, or  
19 transaction which is determined by  
20 the Federal Deposit Insurance Cor-  
21 poration in a regulation prescribed  
22 after the date of the enactment of the  
23 Financial Services Competitiveness  
24 Act of 1997 to be a qualified financial  
25 contract unless the Board determines,

1 after consultation with and consider-  
2 ation of the views of the Securities  
3 and Exchange Commission, that such  
4 agreement, contract, or transaction  
5 shall be treated as a qualified finan-  
6 cial contract for purposes of this sec-  
7 tion.

8 “(C) BOARD’S AUTHORITY TO EXEMPT  
9 TRADITIONAL BANKING PRODUCTS.—Notwith-  
10 standing any other provision of law, the Board  
11 may, by regulation or order, exempt a banking  
12 product from the definition of security if the  
13 Board finds that—

14 “(i) the product is available in the  
15 course of a banking business and is more  
16 appropriately regulated as a banking prod-  
17 uct; and

18 “(ii) the exemption is otherwise con-  
19 sistent with the purposes of this section,  
20 the maintenance of fair and orderly mar-  
21 kets, and the protection of investors.

22 “(D) DEFINITION FOR LIMITED PUR-  
23 POSE.—The fact that a particular instrument is  
24 excluded pursuant to subparagraph (B) or (C)  
25 from the definition of security for purposes of

1 this section shall not be construed as finding or  
2 implying that such instrument is or is not a se-  
3 curity for purposes of Federal securities laws.

4 “(E) RESERVATION OF AUTHORITY TO  
5 CHARTERING AUTHORITY.—A determination by  
6 the Board under this paragraph shall not be  
7 construed in any way as authorizing a bank to  
8 provide any product or service that the bank is  
9 not otherwise authorized to provide under rel-  
10 evant law governing the activities and powers of  
11 the bank.

12 “(F) CONSULTATION WITH COMMISSION.—

13 “(i) NOTICE AND CONSULTATION RE-  
14 QUIRED.—In determining whether to ex-  
15 empt a banking product pursuant to sub-  
16 paragraph (C), the Board shall provide  
17 written notice to, consult with, and con-  
18 sider the views of the Securities and Ex-  
19 change Commission.

20 “(ii) RESPONSE AND PUBLICATION.—

21 If the Securities and Exchange Commis-  
22 sion comments in writing on a proposed  
23 determination of the Board, the Board  
24 shall—

1                   “(I) respond in writing to such  
2                   written comment; and

3                   “(II) at the request of such com-  
4                   mission, publish such comment and  
5                   response in the FEDERAL REGISTER  
6                   at the time the determination becomes  
7                   effective.”.

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

10           (1) CONVERSION TO (4)(c)(15) SUBSIDIARY.—

11           (A) IN GENERAL.—Except as provided in  
12           subparagraph (B) and paragraphs (3) and (4),  
13           effective 18 months after the date of enactment  
14           of this Act, no financial services holding com-  
15           pany may engage in, or retain the shares of any  
16           company engaged in, underwriting or dealing in  
17           securities based on the approval of an applica-  
18           tion under section 4(c)(8) of the Bank Holding  
19           Company Act of 1956 (as in effect before the  
20           date of the enactment of the Financial Services  
21           Competitiveness Act of 1997) unless the finan-  
22           cial services holding company has obtained the  
23           Board’s approval to retain the shares of that  
24           company under section 10.

1 (B) EXCEPTION FOR BANK ELIGIBLE SE-  
2 CURITIES.—Subparagraph (A) shall not apply  
3 with respect to underwriting or dealing in—

4 (i) securities expressly authorized by  
5 section 5136 of the Revised Statutes of the  
6 United States as permissible for a national  
7 bank to underwrite or deal in; and

8 (ii) municipal securities.

9 (2) EXTENDING TIME.—

10 (A) IN GENERAL.—The Board may, for  
11 good cause shown, extend the time provided  
12 under paragraph (1) for not more than 18  
13 months.

14 (B) PENDING NOTICES.—If a financial  
15 services holding company has filed a notice  
16 under section 10(b) of the Bank Holding Com-  
17 pany Act of 1956 not later than 180 days after  
18 the date of enactment of this Act, paragraph  
19 (1) shall not apply with respect to the company  
20 engaged in such underwriting or dealing until  
21 180 days after the Board has acted on the no-  
22 tice.

23 (3) CONVERSION PROCEDURES FOR COMPANIES  
24 PREVIOUSLY AUTHORIZED TO CONDUCT SECURITIES

1       ACTIVITIES.—Any financial services holding com-  
2       pany that controls a company engaged in underwrit-  
3       ing and dealing in corporate debt and equity securi-  
4       ties pursuant to an order issued by the Board under  
5       section 4(c)(8) of the Bank Holding Company Act of  
6       1956 before the date of enactment of the Financial  
7       Services Competitiveness Act of 1997 shall be treat-  
8       ed as follows:

9               (A) REVENUE TEST AND CERTAIN OTHER  
10              RESTRICTIONS.—Upon filing the notice required  
11              under section 10(b) of the Financial Services  
12              Holding Company Act of 1997, the financial  
13              services holding company shall be relieved  
14              from—

15                   (i) the limitation contained in such  
16                   order on the amount of revenue that may  
17                   be derived from securities underwriting  
18                   and dealing activities; and

19                   (ii) any other restriction contained in  
20                   such order that would not be required  
21                   under section 11 of such Act, as permitted  
22                   by the Board.

23               (B) EXAMINATION OF INTERNAL CON-  
24              TROLS.—The financial services holding com-  
25              pany shall not, in connection with action on the

1 notice submitted under section 10(b)(1) of the  
2 Financial Services Holding Company Act of  
3 1997, be subject to an examination of internal  
4 controls under section 10(b)(2)(D) of such Act.

5 (4) RETENTION OF COMPANIES CONDUCTING  
6 LIMITED SECURITIES ACTIVITIES.—Notwithstanding  
7 paragraph (1), any financial services holding com-  
8 pany that controls a company engaged in underwrit-  
9 ing and dealing in securities (other than corporate  
10 debt or equity securities) pursuant to an order is-  
11 sued by the Board under section 4(c)(8) of the Bank  
12 Holding Company Act of 1956 before the date of en-  
13 actment of the Financial Services Competitiveness  
14 Act of 1997 may retain control of such company, so  
15 long as such company complies with all of the limita-  
16 tions, restrictions and conditions, including the limi-  
17 tation on the revenue that may be derived from such  
18 underwriting or dealing activities contained in such  
19 order.

20 **SEC. 104. SAFEGUARDS RELATING TO SECURITIES AFFILI-**  
21 **ATES.**

22 (a) IN GENERAL.—The Bank Holding Company Act  
23 of 1956 (12 U.S.C. 1841 et seq.) is amended—

24 (1) by redesignating sections 11 and 12 as sec-  
25 tions 13 and 14, respectively; and

1           (2) by inserting after section 10 (as added by  
2           section 103 of this Act) the following new section:

3   **“§ 11. Safeguards relating to securities affiliates**

4           “(a) EXTENSIONS OF CREDIT AND ASSET PUR-  
5 CHASES RESTRICTED.—

6           “(1) IN GENERAL.—No depository institution  
7           affiliated with a securities affiliate shall, directly or  
8           indirectly, do any of the following:

9                   “(A) Extend credit in any manner to the  
10                   securities affiliate.

11                   “(B) Issue a guarantee, acceptance, or let-  
12                   ter of credit, including an endorsement or a  
13                   standby letter of credit, for the benefit of the  
14                   securities affiliate.

15                   “(C) Except as provided in paragraph (3),  
16                   purchase for its own account, or for the account  
17                   of any subsidiary of such institution, financial  
18                   assets of the securities affiliate.

19           “(2) EXCEPTION FOR CLEARING SECURITIES.—  
20           Paragraph (1)(A) shall not apply with respect to an  
21           extension of credit by a well capitalized depository  
22           institution to acquire or sell securities if the follow-  
23           ing conditions are met:

1           “(A) The extension of credit is incidental  
2 to clearing transactions in those securities  
3 through that depository institution.

4           “(B) Both the principal of and the interest  
5 on the extension of credit are fully secured by  
6 those securities.

7           “(C) Either—

8               “(i) the extension of credit is to be re-  
9 paid before the close of business on the  
10 same business day; or

11               “(ii) all of the following conditions are  
12 satisfied:

13                   “(I) The securities cannot, in the  
14 ordinary course of business, be cleared  
15 on that business day.

16                   “(II) The extension of credit is to  
17 be repaid before the close of business  
18 on the next business day.

19                   “(III) Extensions of credit sub-  
20 ject to this clause, when aggregated  
21 with all other covered transactions be-  
22 tween the institution and all affiliated  
23 securities affiliates do not exceed 10  
24 percent of the institution’s capital  
25 stock and surplus.

1 “(D) Either—

2 “(i) the securities are securities ex-  
3 pressly authorized by section 5136 of the  
4 Revised Statutes of the United States as  
5 permissible for a national bank to under-  
6 write or deal in; or

7 “(ii) the Board permits transactions  
8 under this paragraph in securities not de-  
9 scribed in clause (i) and the securities af-  
10 filiate provides the depository institution  
11 with such additional security or other as-  
12 surance of performance, if any, as the  
13 Board shall require to prevent such trans-  
14 actions from posing any appreciable risk to  
15 the institution.

16 “(3) EXCEPTIONS FOR CERTAIN SECURITIES  
17 PURCHASED FOR A DEPOSITORY INSTITUTION’S OWN  
18 ACCOUNT.—Paragraph (1)(C) shall not apply with  
19 respect to purchases at the current market value  
20 (based on reliable and regularly available price  
21 quotations) of—

22 “(A) securities expressly authorized by sec-  
23 tion 5136 of the Revised Statutes of the United  
24 States as permissible for a national bank to un-  
25 derwrite or deal in; or

1 “(B) securities that—

2 “(i) the securities affiliate has been  
3 marking to market daily; and

4 “(ii) are rated investment grade by at  
5 least one nationally recognized statistical  
6 rating organization.

7 “(4) OTHER EXCEPTIONS.—A well capitalized  
8 depository institution may engage in a transaction  
9 described in paragraph (1), if—

10 “(A) the transaction is fully secured in ac-  
11 cordance with section 23A(c) of the Federal Re-  
12 serve Act; and

13 “(B) the aggregate amount of covered  
14 transactions between the institution and all se-  
15 curities affiliates of the financial services hold-  
16 ing company, excluding transactions permitted  
17 under paragraph (2)(C)(i) or (3)(A), does not  
18 exceed 10 percent of the institution’s capital  
19 stock and surplus.

20 “(b) CREDIT ENHANCEMENT RESTRICTED.—

21 “(1) IN GENERAL.—No depository institution  
22 affiliated with a securities affiliate shall, directly or  
23 indirectly, extend credit, or issue or enter into a  
24 standby letter of credit, asset purchase agreement,  
25 indemnity, guarantee, insurance, or other facility,

1 for the purpose of enhancing the marketability of a  
2 securities issue underwritten by the securities affili-  
3 ate.

4 “(2) DEFINITION OF TERM BY BOARD.—The  
5 Board shall prescribe a definition for the term ‘for  
6 the purpose of enhancing the marketability of a se-  
7 curities issue’ for purposes of paragraph (1).

8 “(3) EXCEPTION FOR BANK ELIGIBLE SECURI-  
9 TIES.—Paragraph (1) shall not apply with regard to  
10 securities expressly authorized by section 5136 of  
11 the Revised Statutes of the United States as permis-  
12 sible for a national bank to underwrite or deal in.

13 “(4) APPLICATION TO WELL CAPITALIZED DE-  
14 POSITORY INSTITUTIONS.—

15 “(A) IN GENERAL.—A well capitalized de-  
16 pository institution may engage in a transaction  
17 described in paragraph (1) if—

18 “(i) the depository institution has  
19 adopted appropriate limits on exposure on  
20 a consolidated basis to any single customer  
21 whose securities are underwritten by the  
22 securities affiliate; and

23 “(ii) the institution and its securities  
24 affiliate have adopted appropriate proce-  
25 dures, including maintenance of necessary

1 documentary records, to assure than any  
2 such extension of credit, standby letter of  
3 credit, asset purchase agreement, indem-  
4 nity, guarantee, insurance or other facility,  
5 is on an arm's length basis.

6 “(B) ARM’S LENGTH TRANSACTION DE-  
7 SCRIBED.—An extension of credit may be con-  
8 sidered to be on an arm’s length basis if the  
9 terms and conditions are substantially the same  
10 as those prevailing at the time for comparable  
11 transactions involving securities that are not  
12 underwritten by the securities affiliate.

13 “(C) COMPLIANCE WITH PARAGRAPH (1).—  
14 The Board may require, by regulation or order,  
15 compliance with paragraph (1) by well capital-  
16 ized depository institutions exempt under this  
17 paragraph in order to achieve any purpose spec-  
18 ified in subsection (1).

19 “(c) RESTRICTION ON EXTENDING CREDIT TO MAKE  
20 PAYMENTS ON SECURITIES.—

21 “(1) IN GENERAL.—No depository institution  
22 affiliated with a securities affiliate shall, directly or  
23 indirectly, extend credit to an issuer of securities un-  
24 derwritten by the securities affiliate for the purpose

1 of paying the principal of those securities or interest  
2 or dividends on those securities.

3 “(2) EXCEPTIONS FOR CERTAIN EXTENSIONS  
4 OF CREDIT.—Paragraph (1) shall not apply to an  
5 extension of credit for a documented purpose (other  
6 than paying principal, interest, or dividends) if the  
7 timing, maturity, and other terms of the credit,  
8 taken as a whole, are substantially different from  
9 those of the underwritten securities.

10 “(3) EXCEPTIONS FOR BANK ELIGIBLE SECURI-  
11 TIES.—Paragraph (1) shall not apply with respect to  
12 any security expressly authorized by section 5136 of  
13 the Revised Statutes of the United States as permis-  
14 sible for a national bank to underwrite or deal in.

15 “(4) APPLICATION TO WELL CAPITALIZED DE-  
16 POSITORY INSTITUTIONS.—

17 “(A) IN GENERAL.—Paragraph (1) shall  
18 not apply with respect to well capitalized depos-  
19 itory institutions if—

20 “(i) the depository institution has  
21 adopted appropriate limits on exposure on  
22 a consolidated basis to any single customer  
23 whose securities are underwritten by the  
24 securities affiliate; and

1           “(ii) the depository institution has  
2           adopted appropriate procedures, including  
3           maintenance of necessary documentary  
4           records, to assure that any extension of  
5           credit by the depository institution to an  
6           issuer for the purpose of paying the prin-  
7           cipal, interest or dividends on securities  
8           underwritten by the securities affiliate is  
9           on an arm’s length basis.

10           “(B) ARM’S LENGTH TRANSACTION DE-  
11           SCRIBED.—An extension of credit may be con-  
12           sidered to have been made on an arm’s length  
13           basis if the terms and conditions are substan-  
14           tially the same as those prevailing at the time  
15           for comparable transactions with issuers whose  
16           securities are not underwritten by the securities  
17           affiliate.

18           “(C) COMPLIANCE WITH SUBPARAGRAPH  
19           (A).—The Board may require, by regulation or  
20           order, compliance with paragraph (1) by well  
21           capitalized depository institutions exempt under  
22           this paragraph in order to achieve any purpose  
23           specified in subsection (1).

24           “(d) COMMON DIRECTORS AND SENIOR EXECUTIVE  
25           OFFICERS.—

1           “(1) IN GENERAL.—The Board shall, by regula-  
2           tion or order, prescribe the circumstances under  
3           which directors and senior executive officers of a se-  
4           curities affiliate may serve at the same time as di-  
5           rectors or senior executive officers of any affiliated  
6           depository institutions.

7           “(2) STANDARDS.—The Board, in issuing any  
8           regulation or order pursuant to paragraph (1), shall  
9           consider appropriate factors including—

10                   “(A) any burdens imposed by restrictions  
11                   on director and senior executive officer inter-  
12                   locks; and

13                   “(B) the safety and soundness of depository  
14                   institutions and securities affiliates.

15           “(3) EXCEPTION FOR SMALL FINANCIAL SERV-  
16           ICES HOLDING COMPANIES.—

17                   “(A) IN GENERAL.—Notwithstanding para-  
18                   graph (1), a director or senior executive officer  
19                   of a securities affiliate may serve at the same  
20                   time as a director or senior executive officer of  
21                   an affiliated depository institution if that insti-  
22                   tution and all affiliated depository institutions  
23                   have, in the aggregate, total assets of not more  
24                   than \$500,000,000.

1           “(B) INFLATION ADJUSTMENT.—The dol-  
2           lar limitation contained in subparagraph (A)  
3           shall be adjusted annually after December 31,  
4           1997, by the annual percentage increase in the  
5           Consumer Price Index for Urban Wage Earners  
6           and Clerical Workers published by the Bureau  
7           of Labor Statistics.

8           “(4) EXCEPTION FOR CERTAIN REGULATION K  
9           AFFILIATES.—Paragraph (1) shall not prohibit a di-  
10          rector or senior executive officer of a securities affili-  
11          ate from serving at the same time as a director or  
12          senior executive officer of a depository institution  
13          which—

14                 “(A) is organized under section 25 or 25A  
15                 of the Federal Reserve Act;

16                 “(B) is an affiliate of such securities affili-  
17                 ate; and

18                 “(C) principally engages in business out-  
19                 side the United States.

20          “(e) DISCLOSURE REQUIRED BY SECURITIES AFFILI-  
21          ATE.—

22                 “(1) IN GENERAL.—At the time a securities ac-  
23                 count is opened, a securities affiliate shall conspicu-  
24                 ously disclose in writing to each of its customers  
25                 that—

1           “(A) securities sold, offered, or rec-  
2 ommended by the securities affiliate—

3           “(i) are not deposits;

4           “(ii) are not insured by the Federal  
5 Deposit Insurance Corporation;

6           “(iii) are not guaranteed by an affili-  
7 ated insured depository institution;

8           “(iv) are not otherwise an obligation  
9 of an insured depository institution (unless  
10 such is the case); and

11           “(v) with regard to any product that  
12 includes any investment component, are  
13 subject to investment risks including pos-  
14 sible loss of principal invested;

15           “(B) the securities affiliate is not an in-  
16 sured depository institution, and is a corpora-  
17 tion separate from any insured depository insti-  
18 tution; and

19           “(C) the securities affiliate may be under-  
20 writing or dealing in the securities being sold,  
21 offered or recommended, and if so, would have  
22 a financial interest in the transaction.

23           “(2) FORM OF DISCLOSURE.—The disclosures  
24 required by paragraph (1) shall be made in clear  
25 and concise language that—

1           “(A) is readily comprehensible to cus-  
2           tomers of the securities affiliate, and

3           “(B) is designed to promote customer un-  
4           derstanding that uninsured investment products  
5           are not deposits insured by the Federal Deposit  
6           Insurance Corporation.

7           “(3) BOARD AUTHORITY.—Subject to para-  
8           graph (2), the Board may, in the Board’s discretion,  
9           prescribe disclosures in addition to the disclosures  
10          prescribed by paragraph (1).

11          “(f) DISCLOSURE REQUIRED BY INSURED DEPOSI-  
12          TORY INSTITUTIONS.—

13           “(1) IN GENERAL.—No insured depository in-  
14           stitution shall knowingly express any opinion on the  
15           value of, or the advisability of purchasing or selling,  
16           nonbanking products (as defined by the Board) sold  
17           by the insured depository institution or any affiliate  
18           of an insured depository institution unless the in-  
19           sured depository institution conspicuously discloses  
20           in writing to the customer at the time the type of  
21           product is first sold to the customer that—

22           “(A) the insured depository institution or  
23           affiliate (whichever is applicable) is selling the  
24           nonbanking product and has a financial interest  
25           in the transaction (if such is the case);

1                   “(B) the nonbanking products—  
2                    “(i) are not deposits;  
3                    “(ii) are not insured by the Federal  
4                   Deposit Insurance Corporation;  
5                    “(iii) are not guaranteed by the insti-  
6                   tution or any other affiliated insured de-  
7                   pository institution;  
8                    “(iv) are not otherwise an obligation  
9                   of an insured depository institution (unless  
10                  such is the case); and  
11                  “(v) with regard to any nonbanking  
12                  product that includes any investment com-  
13                  ponent, are subject to investment risks in-  
14                  cluding possible loss of principal invested;  
15                  and  
16                  “(C) an affiliate, if involved, is not an in-  
17                  sured depository institution (unless such is the  
18                  case), and is a corporation separate from any  
19                  insured depository institution (unless such is  
20                  not the case).  
21                  “(2) FORM OF DISCLOSURE.—The disclosures  
22                  required by paragraph (1) shall be made in clear  
23                  and concise language that—

1           “(A) is readily comprehensible to cus-  
2           tomers of the insured depository institution,  
3           and

4           “(B) is designed to promote customer un-  
5           derstanding that nonbanking products are not  
6           deposits insured by the Federal Deposit Insur-  
7           ance Corporation.

8           “(3) CUSTOMER ACKNOWLEDGMENT OF DIS-  
9           CLOSURE.—

10           “(A) IN GENERAL.—Whenever any insured  
11           depository institution or securities affiliate  
12           opens an account for the purpose of selling a  
13           nondeposit investment product or products to a  
14           customer, such insured depository institution or  
15           securities affiliate as the case may be, shall ob-  
16           tain a one-time acknowledgment of receipt by  
17           the customer or such disclosures, including the  
18           date of receipt with the customer’s name, ad-  
19           dress, and the account number.

20           “(B) SPECIAL RULE FOR ACCREDITED IN-  
21           VESTORS.—In the case of any customer who is,  
22           or meets the requirements for, an accredited in-  
23           vestor (as defined in section 2(15) of the Secu-  
24           rities Act of 1993), the acknowledgment of the

1 receipt of any disclosure described in subpara-  
2 graph (A) may be obtained by the insured de-  
3 pository institution or securities affiliate at the  
4 time any account is opened by such customer.

5 “(4) BOARD AUTHORITY.—Subject to para-  
6 graph (2), the Board, after consultation with the  
7 other appropriate Federal banking agencies, may  
8 prescribe disclosures in addition to the disclosures  
9 required by paragraph (1).

10 “(g) IMPROPER DISCLOSURE OF CONFIDENTIAL  
11 CUSTOMER INFORMATION PROHIBITED.—

12 “(1) IN GENERAL.—No depository institution  
13 subsidiary of a financial services holding company  
14 shall disclose to any affiliate of such institution  
15 which is not a depository institution, and no affiliate  
16 of such company which is not a depository institu-  
17 tion shall disclose to any other affiliate which is a  
18 depository institution or a subsidiary of such an in-  
19 stitution, any nonpublic customer information (in-  
20 cluding an evaluation of the creditworthiness of an  
21 issuer or other customer of that institution or secu-  
22 rities affiliate), unless it is clearly and conspicuously  
23 disclosed that such information may be commu-  
24 nicated among such persons and the customer is

1 given the opportunity, before the time that the infor-  
2 mation is initially communicated, to direct that such  
3 information not be communicated among such per-  
4 sons.

5 “(2) DEFINITION.—For purposes of paragraph  
6 (1), the term ‘nonpublic customer information’ does  
7 not include—

8 “(A) customers’ names and addresses (un-  
9 less a customer has specified otherwise);

10 “(B) information that could be obtained  
11 from unaffiliated credit bureaus or similar com-  
12 panies in the ordinary course of business; or

13 “(C) information that is customarily pro-  
14 vided to unaffiliated credit bureaus or similar  
15 companies in the ordinary course of business  
16 by—

17 “(i) depository institutions not affili-  
18 ated with securities affiliates; or

19 “(ii) brokers and dealers not affiliated  
20 with depository institutions.

21 “(h) RECIPROCAL ARRANGEMENTS PROHIBITED.—  
22 No financial services holding company and no subsidiary  
23 of a financial services holding company may enter into any  
24 agreement, understanding, or other arrangement under  
25 which—

1           “(1) a financial services holding company (or  
2           subsidiary of that financial services holding com-  
3           pany) agrees to engage in a transaction with, or on  
4           behalf of, another financial services holding company  
5           (or subsidiary of that financial services holding com-  
6           pany), in exchange for

7           “(2) the agreement of the second financial serv-  
8           ices holding company referred to in paragraph (1)  
9           (or a subsidiary of that financial services holding  
10          company) to engage in any transaction with, or on  
11          behalf of, the first financial services holding com-  
12          pany referred to in such paragraph (or any subsidi-  
13          ary of that financial services holding company), for  
14          the purpose of evading any requirement or restric-  
15          tion of Federal law on transactions between, or for  
16          the benefit of, affiliates of financial services holding  
17          companies.

18          “(i) SAFEGUARDS APPLY TO CERTAIN SUBSIDI-  
19          ARIES.—Except as provided in this section—

20                 “(1) SECURITIES AFFILIATE.—No subsidiary of  
21                 a securities affiliate may do anything that this sec-  
22                 tion prohibits the securities affiliate from doing.

23                 “(2) DEPOSITORY INSTITUTION.—No subsidi-  
24                 ary of a depository institution (other than a special  
25                 operating subsidiary as defined in section 5136D of

1 the Revised Statutes or referenced in undesignated  
2 paragraph 20 of section 9 of the Federal Reserve  
3 Act or section 24(d)(1)(C) of the Federal Deposit  
4 Insurance Act) may do anything that this section  
5 prohibits the institution from doing.

6 “(j) AUTHORITY TO MODIFY AND IMPOSE ADDI-  
7 TIONAL SAFEGUARDS; INTERPRETIVE AUTHORITY.—

8 “(1) IN GENERAL.—The Board may, by regula-  
9 tion or order—

10 “(A) adopt additional limitations, restric-  
11 tions or conditions on relationships or trans-  
12 actions among depository institutions, their af-  
13 filiates, and their customers; and

14 “(B) make any modification to any limita-  
15 tion, restriction, or condition imposed under  
16 this section on relationships or transactions  
17 among depository institutions, the affiliates of  
18 insured depository institutions, and the cus-  
19 tomers of such institutions or affiliates, includ-  
20 ing modifications in addition to those expressly  
21 provided for in this section.

22 “(2) STANDARDS.—The Board may not exercise  
23 authority under paragraph (1) unless the Board  
24 finds that such action is consistent with the pur-  
25 poses of this Act, including—

1           “(A) the avoidance of any significant risk  
2 to the safety and soundness of depository insti-  
3 tutions or the Federal deposit insurance funds;

4           “(B) the enhancement of the financial sta-  
5 bility of financial services holding companies;

6           “(C) the prevention of the subsidization of  
7 securities affiliates by depository institutions;

8           “(D) the avoidance of conflicts of interests  
9 or other abuses; and

10           “(E) the application of the principle of na-  
11 tional treatment and equality of competitive op-  
12 portunity between securities affiliates owned or  
13 controlled by domestic financial services holding  
14 companies and securities affiliates owned or  
15 controlled by foreign banks operating in the  
16 United States.

17           “(3) BIENNIAL REVIEW.—Beginning 2 years  
18 after the date of enactment of the Financial Services  
19 Competitiveness Act of 1997, the Board shall, on a  
20 biennial basis—

21           “(A) review all restrictions established pur-  
22 suant to paragraph (1) to determine whether  
23 any such restrictions are required any longer to  
24 carry out the purposes of this Act; and

1           “(B) modify or eliminate any such restric-  
2           tion that the Board determines is no longer re-  
3           quired to carry out the purposes of this Act.

4           “(k) COMPLIANCE PROGRAMS REQUIRED.—

5           “(1) IN GENERAL.—Each appropriate Federal  
6           banking agency and the Securities and Exchange  
7           Commission shall establish a program for—

8           “(A) sharing information, including reports  
9           of examinations, concerning compliance with  
10          subtitle A of title I or subtitle A or B of title  
11          II of the Financial Services Competitiveness  
12          Act of 1997, and the amendments made by  
13          such subtitles, by—

14          “(i) brokers, dealers, investment ad-  
15          visers, or investment companies that are  
16          registered with the Securities and Ex-  
17          change Commission that are affiliated with  
18          depository institutions, or are separately  
19          identifiable departments or divisions of de-  
20          pository institutions registered as invest-  
21          ment advisers; and

22          “(ii) depository institutions and their  
23          affiliates;

1           “(B) enforcing compliance with subtitle A  
2 of title I of the Financial Services Competitive-  
3 ness Act of 1997, and the amendments made by  
4 such subtitle and paragraphs (4) and (5) of sec-  
5 tion 3(a) of the Securities Exchange Act of  
6 1934 by entities under its supervision; and

7           “(C) responding to any complaints from  
8 customers about inappropriate cross-marketing  
9 of securities products or inadequate disclosure.

10          “(2) DATA COLLECTION.—

11           “(A) IN GENERAL.—The appropriate Fed-  
12 eral banking agencies, after consultation with  
13 and consideration of the views of the Securities  
14 and Exchange Commission, shall (except as oth-  
15 erwise provided by the appropriate Federal  
16 banking agency after such consultation) require  
17 any depository institution that has affected se-  
18 curities transactions pursuant to any exception  
19 enumerated in paragraphs (4) and (5) of sec-  
20 tion 3(a) of the Securities Exchange Act of  
21 1934 to identify the exceptions relied upon and  
22 to submit such information necessary to mon-  
23 itor compliance under such paragraphs.

24           “(B) COMMISSION ACCESS.—The appro-  
25 priate Federal banking agency shall make any

1 information referred to in subparagraph (A)  
2 available to the Securities and Exchange Com-  
3 mission, upon the request of the Commission.

4 “(C) COMPLIANCE.—In implementing the  
5 provisions of this paragraph, the appropriate  
6 Federal banking agencies shall ensure that any  
7 information requests to depository institutions  
8 take into account the size and activities of the  
9 institutions and do not cause undue reporting  
10 burdens.

11 “(3) COMMISSION’S ENFORCEMENT AUTHOR-  
12 ITY.—Without limiting in any way the authority of  
13 the appropriate Federal banking agencies under this  
14 section, the Securities and Exchange Commission  
15 shall have the authority to enforce any subsection of  
16 this section against a securities affiliate as if such  
17 subsection were a provision of the Securities Ex-  
18 change Act of 1934 to the extent that the subsection  
19 applies with respect to the conduct or activities of  
20 the securities affiliate.

21 “(4) EXAMINATION REPORTS.—

22 “(A) IN GENERAL.—The appropriate Fed-  
23 eral banking agencies shall, to the fullest extent  
24 possible, use the reports of examination of any

1 broker, dealer, investment adviser, or invest-  
2 ment company made by or on behalf of the Se-  
3 curities and Exchange Commission and reports  
4 made by or on behalf of a registered securities  
5 association or national securities exchange, and  
6 shall defer to such examinations for compliance  
7 with the Federal securities laws.

8 “(B) COMPLIANCE WITH SECTION 11 SAFE-  
9 GUARDS.—The appropriate Federal banking  
10 agencies shall—

11 “(i) to the fullest extent possible, use  
12 the reports of examination of any securi-  
13 ties affiliate made by the appropriate Fed-  
14 eral banking agency for such affiliate; and

15 “(ii) defer to such examinations for  
16 compliance with the provisions of this sec-  
17 tion.

18 “(5) INTERPRETATIONS OF THE FEDERAL SE-  
19 CURITIES LAWS.—The appropriate Federal banking  
20 agencies shall defer to the Securities and Exchange  
21 Commission regarding all interpretations and en-  
22 forcement of the Federal securities laws relating to  
23 the application of the Federal securities laws to the  
24 activities and conduct of brokers, dealers, investment  
25 advisers, and investment companies.

1           “(6) NOTICE OF CERTAIN ACTIONS BY SEC.—

2           The Securities and Exchange Commission shall give  
3           notice to the appropriate Federal banking agency  
4           upon the commencement of any disciplinary or law  
5           enforcement proceedings by the Commission and a  
6           copy of any order entered by the Commission  
7           against—

8                   “(A) any broker, dealer, or investment ad-  
9           viser that—

10                           “(i) is registered with the Securities  
11                           and Exchange Commission; and

12                           “(ii) is affiliated with, or is a sepa-  
13                           rately identifiable department or division  
14                           of, a depository institution;

15                   “(B) any investment company registered  
16           with the Securities and Exchange Commission  
17           that is an affiliate of or is advised by an invest-  
18           ment adviser affiliated with a depository institu-  
19           tion or by a separately identifiable department  
20           or division of a depository institution that is a  
21           registered investment adviser; or

22                   “(C) any financial services holding com-  
23           pany, depository institution, or subsidiary of  
24           such company or institution, if the proposed ac-  
25           tion relates to subtitle A of title I or subtitle A

1           or B of title II of the Financial Services Com-  
2           petitiveness Act of 1997.

3           “(7) NOTICE OF CERTAIN ACTIONS BY APPRO-  
4           PRIATE FEDERAL BANKING AGENCIES.—Upon the  
5           commencement of any disciplinary or law enforce-  
6           ment proceedings to enforce the provisions of sub-  
7           title A of title I of the Financial Services Competi-  
8           tiveness Act of 1997, or any amendment made by  
9           such subtitle, by an appropriate Federal banking  
10          agency against any broker, dealer, investment ad-  
11          viser, or investment company that is registered  
12          under the Federal securities laws and is affiliated  
13          with a depository institution or is a separately iden-  
14          tifiable department or division of a depository insti-  
15          tution, the appropriate Federal banking agency shall  
16          give notice to the Securities and Exchange Commis-  
17          sion of the proposed action.

18          “(8) IMMEDIATE ACTION ALLOWED BEFORE  
19          NOTICE.—The notice required under paragraph (6)  
20          or (7) may be provided promptly after action by the  
21          Securities and Exchange Commission or the appro-  
22          priate Federal banking agency, if—

23                  “(A) the Commission determines that the  
24                  protection of investors requires immediate ac-  
25                  tion by the Commission and prior notice under

1 paragraph (6) is not practical under the cir-  
2 cumstances; or

3 “(B) the appropriate Federal banking  
4 agency determines that concerns for the safety  
5 and soundness of a depository institution or its  
6 affiliate require immediate action by the agency  
7 and prior notice under paragraph (7) is not  
8 practical under the circumstances.

9 “(9) COORDINATED ENFORCEMENT ACTIONS.—  
10 The Securities and Exchange Commission and the  
11 appropriate Federal banking agencies shall, to the  
12 extent practicable, coordinate supervisory actions  
13 based on applicable law where the actions are based  
14 on the same or related events or practices.

15 “(10) INVESTMENT COMPANIES NOT AFFILI-  
16 ATED WITH A DEPOSITORY INSTITUTION.—The ap-  
17 propriate Federal banking agency shall not have au-  
18 thority under this Act or any other provision of law  
19 to inspect or examine any investment company reg-  
20 istered under the Federal securities laws that is  
21 not—

22 “(A) affiliated with a depository institu-  
23 tion; or

24 “(B) advised by an investment adviser af-  
25 filiated with a depository institution or by a

1           separately identifiable department or division of  
2           a depository institution that is a registered in-  
3           vestment adviser.

4           “(11) USE OF EXAMINATION REPORTS.—The  
5           appropriate Federal banking agencies shall—

6                   “(A) to the fullest extent possible, use the  
7                   reports of examination of any investment ad-  
8                   viser or investment company made by or on be-  
9                   half of the Securities and Exchange Commis-  
10                  sion; and

11                  “(B) defer to such examinations for com-  
12                  pliance with the Federal securities laws.

13           “(12) DEFINITION.—For purposes of this sub-  
14           section, the term ‘Federal securities laws’ means the  
15           provisions of Federal law governing securities activi-  
16           ties that are within the jurisdiction of the Securities  
17           and Exchange Commission under the Securities Act  
18           of 1933, the Securities Exchange Act of 1934, the  
19           Investment Company Act of 1940, the Investment  
20           Advisers Act of 1940, and the Trust Indenture Act  
21           of 1939.

22           “(1) FOREIGN BANK FIREWALLS.—

23                   “(1) IN GENERAL.—A foreign bank that oper-  
24                   ates a branch, agency, or commercial lending com-  
25                   pany in the United States and accepts no deposits

1 in the United States, either directly or through an  
2 affiliate, that are insured under the Federal Deposit  
3 Insurance Act, and any affiliate of such foreign  
4 bank, shall not be subject to the restrictions of any  
5 subsection of this section, other than subsections (j)  
6 and (k), if the conditions described in paragraph (2)  
7 are met.

8 “(2) CONDITIONS FOR APPLICABILITY OF EX-  
9 CEPTION.—The conditions of this paragraph have  
10 been met with respect to any foreign bank referred  
11 to in paragraph (1) if—

12 “(A) transactions between a securities af-  
13 filiate of such foreign bank and any branch,  
14 agency or commercial lending company oper-  
15 ated in the United States by such foreign bank  
16 comply with the provisions of sections 23A and  
17 23B of the Federal Reserve Act as if the for-  
18 eign bank were a member bank; and

19 “(B) such foreign bank has received a de-  
20 termination from the Board that the bank  
21 meets capital standards comparable to those es-  
22 tablished by the Board for well capitalized fi-  
23 nancial services holding companies, giving due  
24 regard to the principle of national treatment  
25 and equality of competitive opportunity, subject

1 to any changes the Board may adopt with re-  
2 spect to such standards.

3 “(3) APPLICABILITY OF SUBSECTION (1) TO  
4 FOREIGN BANKS.—Any limitation, restriction, condi-  
5 tion, or modification adopted by the Board under  
6 subsection (j) may be applied by the Board to—

7 “(A) a foreign bank described in para-  
8 graph (1) (and any company that owns or con-  
9 trols such foreign bank);

10 “(B) any branch, agency or commercial  
11 lending company operated by such foreign bank  
12 in the United States; or

13 “(C) any other affiliate of such foreign  
14 bank in the United States, if such limitation,  
15 restriction, condition, or modification is applied  
16 by regulation or order of general applicability  
17 under section 12(a)(2)(B)(ii) to wholesale fi-  
18 nancial institutions and securities affiliates con-  
19 trolled by investment bank holding companies,  
20 subject to such modifications, conditions, or ex-  
21 emptions as the Board deems appropriate, giv-  
22 ing due regard to the principle of national  
23 treatment and equality of competitive oppor-  
24 tunity.”.

1           (b) AMENDMENT TO THE FEDERAL RESERVE ACT.—  
2 Section 23B(b)(1)(B) of the Federal Reserve Act (12  
3 U.S.C. 371e–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           (c) EXEMPTION FROM SECTION 305(b) OF THE FED-  
7 ERAL POWER ACT.—Section 305(b) of the Federal Power  
8 Act shall not apply to any person now holding, or propos-  
9 ing to hold, at the same time the position of officer or  
10 director of a public utility and the position of officer or  
11 director of a bank, trust company, banking association,  
12 or firm permitted by section 10 of the Financial Services  
13 Holding Company Act of 1997 (as amended by section  
14 103(a) of this Act) to underwrite or participate in the  
15 marketing of securities (including commercial paper) of a  
16 public utility, if that bank, trust company, banking asso-  
17 ciation, or firm does not underwrite or participate in the  
18 marketing of securities of the public utility for which the  
19 person serves, or proposes to serve, as an officer or direc-  
20 tor.

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

24           (1) by striking “this title” and inserting “law”;  
25           and

1           (2) by inserting “, examination reports,” after  
2           “financial records”.

3           “(e) REGULATIONS TO PRESERVE SEPARATION OF  
4 BANKING AND COMMERCE.—Section 5(b) of the Bank  
5 Holding Company Act of 1956 (12 U.S.C. 1844(b)) is  
6 amended by inserting “, including the protection of deposi-  
7 tory institutions and the separation of banking and com-  
8 merce,” after “purposes of this Act”.

9   **SEC. 105. OWNERSHIP OF SHARES OF CERTAIN COMPANIES**  
10                           **BY FINANCIAL SERVICES HOLDING COMPA-**  
11                           **NIES.**

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

15           “(k) OWNERSHIP OF SHARES OF CERTAIN COMPA-  
16 NIES BY FINANCIAL SERVICES HOLDING COMPANIES.—

17                   “(1) NONCONFORMING FINANCIAL COMPA-  
18 NIES.—Notwithstanding subsection (a), a financial  
19 services holding company may retain direct or indi-  
20 rect ownership or control of voting shares of any  
21 company that engages in activities not authorized  
22 under this section if—

23                           “(A) the financial services holding com-  
24                           pany held the shares of any company engaged

1 in such activities as of the date of the enact-  
2 ment of the Financial Services Competitiveness  
3 Act of 1997 and the financial services holding  
4 company was then exempt from the provisions  
5 of this section pursuant to subsection (d) as of  
6 such date;

7 “(B) the company engaged in such activi-  
8 ties continues to engage only in the same gen-  
9 eral lines of business and related activities that  
10 such company conducted as of the date of the  
11 enactment of the Financial Services Competi-  
12 tiveness Act of 1997 (or other activities per-  
13 mitted under subsection (c) or section 10); and

14 “(C) 80 percent of the aggregate gross rev-  
15 enues of the financial services holding company  
16 and the subsidiaries of such holding company  
17 as of the date of the enactment of the Financial  
18 Services Competitiveness Act of 1997 was at-  
19 tributable to—

20 “(i) ownership and operation of depos-  
21 itory institutions;

22 “(ii) activities that are financial in na-  
23 ture as determined by the Board pursuant  
24 to subsection (c)(8);

1                   “(iii) activities permissible under sec-  
2                   tion 10; and

3                   “(iv) such other activities that would  
4                   be permissible generally for the holding  
5                   company as a financial services holding  
6                   company (other than as an investment  
7                   bank holding company).

8                   “(2) NONFINANCIAL COMPANIES.—

9                   “(A) IN GENERAL.—Notwithstanding sub-  
10                  section (a), a financial services holding company  
11                  engaged predominantly in activities described in  
12                  section 10(a)(1) or 4(c) that becomes a finan-  
13                  cial services holding company may, during the  
14                  5-year period beginning on the date that the  
15                  company becomes a financial services holding  
16                  company, retain direct or indirect ownership or  
17                  control of voting shares of any company that  
18                  the financial services holding company owns or  
19                  controls on the date such holding company be-  
20                  comes a financial services 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—

1           “(i) determines that such extension is  
2           necessary to avert substantial loss to the  
3           financial services holding company; and

4           “(ii) finds that the financial services  
5           holding company has made good faith ef-  
6           forts to divest such shares.

7           “(C) NO EXPANSION OF NONFINANCIAL  
8           COMPANIES PRIOR TO DIVERSTITUTE.—Unless  
9           an acquisition or activity is permitted in accord-  
10          ance with subsection (c) or section 3—

11           “(i) no financial services holding com-  
12          pany, and no company whose shares are  
13          owned or controlled by a financial services  
14          holding company in accordance with this  
15          paragraph, may acquire any interest in or  
16          assets of any other company, and

17           “(ii) no company whose shares are  
18          owned or controlled by a financial services  
19          holding company pursuant to this para-  
20          graph may engage directly or indirectly in  
21          any activity that the company did not con-  
22          duct on the day before the financial serv-  
23          ices holding company registered as a finan-  
24          cial services holding company.

1           “(3) RESTRICTIONS ON JOINT MARKETING.—  
2           No depository institution (and no subsidiary of such  
3           institution) shall—

4                   “(A) offer or market, directly or indirectly  
5                   through any arrangement, any product or serv-  
6                   ice of any affiliate whose share are owned or  
7                   controlled by the financial services holding com-  
8                   pany pursuant to this subsection or section  
9                   10(j); or

10                   “(B) permit any of such depository institu-  
11                   tion’s or subsidiary’s products or services to be  
12                   offered or marketed, directly or indirectly  
13                   through any arrangement, by or through any  
14                   affiliate whose shares are owned or controlled  
15                   by the financial services holding company pur-  
16                   suant to this subsection, section 10(j), or sub-  
17                   section (l) unless, in a case involving an affiliate  
18                   held under this subsection, the product or serv-  
19                   ice is permissible or authorized for financial  
20                   services holding companies to provide under  
21                   subsection (c)(8) or section 10.

22                   “(4) DEPOSITORY INSTITUTION DEFINED.—For  
23                   purposes of paragraph (3), the term ‘depository in-  
24                   stitution’ includes a foreign bank.

1       “(l) SHARES ACQUIRED IN CONNECTION WITH IN-  
2 SURANCE COMPANY INVESTMENT ACTIVITIES.—

3           “(1) IN GENERAL.—Notwithstanding subsection  
4 (a), a financial services holding company may ac-  
5 quire or control, directly or indirectly, whether as  
6 principal, on behalf of one or more entities (includ-  
7 ing any subsidiary of the holding company which is  
8 not a depository institution or a subsidiary of a de-  
9 pository institution), or otherwise, shares, assets, or  
10 ownership interests (including debt or equity securi-  
11 ties, partnership interests, trust certificates, or other  
12 instruments representing ownership) of a company  
13 or other entity, whether or not constituting control  
14 of such company or entity, engaged in activities not  
15 authorized pursuant to this section if—

16           “(A) the shares, assets, or ownership inter-  
17 ests are not acquired or held by a depository in-  
18 stitution or a subsidiary of a depository institu-  
19 tion;

20           “(B) such shares, assets, or ownership in-  
21 terests are acquired and held by an insurance  
22 affiliate that is predominantly engaged in un-  
23 derwriting life, accident and health, or property  
24 and casualty insurance (other than credit-relat-  
25 ed insurance);

1           “(C) such shares, assets, or ownership in-  
2           terests represent an investment made in the or-  
3           dinary course of business of such insurance af-  
4           filiate in accordance with relevant State law  
5           governing such investments; and

6           “(D) during the period such shares, assets,  
7           or ownership interests are held, the financial  
8           services holding company does not directly or  
9           indirectly participate in the day-to-day manage-  
10          ment or operation of the company or entity ex-  
11          cept insofar as necessary to achieve the objec-  
12          tives of subparagraphs (B) and (C).

13          “(2) NO EXPANSION OF UNDERWRITING ACTIVI-  
14          TIES.—No provision of this subsection shall be con-  
15          strued as authorizing any financial services holding  
16          company, or any subsidiary of any such company, to  
17          underwrite or deal in any security.”.

18 **SEC. 106. PROVISIONS APPLICABLE TO LIMITED PURPOSE**

19                   **BANKS.**

20           (a) EXCEPTION TO RESTRICTIONS ON NONBANK  
21 BANKS.—

22           (1) IN GENERAL.—Section 4(f)(3) of the Bank  
23           Holding Company Act of 1956 (12 U.S.C.  
24           1843(f)(3)) is amended by adding at the end the fol-  
25           lowing new subparagraph:

1           “(D) EXCEPTION TO RESTRICTION ON AC-  
2           TIVITIES, AND CERTAIN CROSS-MARKETING RE-  
3           STRICTIONS.—

4           “(i) QUALIFICATION FOR EXCEPTION  
5           FROM ACTIVITIES RESTRICTION.—Notwith-  
6           standing subparagraph (B)(i), a bank con-  
7           trolled by a company described in para-  
8           graph (1) that meets the requirements of  
9           paragraph (14) may engage in an activity  
10          authorized under applicable law (other  
11          than an activity that would have resulted  
12          in the institution being a bank for pur-  
13          poses of this Act, as in effect on the day  
14          before the date of the enactment of the  
15          Competitive Equality Banking Act of  
16          1987, based on the activities each bank  
17          conducted on March 5, 1987, as reported  
18          to the Board) if such bank, at least 60  
19          days before commencing such activity, has  
20          notified the Board of the bank’s intention  
21          to commence such activity and either—

22                   “(I) the Board has notified such  
23                   bank that the Board will not dis-  
24                   approve the proposed activity as un-  
25                   safe or unsound; or

1                   “(II) the Board has not, within  
2                   60 days after receiving such notice,  
3                   disapproved the proposal on the basis  
4                   of such criteria.

5                   “(ii) QUALIFICATION FOR EXCEPTION  
6                   FROM CROSS-MARKETING RESTRICTION.—  
7                   Notwithstanding subparagraph (B)(ii), a  
8                   bank controlled by a company described in  
9                   paragraph (1) that meets the requirements  
10                  of paragraph (14) may offer or market  
11                  products or services of an affiliate or per-  
12                  mit the bank’s products or services to be  
13                  offered or marketed in connection with  
14                  products or services of an affiliate if such  
15                  products or services are offered or mar-  
16                  keted only to the extent permissible for  
17                  banks or financial services holding compa-  
18                  nies to provide by law, regulation, or order  
19                  under paragraph (8) or (15) of subsection  
20                  (c).

21                  “(iii) EXCEPTION FROM DIVESTITURE  
22                  REQUIREMENT FOR BANKS RESTORED TO  
23                  WELL CAPITALIZED LEVEL.—If any bank  
24                  controlled by a company that meets the re-  
25                  quirements of paragraph (14) ceases to be

1 well capitalized, the company shall divest  
2 control of such bank in accordance with  
3 paragraph (4) unless—

4 “(I) within 12 months after the  
5 date the bank ceases to be well cap-  
6 italized, the capital of the bank is re-  
7 stored to the well capitalized level;  
8 and

9 “(II) after the end of such 12-  
10 month period, the bank remains well  
11 capitalized, subject to the capital res-  
12 toration requirements in subclause (I).

13 “(iv) ACTION REQUIRED IF BANK  
14 CEASES TO BE ADEQUATELY CAPITAL-  
15 IZED.—If any bank controlled by a com-  
16 pany that meets the requirements of para-  
17 graph (14) ceases to be adequately capital-  
18 ized, the company shall, within 30 days  
19 after the date as of which the bank ceases  
20 to be adequately capitalized—

21 “(I) execute an agreement with  
22 the Board to divest control of such  
23 bank in accordance with paragraph  
24 (4); or

1                   “(II) restore the capital of the  
2                   bank to at least the adequately cap-  
3                   italized level.”.

4                   (2) QUALIFICATIONS FOR COMPANIES UNDER  
5                   PARAGRAPH (3)(d).—Section 4(f) of the Bank Hold-  
6                   ing Company Act of 1956 (12 U.S.C. 1843(f)) is  
7                   amended by adding at the end the following new  
8                   paragraph:

9                   “(14) QUALIFICATIONS FOR COMPANIES UNDER  
10                  PARAGRAPH (3)(d).—A company meets the require-  
11                  ments of this paragraph if—

12                   “(A) the company (based on consolidated  
13                   revenues) engages predominantly in—

14                   “(i) banking;

15                   “(ii) activities that the Board has de-  
16                   termined, or are specified, under sub-  
17                   section (c)(8) (regardless of the effective  
18                   date) to be financial in nature or incidental  
19                   to such financial activities;

20                   “(iii) activities permitted under sub-  
21                   paragraph (A) or (B) of section 10(a)(1);

22                   and

1                   “(iv) other activities that would be  
2                   permissible for such company as a finan-  
3                   cial services holding company (other than  
4                   as an investment bank holding company);

5                   “(B) all insured depository institutions  
6                   controlled by such company are well capitalized  
7                   and well managed;

8                   “(C) the bank and any affiliate of the bank  
9                   that is engaged in securities activities described  
10                  in section 10(a) comply with the safeguards  
11                  contained in section 11 as if that affiliate were  
12                  a securities affiliate; and

13                  “(D) the company has provided at least 60  
14                  days prior written notice to the Board and, dur-  
15                  ing that period, the Board has not disapproved  
16                  the proposal.”.

17                  (b) AMENDED DIVESTITURE PROCEDURE FOR CER-  
18                  TAIN COMPANIES.—Section 4(f)(4) of the Bank Holding  
19                  Company Act of 1956 (12 U.S.C. 1843(f)(4)) is amended  
20                  by adding at the end of the following: “If any company  
21                  described in paragraph (1) which meets the requirements  
22                  of paragraph (14) fails to qualify for the exemption pro-  
23                  vided under paragraph (2), such company shall divest, in  
24                  accordance with this paragraph, control of each bank the  
25                  company controls unless, within 12 months after the date

1 that the company fails to comply with the provisions of  
2 paragraph (2), the company has corrected the condition  
3 or ceased the activity that led to the failure to comply.”.

4 (c) CONVERSION OF CERTAIN NONBANK HOLDING  
5 COMPANIES TO FINANCIAL SERVICES HOLDING COMPA-  
6 NIES.—Section 4(f) of the Bank Holding Company Act  
7 of 1956 (12 U.S.C. 1843(f)) is amended by inserting after  
8 paragraph (14) (as added by subsection (a)(2)) the follow-  
9 ing new paragraph:

10 “(15) CONVERSION OF CERTAIN COMPANIES TO  
11 FINANCIAL SERVICES HOLDING COMPANIES.—

12 “(A) IN GENERAL.—During the 18-month  
13 period beginning on the date of the enactment  
14 of the Financial Services Competitiveness Act  
15 of 1977, any company described in paragraph  
16 (1) may become a financial services holding  
17 company if—

18 “(i) the company (on a consolidated  
19 basis) engages predominantly in—

20 “(I) banking;

21 “(II) activities that the Board  
22 has determined, or are specified,  
23 under subsection (c)(8) (regardless of  
24 the effective date) to be financial in

1 nature or incidental to such financial  
2 activities;

3 “(III) activities permitted under  
4 subparagraph (A) or (B) of section  
5 10(a)(1); and

6 “(IV) other activities that would  
7 be permissible for such company as a  
8 financial services holding company  
9 (other than an investment bank hold-  
10 ing company);

11 “(ii) all insured depository institutions  
12 controlled by such company are well cap-  
13 italized and well managed;

14 “(iii) the company provides written  
15 notice to the Board under sections 4 and  
16 10 at least 60 days before the company be-  
17 comes a financial services holding com-  
18 pany;

19 “(iv) the Board does not object to  
20 such transaction before the end of such 60-  
21 day period; and

22 “(v) the Board has received, from the  
23 company, full payment of a fee which the  
24 Board shall impose in accordance with sec-  
25 tion 5(h).

1           “(B) PERIOD TO CONFORM OTHER ACTIVI-  
2           TIES.—Notwithstanding subsection (a), a com-  
3           pany that becomes a financial services holding  
4           company pursuant to subparagraph (A) may re-  
5           tain direct or indirect ownership or control of  
6           voting shares of any company not otherwise  
7           permitted under this section for the period pro-  
8           vided in, and subject to the conditions con-  
9           tained in, paragraphs (2) and (3) of section  
10          4(k).

11          “(C) ELECTRON FOR REDUCED SUPER-  
12          VISION.—Any company that becomes a financial  
13          services holding company pursuant to subpara-  
14          graph (A) may elect to be governed by the pro-  
15          visions of paragraphs (3), (4), (5), and (6) of  
16          section 5(g), subject to the requirements of  
17          such section, if—

18                 “(i) the company, and any insured de-  
19                 pository institution controlled by such com-  
20                 pany, meet the requirements of section  
21                 5(g) (other than the requirements of para-  
22                 graph (2)(A) of such section);

23                 “(ii) the company does not acquire  
24                 more than 5 percent of the shares of any  
25                 additional depository institution after the

1 date that such company becomes a finan-  
2 cial services holding company; and

3 “(iii) no depository institution con-  
4 trolled by such company acquires, estab-  
5 lishes, or operates an additional branch of-  
6 fice after the date that the company be-  
7 comes a financial services holding com-  
8 pany.”.

9 **SEC. 107. SECURITIES COMPANY AFFILIATIONS OF FDIC-IN-**  
10 **SURED BANKS.**

11 (a) IN GENERAL.—Section 18 of the Federal Deposit  
12 Insurance Act (12 U.S.C. 1828) is amended by adding at  
13 the end the following new subsections:

14 “(s) SECURITIES AFFILIATIONS OF BANKS.—

15 “(1) IN GENERAL.—Notwithstanding any other  
16 provision of law, a bank shall not be an affiliate of  
17 any company that, directly or indirectly, acts as an  
18 underwriter or dealer of any security, other than—

19 “(A) a securities affiliate in accordance  
20 with section 10 of the Financial Services Hold-  
21 ing Company Act of 1997;

22 “(B) a special operating subsidiary in ac-  
23 cordance with section 5136D of the Revised

1 Statutes or referenced in undesignated para-  
2 graph 20 of section 9 of the Federal Reserve  
3 Act or section 24(d)(1)(C); or

4 “(C) a company that underwrites or deals  
5 only in securities expressly authorized by sec-  
6 tion 5136 of the Revised Statutes as permis-  
7 sible for a national bank to underwrite or deal  
8 in.

9 “(2) EXCEPTIONS.—

10 “(A) CERTAIN BANKS NOT INCLUDED.—  
11 For purposes of this subsection, the term ‘bank’  
12 does not include—

13 “(i) an insured bank described in sub-  
14 paragraph (D), (F), or (H) of section  
15 2(c)(2) of the Financial Services Holding  
16 Company Act of 1997; and

17 “(ii) a Federal branch or an insured  
18 branch (as defined in section 3 of the Fed-  
19 eral Deposit Insurance Act).

20 “(B) AFFILIATIONS WITH EDGE ACT AND  
21 AGREEMENT CORPORATIONS.—Paragraph (1)  
22 shall not apply with respect to the affiliation of  
23 a bank with a company held pursuant to section  
24 25 or 25A of the Federal Reserve Act or section

1           4(e)(13) of the Financial Services Holding  
2           Company Act of 1997.

3           “(3) GRANDFATHER PROVISION.—This sub-  
4           section shall not apply with respect to—

5                   “(A) an affiliation that existed on January  
6                   1, 1995; or

7                   “(B) any new affiliation by an insured  
8                   bank that has an affiliation that would be pro-  
9                   hibited if the affiliation were not covered by  
10                  subparagraph (A).

11           “(4) DEFINITIONS.—For purposes of this sub-  
12           section, the following definitions shall apply:

13                   “(A) BROKER.—The term ‘broker’ has the  
14                   meaning given to such term in section 3(a)(4)  
15                   of the Securities Exchange Act of 1934.

16                   “(B) DEALER.—The term ‘dealer’ has the  
17                   meaning given to such term in section 3(a)(5)  
18                   of the Securities Exchange Act of 1934.

19                   “(C) SECURITY.—The term ‘security’ has  
20                   the meaning given to such term in section 10(l)  
21                   of the Financial Services Holding Company Act  
22                   of 1997.

23                   “(D) UNDERWRITER.—The term ‘under-  
24                   writer’ has the meaning given to such term in  
25                   section 2(ll) of the Securities Act of 1933.

1           “(5) AFFILIATE.—For purposes of this sub-  
2           section, a separately identifiable department or divi-  
3           sion (as defined in section 3(a) of the Securities Ex-  
4           change Act of 1934) of a bank shall be deemed to  
5           be a company which is an affiliate of the bank.

6           “(t) BROKER-DEALER REGISTRATION.—An insured  
7           bank may not use the United States mails or any means  
8           or instrumentality of interstate commerce to act as a  
9           broker or dealer without registration under the Securities  
10          Exchange Act of 1934—

11           “(1) except to the extent permitted under the  
12          circumstances described in paragraph (4) or (5) of  
13          section 3(a) of such Act; or

14           “(2) unless otherwise exempt from registrations  
15          as a broker or dealer pursuant to regulations pre-  
16          scribed by the Securities and Exchange Commission.

17          “(u) EXAMINATION REPORTS.—The Federal banking  
18          agencies shall, to the fullest extent possible, use the re-  
19          ports of examination of any broker, dealer, investment ad-  
20          viser, or investment company made by or on behalf of the  
21          Securities and Exchange Commission and reports made  
22          by or on behalf of a registered securities association or  
23          national securities exchange and shall defer to such exam-  
24          ination for compliance with Federal securities laws.

1           “(v) INTERPRETATIONS OF THE FEDERAL SECURI-  
2 TIES LAWS.—The appropriate Federal banking agencies  
3 shall defer to the Securities and Exchange Commission re-  
4 garding all interpretations and enforcement of the Federal  
5 securities laws relating to the application of the Federal  
6 securities laws to the activities and conduct of brokers,  
7 dealers, investment advisers, and investment companies.”.

8           (b) STUDY OF RISKS TO DEPOSIT INSURANCE SYS-  
9 TEM.—

10           (1) STUDY REQUIRED.—During the 6-month  
11 period beginning 18 months after the date of the en-  
12 actment of the Financial Services Competitiveness  
13 Act of 1997, the Federal Deposit Insurance Cor-  
14 poration shall conduct a study of the risks posed to  
15 the deposit insurance funds by—

16                   (A) the affiliation of insured depository in-  
17 stitutions with securities affiliates and other in-  
18 stitutions described in subsection (s)(1) of sec-  
19 tion 18 of the Federal Deposit Insurance Act  
20 (as added by subsection (a) of this section); or

21                   (B) any activity described in section 10(a)  
22 (as added by section 103(a) of this Act) of the  
23 Financial Services Holding Company Act of  
24 1997 (as so redesignated by section 128(a) of

1 this Act) in which insured depository institu-  
2 tions may engage in accordance with any provi-  
3 sion of Federal or State law.

4 (2) REPORT TO CONGRESS AND GAO.—

5 (A) IN GENERAL.—Before the end of the  
6 6-month period described in paragraph (1), the  
7 Federal Deposit Insurance Corporation shall  
8 submit a report to the Congress on the findings  
9 and conclusions of the Corporation with respect  
10 to the study conducted under such paragraph,  
11 together with such conclusions for administra-  
12 tive or legislative action as the Corporation may  
13 determine to be appropriate.

14 (B) DETAILS OF SPECIFIC RISKS.—If the  
15 Federal Deposit Insurance Corporation con-  
16 cludes that certain kinds of activities not spe-  
17 cifically authorized by statute for insured de-  
18 pository institutions before the date of the en-  
19 actment of this Act, or the affiliation of insured  
20 depository institutions with securities affiliates  
21 engaged in certain kinds of securities activities,  
22 pose a greater risk to the deposit insurance  
23 funds than activities specifically authorized by  
24 statute for national banks before January 1,  
25 1995, the report submitted under subparagraph

1 (A) shall contain a detailed explanation of the  
2 basis for such conclusion.

3 (C) TRANSMITTAL TO GAO.—The Federal  
4 Deposit Insurance Corporation shall transmit a  
5 copy of the report referred to in paragraph (1)  
6 to the Comptroller General.

7 (3) ACTION BY FDIC.—If the Federal Deposit  
8 Insurance Corporation concludes that any activity or  
9 affiliation with respect to insured depository institu-  
10 tions poses a greater risk to any deposit insurance  
11 fund than the risk posed by activities specifically au-  
12 thorized by statute for national banks before Janu-  
13 ary 1, 1995, the Federal Deposit Insurance Corpora-  
14 tion shall treat such conclusion as a factor to be  
15 considered in setting semiannual assessments under  
16 section 7(b)(2)(A) of the Federal Deposit Insurance  
17 Act.

18 (4) EVALUATION OF REPORT BY GAO.—The  
19 Comptroller General shall—

20 (A) evaluate the report transmitted by the  
21 Federal Deposit Insurance Corporation to the  
22 Comptroller General under paragraph (2); and

23 (B) submit a report to the Congress on  
24 such evaluation, including a discussion on the  
25 methodology used by the Corporation to assess

1 risks posed by nonbanking activities to the de-  
2 posit insurance funds.

3 **SEC. 108. AUTHORITY TO TERMINATE GRANDFATHER**  
4 **RIGHTS UNDER THE INTERNATIONAL BANK-**  
5 **ING ACT OF 1978.**

6 Section 8(c) of the International Banking Act of  
7 1978 (12 U.S.C. 3106(c)) is amended by adding at the  
8 end the following new paragraph:

9 “(3) PARITY IN CONDUCT OF AUTHORIZED SE-  
10 CURITIES ACTIVITIES.—

11 “(A) IN GENERAL.—Notwithstanding the  
12 provisions of paragraph (1) or any other provi-  
13 sions of law, any authority conferred under this  
14 subsection on any foreign bank or company  
15 with respect to securities activities authorized  
16 for financial services holding companies in the  
17 United States shall terminate 30 days following  
18 approval by the Board of an application by such  
19 foreign bank or company under section 10 of  
20 the Financial Services Holding Company Act of  
21 1997.

22 “(B) AUTHORITY TO IMPOSE CONDI-  
23 TIONS.—If a foreign bank or company that en-  
24 gages directly or through an affiliate in any se-  
25 curities activity pursuant to paragraph (1) has

1 not received approval by the Board under sec-  
2 tion 10 of the Financial Services Holding Com-  
3 pany Act of 1997 to control a securities affiliate  
4 by the end of the 3-year period beginning on  
5 the effective date of such Act, the Board may  
6 impose such limitations and restrictions, includ-  
7 ing the termination of any activities conducted  
8 under paragraph (1) or a requirement that such  
9 activities be conducted in compliance with the  
10 safeguards of section 11 of such Act, as the  
11 Board considers appropriate consistent with the  
12 purposes of this Act and the Financial Services  
13 Holding Company Act of 1997.”.

14 **SEC. 109. EFFECT ON STATE LAWS PROHIBITING THE AF-**  
15 **FILIATION OF BANK, SECURITIES, AND IN-**  
16 **SURANCE COMPANIES.**

17 (a) IN GENERAL.—Section 7 of the Bank Holding  
18 Company Act of 1956 (12 U.S.C. 1846) is amended by  
19 adding at the end the following new subsections:

20 “(c) AFFILIATIONS AND ACTIVITIES.—No State may  
21 prohibit or limit—

22 “(1) the affiliation of a bank or financial serv-  
23 ices holding company with a securities affiliate solely

1 because the securities affiliate is engaged in activi-  
2 ties described in subparagraph (A) or (B) of section  
3 10(a)(1); or

4 “(2) the insurance or other activities of a sub-  
5 sidiary of a financial services holding company solely  
6 because the financial services holding company is no  
7 longer exempt under this Act pursuant to section  
8 4(d).

9 “(d) Consistent with section 4(c)(8)(H), any State  
10 law is hereby preempted to the extent it—

11 “(1) prevents, impedes or burdens any insurer,  
12 or any affiliate of an insurer (whether such affiliate  
13 is organized as a stock company, mutual holding  
14 company or otherwise), from becoming a financial  
15 services holding company or acquiring control of an  
16 insured depository institution;

17 “(2) limits the amount of an insurer’s assets  
18 that may be invested in the voting securities of an  
19 insured depository institution (or in the parent of  
20 such an institution) (provided that the laws of an in-  
21 surer’s State of domicile may limit such amount to  
22 an amount that is not less than 5 percent of the in-  
23 surer’s admitted assets); or

24 “(3) prevents, impedes or burdens, or author-  
25 izes the insurance regulatory or other authorities of

1 a State other than the State in which an insurer  
2 is domiciled to prevent, impede, burden or review a  
3 plan of reorganization by which the insurer proposes  
4 to reorganize from mutual form to become a stock  
5 insurer whether as a direct or indirect subsidiary of  
6 a mutual holding company or otherwise.”.

7 (b) BANK ACTIVITIES.—No provision of this Act, and  
8 no amendment by this Act to any other provision of law  
9 (other than section 10 or 11 of the Financial Services  
10 Holding Company Act of 1997 (as added by sections 103  
11 and 104 of this Act), section 18(s) of the Federal Deposit  
12 Insurance Act (as added by section 107 of this Act), or  
13 any amendments made by title II of this Act), may be  
14 construed as affecting the authority of any bank to engage  
15 in any activity authorized for such bank under the law  
16 of such bank’s home State (as defined in section 2(o)(4)  
17 of the Financial Services Holding Company Act of 1997).

18 **SEC. 110. NATIONAL BANK SPECIAL OPERATING SUBSIDI-**  
19 **ARIES.**

20 (a) IN GENERAL.—The Revised Statutes are amended  
21 by adding, after section 5136C, the following new section:

22 **“§ 5136D.—Special operating subsidiaries**

23 “(a) SPECIAL OPERATING SUBSIDIARIES AUTHOR-  
24 IZED.—A national bank may, acquire or establish a special  
25 operating subsidiary as a subsidiary of that bank.

1       “(b) SPECIAL OPERATING SUBSIDIARY DEFINED.—

2 For purposes of this section, a ‘special operating subsidi-  
3 ary’ means a subsidiary of a national bank that operates  
4 in compliance with all of the requirements of this section.

5       “(c) PERMISSIBLE ACTIVITIES.—A special operating  
6 subsidiary of a national bank may, with the approval of  
7 the Comptroller of the Currency, after notice and oppor-  
8 tunity for comment, engage in activities that are part of  
9 or incidental to the business of banking, or permissible  
10 for national banks under other statutory authority, includ-  
11 ing activities that the national bank is not permitted to  
12 conduct directly, or conduct in that manner. Such permis-  
13 sible activities include the authority to:

14               “(1) Underwrite, deal in, broker, place, or dis-  
15 tribute securities of any type, provide investment ad-  
16 vice regarding securities of any type, and engage in  
17 other securities activities;

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

20       “(d) INSURANCE UNDERWRITING AND DIRECT IN-  
21 VESTMENT.—This section shall not be construed as au-  
22 thorizing a special operating subsidiary to underwrite non-  
23 credit related insurance or directly engage in real estate  
24 investment or development, except as authorized for a na-  
25 tional bank itself.

1       “(e) STANDARDS FOR APPROVAL.—The Comptroller  
2 of the Currency may not approve a proposal by a national  
3 bank to establish or acquire a special operating subsidiary  
4 to engage in activities described in subsection (e) unless  
5 the national bank—

6           “(1) is well capitalized after taking account of  
7 the deduction provided in subsection (f)(2)(A);

8           “(2) has an ‘outstanding’ or ‘satisfactory’ rat-  
9 ing for its record of performance under the Commu-  
10 nity Reinvestment Act; and

11           “(3) is well managed, as defined in section 2 of  
12 the Financial Services Holding Company Act.

13       “(f) FIREWALLS.—The Comptroller’s approval of a  
14 special operating subsidiary under this section is subject  
15 to the following requirements:

16           “(1) CORPORATE REQUIREMENTS.—

17           “(A) The special operating subsidiary shall  
18 be physically separate and distinct in its oper-  
19 ations from the parent bank, including ensuring  
20 that the employees of the subsidiary are com-  
21 pensated by the subsidiary (except this require-  
22 ment shall not be construed to prohibit the par-  
23 ent bank and the special operating subsidiary  
24 from sharing the same facility, provided that

1 any area in which the subsidiary conducts busi-  
2 ness with the public is distinguishable, from the  
3 area in which customers of the bank conduct  
4 business with the bank);

5 “(B) The subsidiary shall be held out as a  
6 separate and distinct entity from the bank in  
7 its written material and direct contact with out-  
8 side parties and all written marketing material  
9 shall clearly state that the subsidiary is a sepa-  
10 rate entity from the bank and the obligations of  
11 the subsidiary are not obligations of the bank;

12 “(C) The subsidiary’s name shall not be the  
13 same name as its parent bank, and a subsidiary  
14 that has a name similar to its parent bank shall  
15 take appropriate steps to minimize the risk of  
16 customer confusion, including with respect to  
17 the separate character of the two entities and  
18 the extent to which their respective obligations  
19 are insured or not insured by the Federal De-  
20 posit Insurance Corporation;

21 “(D) The subsidiary shall be adequately  
22 capitalized according to relevant industry meas-  
23 ures and shall maintain capital adequate to  
24 support its activities and to cover reasonably  
25 expected expenses and losses;

1           “(E) The subsidiary shall maintain sepa-  
2           rate accounting and corporate records;

3           “(F) The subsidiary shall conduct its oper-  
4           ations pursuant to independent policies and  
5           procedures that are also intended to inform cus-  
6           tomers that the subsidiary is an organization  
7           separate from the bank;

8           “(G) Contracts between the subsidiary and  
9           the bank for any services shall be on terms and  
10          conditions substantially comparable to those  
11          available to or from independent entities;

12          “(H) The subsidiary shall observe appro-  
13          priate separate corporate formalities, such as  
14          separate board of directors’ meetings;

15          “(I) The subsidiary shall maintain a board  
16          of directors at least one-third of whom shall not  
17          be directors of the bank and shall have relevant  
18          expertise capable of overseeing the subsidiary’s  
19          activities; and

20          “(J) The subsidiary and the parent bank  
21          shall have internal controls appropriate to man-  
22          age the financial operational risks associated  
23          with the subsidiary.

1           “(2) SUPERVISORY REQUIREMENTS.—In any  
2 case in which the special operating subsidiary is en-  
3 gaging in activities as principal that are not permis-  
4 sible for the parent bank to engage in directly:

5           “(A) The bank’s capital and total assets  
6 shall each be reduced by an amount equal to  
7 the bank’s equity investment in the subsidiary  
8 (for purposes of risk-based capital this deduc-  
9 tion shall be made equally from tier 1 and tier  
10 2 capital), and the subsidiary’s assets and li-  
11 abilities shall not be consolidated with those of  
12 the bank (except that the Comptroller may re-  
13 quire the bank to calculate its capital on a con-  
14 solidated basis for purposes of applying prompt  
15 corrective action authorized under section 38 of  
16 the Federal Deposit Insurance Act);

17           “(B) The Comptroller must determine that  
18 the bank is an eligible bank under the Comp-  
19 troller’s regulations, both prior to establishing  
20 or acquiring a special operating subsidiary and  
21 thereafter, taking into account the capital de-  
22 duction required under subparagraph (A);

1           “(C) If the bank ceases to be well capital-  
2           ized for two consecutive quarters, it shall sub-  
3           mit to the Comptroller, within the period speci-  
4           fied by the Comptroller, an acceptable plan to  
5           become well capitalized; and

6           “(D) A special operating subsidiary en-  
7           gaged in securities activities described in sec-  
8           tion 10 of the Financial Services Holding Com-  
9           pany Act shall be a securities affiliate for pur-  
10          poses of section 11 of the Financial Services  
11          Holding Company Act, and any special operat-  
12          ing subsidiary and any insured depository insti-  
13          tution affiliated with a special operating sub-  
14          sidiary shall comply with the provisions of sec-  
15          tion 11 of that Act.

16          “(3) AUTHORITY TO MODIFY AND IMPOSE AD-  
17          DITIONAL SAFEGUARDS; INTERPRETIVE AUTHOR-  
18          ITY.—

19                 “(A) IN GENERAL.—The Comptroller may,  
20                 by regulation or order—

21                         “(i) adopt additional limitations, re-  
22                         strictions or conditions on relationships or  
23                         transactions among national banks, their  
24                         special operating subsidiaries, and their  
25                         customers; and

1           “(ii) make any modifications to any  
2           limitations, restriction, or condition im-  
3           posed under paragraph (1) on relationships  
4           or transactions among national banks,  
5           their special operating subsidiaries and the  
6           customers of those banks or subsidiaries,  
7           including modifications in addition to those  
8           expressly provided for in paragraph (1).

9           “(B) STANDARDS.—The Comptroller may  
10          not exercise authority under subparagraph (A)  
11          unless the Comptroller finds that the action is  
12          consistent with the purposes of the National  
13          Bank Act, including—

14               “(i) the avoidance of any significant  
15               risk to the safety and soundness of na-  
16               tional banks or the Federal deposit insur-  
17               ance funds;

18               “(ii) the enhancement of the financial  
19               stability of national banks;

20               “(iii) the prevention of the subsidiza-  
21               tion of special operating subsidiaries by  
22               national banks;

23               “(iv) the avoidance of conflicts of in-  
24               terest or other abuses; and

1           “(v) the application of the principle of  
2           national treatment and equality of com-  
3           petitive opportunity between special operat-  
4           ing subsidiaries owned or controlled by a  
5           national bank and special operating sub-  
6           sidiaries owned or controlled by foreign  
7           banks operating in the United States.

8           “(C) BIENNIAL REVIEW.—Beginning two  
9           years after the date of enactment of this sec-  
10          tion, the Comptroller shall, on a biennial  
11          basis—

12                   “(i) review all restrictions established  
13                   pursuant to subparagraph (A) to deter-  
14                   mine whether these restrictions are still re-  
15                   quired to carry out the purposes of this  
16                   section; and

17                           “(ii) modify or eliminate any such re-  
18                           striction that the Comptroller determines  
19                           is no longer required to carry out the pur-  
20                           poses of this section.

21          “(g) Neither a national bank nor a special operating  
22          subsidiary of a national bank may engage in activities de-  
23          scribed in section 10(j) of the Financial Services Holding  
24          Company Act.”.

25          (b) TECHNICAL AND CONFORMING AMENDMENTS.—

1           (1) Section 23A(b) of the Federal Reserve Act  
2           (12 U.S.C. 371c(b)) is amended by redesignating  
3           paragraphs (9) and (10) as paragraphs (10) and  
4           (11), respectively, and inserting the following new  
5           paragraph:

6           “(9) notwithstanding paragraph (2) or section  
7           23B(d)(1) (12 U.S.C. 371c–1(d)(1)), the term ‘affil-  
8           iate’ shall include a special operating subsidiary (as  
9           defined in section 5136D of the Revised Statutes or  
10          referenced in undesignated paragraph 20 of section  
11          9 of the Federal Reserve Act or section 24(d)(1)(C)  
12          of the Federal Deposit Insurance Act) of a bank;”;

13          (2) Section 106(a) of the 1970 Amendments to  
14          the Bank Holding Company Act is amended by add-  
15          ing at the end the following new sentence: “A special  
16          operating subsidiary (as defined in section 5136D of  
17          the Revised Statutes or referenced in undesignated  
18          paragraph 20 of section 9 of the Federal Reserve  
19          Act or section 24(d)(1)(C) of the Federal Deposit  
20          Insurance Act) shall be deemed a subsidiary of a  
21          bank holding company, and not a subsidiary of a  
22          bank, for purposes of this Act.”; and

23          (3) Undesignated paragraph 20 of section 9 of  
24          the Federal Reserve Act is amended by adding at  
25          the end of the following: “To the extent permitted

1 under State law, a State member bank may acquire,  
2 retain or establish a special operating subsidiary as  
3 defined in section 5136D of the Revised Statutes,  
4 except that all references in that section to the  
5 Comptroller of the Currency, the Comptroller, or  
6 rules or orders of the Comptroller shall be deemed  
7 to be references to the Board or rules or orders of  
8 the Board.”.

9 (4) Section 24(d)(1) of the Federal Deposit In-  
10 surance Act (12 U.S.C. 1831a(d)(1)) is amended as  
11 follows:

12 (A) by deleting “and” at the end of sub-  
13 paragraph (A); and

14 (B) by deleting the period at the end of the  
15 subparagraph (B) and by adding the following:

16 “; and

17 “(C) if the subsidiary is engaged in securi-  
18 ties activities described in section 10 of the Fi-  
19 nancial Services Holding Company Act—

20 “(i) the subsidiary meets the require-  
21 ments applicable to a special operating  
22 subsidiary in section 5136D of the Revised  
23 Statutes except that all references to the

1 Comptroller of the Currency, the Comp-  
2 troller, or rules or orders of the Comptrol-  
3 ler shall be deemed to be references to the  
4 Corporation or rules or orders of the Cor-  
5 poration, and

6 “(ii) any insured depository institu-  
7 tion affiliated with such subsidiary and the  
8 subsidiary comply with section 11 of the  
9 Financial Services Holding Company Act  
10 as if the subsidiary were a securities affili-  
11 ate for purposes of that Act.”.

12 **SEC. 111. INTERAGENCY AGREEMENT RELATING TO RETAIL**  
13 **SALES OF CERTAIN NONDEPOSIT INVEST-**  
14 **MENT PRODUCTS.**

15 Section 18 of the Federal Deposit Insurance Act (12  
16 U.S.C. 1828) is amended by inserting after subsection (u)  
17 (as added by section 107 of this Act) the following new  
18 subsection:

19 “(v) **JOINT STANDARDS RELATING TO RETAIL SALES**  
20 **OF CERTAIN NONDEPOSIT INVESTMENT PRODUCTS.—**

21 “(1) **SECURITIES.—**The appropriate Federal  
22 banking agencies shall jointly prescribe, after con-  
23 sulting with and considering the views of the Securi-  
24 ties and Exchange Commission, standards applicable  
25 to any depository institution which—

1           “(A) is not registered as a broker under  
2           the Securities Exchange Act of 1934; and

3           “(B) effects transactions in securities, in-  
4           cluding securities issued by an investment com-  
5           pany, or annuities.

6           “(2) OTHER NONDEPOSIT INVESTMENT PROD-  
7           UCTS.—The appropriate Federal banking agencies  
8           shall jointly prescribe standards applicable to any  
9           depository institution which effects transactions in  
10          any nondeposit investment product not covered  
11          under paragraph (1).

12          “(3) SCOPE OF STANDARDS.—The standards  
13          required under paragraph (1) with respect to securi-  
14          ties and annuities referred to in such paragraph and  
15          under paragraph (2) with respect to other non-  
16          deposit investment products shall, at a minimum, es-  
17          tablish requirements with respect to—

18                  “(A) sales practices;

19                  “(B) disclosures and advertising in connec-  
20                  tion with transactions in such securities, annu-  
21                  ities, and other nondeposit investment products,  
22                  including—

23                          “(i) the content, form, and timing of  
24                          any such disclosure; and

1           “(ii) disclaimers concerning the non-  
2           insured status of the security, annuity, or  
3           other nondeposit investment product;

4           “(C) the compensation of sales personnel  
5           with respect to referrals or transactions;

6           “(D) the training of and qualifications for  
7           personnel involved in such transactions, includ-  
8           ing training in making an accurate judgment  
9           about the suitability of a particular investment  
10          product for a prospective customer; and

11          “(E) the setting in which and the cir-  
12          cumstances under which transactions may be  
13          effected, and referrals made, by sales personnel  
14          with respect to such securities, annuities, other  
15          nondeposit investment products.

16          “(4) COMPARABILITY REQUIREMENT.—The  
17          standards required under paragraph (1) shall be  
18          comparable to the standards applicable to brokers  
19          and dealers registered under the Securities Ex-  
20          change Act of 1934 unless the appropriate Federal  
21          banking agencies jointly determine that implementa-  
22          tion of comparable standards is not necessary or ap-  
23          propriate for the maintenance of fair and orderly  
24          markets or the protection of investors or is not in  
25          the public interest.”.

1 **SEC. 112. EFFECTIVE DATE.**

2       The amendments made by this subtitle shall take ef-  
3 fect at the end of the 90-day period beginning on the date  
4 of the enactment of this Act.

5                   **Subtitle B—Investment Bank**  
6                   **Holding Companies**

7 **SEC. 116. INVESTMENT BANK HOLDING COMPANIES.**

8       (a) DEFINITIONS.—

9               (1) IN GENERAL.—Section 2 of the Bank Hold-  
10       ing Company Act of 1956 (12 U.S.C. 1842) is  
11       amended by adding at the end the following new  
12       subsections:

13       “(s) WHOLESALE FINANCIAL INSTITUTION.—The  
14       term ‘wholesale financial institution’ means a wholesale fi-  
15       nancial institution as defined in section 9B of the Federal  
16       Reserve Act.

17       “(t) INVESTMENT BANK HOLDING COMPANY.—The  
18       term ‘investment bank holding company’ means any finan-  
19       cial services holding company that—

20               “(1) controls a company engaged in underwrit-  
21       ing corporate equity securities pursuant to section  
22       10;

23               “(2) controls a wholesale financial institution;  
24       and

1           “(3) if the company is a foreign bank that oper-  
2           ates a branch, agency or commercial lending com-  
3           pany in the United States, or is a company that con-  
4           trols such foreign bank, is treated as an investment  
5           bank holding company because such bank or com-  
6           pany meets the criteria in section 12(b) and has re-  
7           ceived the determination required by such section.”.

8           (2) DEFINITION OF BANK INCLUDES WHOLE-  
9           SALE FINANCIAL INSTITUTION.—Section 2(c)(1) of  
10          the Bank Holding Company Act of 1956 (12 U.S.C.  
11          1841(e)(1)) is amended by adding at the end the fol-  
12          lowing new subparagraph:

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

14          (b) INVESTMENT BANK HOLDING COMPANIES.—The  
15          Bank Holding Company Act of 1956 (12 U.S.C. 1841 et  
16          seq.) is amended by inserting after section 11 (as added  
17          by section 104 of this Act) the following new section:

18          **“SEC. 12. INVESTMENT BANK HOLDING COMPANIES.**

19                   “(a) PERMISSIBLE AFFILIATIONS FOR INVESTMENT  
20          BANK HOLDING COMPANIES.—

21                           “(1) FINANCIAL ACTIVITIES.—

22                                   “(A) ACTIVITIES AUTHORIZED.—An in-  
23                                   vestment bank holding company may directly or  
24                                   indirectly own or control shares of any company

1 engaged in any activity the Board has deter-  
2 mined to be financial in nature or incidental to  
3 a financial activity or any activity in compliance  
4 with subparagraph (B) or (C).

5 “(B) INCIDENTAL ACTIVITIES.—

6 “(i) IN GENERAL.—Notwithstanding  
7 subparagraph (A), the aggregate invest-  
8 ment by an investment bank holding com-  
9 pany in shares of companies that engage in  
10 nonfinancial activities shall not at any time  
11 exceed 7.5 percent (or such greater per-  
12 centage as the Board may determine to be  
13 appropriate) of the consolidated total risk-  
14 weighted assets of the investment bank  
15 holding company (excluding assets of com-  
16 panies held pursuant to this subpara-  
17 graph), except that the amount invested by  
18 the investment bank holding company in  
19 any one company (including all affiliates of  
20 such company other than preexisting affili-  
21 ates of such investment bank holding com-  
22 pany) may not exceed the amount which is  
23 equal to 25 percent of the total capital and  
24 surplus of such investment bank holding  
25 company.

1           “(ii) APPLICABILITY TO SUCCESSOR  
2           IN INTEREST.—Any successor to any in-  
3           vestment bank holding company referred to  
4           in clause (i) may retain any investments  
5           made pursuant to this subparagraph—

6                   “(I) during the 5-year period be-  
7                   ginning on the date the succession is  
8                   consummated; and

9                   “(II) with the consent of the  
10                  Board, for an additional period not to  
11                  exceed 5 years after the 5-year period  
12                  referred to in subclause (I),  
13                  unless the Board determines that the re-  
14                  tention of such investment would jeopard-  
15                  ize the safety and soundness of any in-  
16                  sured depository institution any insured  
17                  depository institution affiliate of such suc-  
18                  cessor.

19           “(iii) CROSS MARKETING RESTRIC-  
20           TIONS.—A wholesale financial institution  
21           shall not—

22                   “(I) offer or market, directly or  
23                   through any arrangement, any prod-  
24                   uct or service of an affiliate whose  
25                   shares are owned or controlled by the

1 investment bank holding company  
2 pursuant to this subparagraph or sub-  
3 paragraph (C); or

4 “(II) permit any of such whole-  
5 sale financial institution’s or subsidi-  
6 ary’s products or services to be of-  
7 fered or marketed, directly or through  
8 any arrangement, by or through any  
9 such affiliate.

10 “(iv) USE OF COMMON NAME.—An in-  
11 vestment bank holding company shall not  
12 permit a wholesale financial institution to  
13 adopt a name which is the same as or  
14 similar to, or a variation of, the name or  
15 title of an affiliate engaged in activities  
16 pursuant to subparagraph (B).

17 “(C) COMMODITIES.—

18 “(i) IN GENERAL.—An investment  
19 bank holding company predominately en-  
20 gaged as of January 1, 1995, in securities  
21 activities in the United States (or any suc-  
22 cessor to any such company) may engage  
23 in, or directly or indirectly own or control  
24 shares of a company engaged in, activities  
25 related to the trading, sale, or investment

1 in commodities and underlying physical  
2 properties that were not permissible for  
3 bank holding companies to conduct in the  
4 United States as of January 1, 1995, pro-  
5 vided such investment bank holding com-  
6 pany, or any subsidiary of such holding  
7 company, was engaged directly, indirectly,  
8 or through any such company in any of  
9 such activities as of January 1, 1995, in  
10 the United States.

11 “(ii) LIMITATION.—Notwithstanding  
12 subparagraphs (A) and (B), the aggregate  
13 investment by an investment bank holding  
14 company in activities under this subpara-  
15 graph (other than those otherwise per-  
16 mitted under this section) shall not at any  
17 time exceed 5 percent of the total consoli-  
18 dated assets of the investment bank hold-  
19 ing company.

20 “(iii) SUCCESSOR DEFINED.—For  
21 purposes of this subparagraph and sub-  
22 paragraph (B), the term ‘successor’ means,  
23 with respect to any investment bank hold-  
24 ing company described in clause (i), any  
25 company that merges with, or acquires

1 control of, such investment bank holding  
2 company.

3 “(D) QUALIFIED INVESTOR IN AN INVEST-  
4 MENT BANK HOLDING COMPANY.—

5 “(i) IN GENERAL.—Notwithstanding  
6 any other provision of Federal or State  
7 law, a qualified investor—

8 “(I) shall not be, or be deemed to  
9 be, an investment bank holding com-  
10 pany, a financial services holding com-  
11 pany, a bank holding company, or any  
12 similar organization; and

13 “(II) shall not be deemed to con-  
14 trol or be affiliated with any such  
15 company or organization or any sub-  
16 sidiary of any such company or orga-  
17 nization (other than for purposes of  
18 section 23A and 23B of the Federal  
19 Reserve Act),

20 by virtue of the investor’s ownership or  
21 control of shares of an investment bank  
22 holding company.

23 “(ii) QUALIFIED INVESTOR DE-  
24 FINED.—For purposes of this subpara-  
25 graph, the term ‘qualified investor’ means

1 any United States company (including a  
2 parent company and all subsidiaries of  
3 which the parent company holds at least  
4 80 percent of the total voting equity secu-  
5 rities) which since February 27, 1995, has  
6 directly or indirectly owned or controlled  
7 shares of capital stock representing at  
8 least 10 percent, and not more than 45  
9 percent, of the outstanding voting shares  
10 or voting power of a company that—

11 “(I) becomes an investment bank  
12 holding company or a subsidiary of an  
13 investment bank holding company;  
14 and

15 “(II) before such company be-  
16 came an investment bank holding  
17 company or a subsidiary of an invest-  
18 ment bank holding company, had  
19 more than 50 percent of the compa-  
20 ny’s assets employed directly or indi-  
21 rectly in securities activities.

22 “(iii) CROSS-MARKETING AND COM-  
23 MON NAME.—A wholesale financial institu-  
24 tion shall not—

1           “(I) offer or market products or  
2           services of a qualified investor in the  
3           investment bank holding company of  
4           which the wholesale financial institu-  
5           tion is an affiliate;

6           “(II) permit the institution’s  
7           products or services to be offered or  
8           marketed in connection with products  
9           or services of such qualified investor;  
10          or

11          “(III) adopt a name which is the  
12          same as or similar to, or a variation  
13          of, the name or title of such qualified  
14          investor.

15          “(iv) EXAMINATION AND REPORT-  
16          ING.—Notwithstanding any other provision  
17          of law, the Board may conduct examina-  
18          tions of, or require reports from, a quali-  
19          fied investor only to the extent that the  
20          Board reasonably determines that such ex-  
21          aminations or reports are necessary—

22                 “(I) to ensure compliance with  
23                 this subparagraph; or

1                   “(II) to the extent that the quali-  
2                   fied investor is an affiliate of a whole-  
3                   sale financial institution for purposes  
4                   of section 23A of the Federal Reserve  
5                   Act, to ensure compliance with restric-  
6                   tions imposed by law or regulation on  
7                   transactions between the qualified in-  
8                   vestor and such wholesale financial in-  
9                   stitution.

10                   “(E) CONSOLIDATED TOTAL RISK-WEIGHT-  
11                   ED ASSETS.—For purposes of this paragraph,  
12                   the following definitions shall apply:

13                   “(i) IN GENERAL.—The term ‘consoli-  
14                   dated total risk-weighted assets’ shall have  
15                   the meaning given to such term in regula-  
16                   tions prescribed by the Board as in effect  
17                   on the date of the enactment of the Finan-  
18                   cial Services Competitiveness Act of 1997.

19                   “(ii) APPLICATION TO FOREIGN  
20                   BANKS.—In the case of a foreign bank or  
21                   a company that owns or controls a foreign  
22                   bank, the term ‘consolidated total risk-  
23                   weighted assets’ means total risk-weighted  
24                   assets held by the foreign bank or company  
25                   in the United States in any United States

1 branch, agency, or commercial lending  
2 company subsidiary, any depository institu-  
3 tion controlled by the foreign bank or com-  
4 pany, any subsidiary held under the au-  
5 thority of this section, section 3, 4, or 10  
6 (other than paragraph (9) or (13) or sec-  
7 tion 4(c)), or section 25 or 25A of the  
8 Federal Reserve Act.

9 “(2) SECURITIES ACTIVITIES.—

10 “(A) INSTITUTIONS MUST BE WELL CAP-  
11 ITALIZED.—The Board shall disapprove a no-  
12 tice under section 10 by an investment bank  
13 holding company (or a company seeking to be-  
14 come an investment bank holding company) to  
15 acquire a securities affiliate if any wholesale fi-  
16 nancial institution controlled by the investment  
17 bank holding company is not well capitalized or  
18 would not be well capitalized following the  
19 transaction.

20 “(B) TRANSACTIONS WITH AFFILIATES.—

21 “(i) IN GENERAL.—A wholesale finan-  
22 cial institution controlled by an investment  
23 bank holding company shall be treated as  
24 a bank for purposes of the provisions of

1 sections 23A and 23B of the Federal Re-  
2 serve Act.

3 “(ii) OTHER RESTRICTIONS REGARD-  
4 ING SECURITIES AFFILIATES DETERMINED  
5 BY THE BOARD.—A securities affiliate of  
6 an investment bank holding company, and  
7 a wholesale financial institution controlled  
8 by an investment bank holding company,  
9 shall not be subject to the provisions of  
10 section 11, except that the securities affili-  
11 ate and wholesale financial institution shall  
12 be subject to subsections (j) and (k) of  
13 such section in the same manner and to  
14 the same extent such paragraphs would  
15 apply if the wholesale financial institution  
16 were an insured depository institution.

17 “(3) LIMITATION ON AFFILIATION WITH IN-  
18 SURED DEPOSITORY INSTITUTIONS.—An investment  
19 bank holding company may not, directly or indi-  
20 rectly, own or control—

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

23 “(B) any savings association;

1           “(C) any institution described in section  
2 2(e)(2) (other than subparagraphs (C) and (G)  
3 of such section); or

4           “(D) any institution that accepts—

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

8                 “(ii) deposits that are insured under  
9 the Federal Deposit Insurance Act.

10           “(4) NO DEPOSIT INSURANCE FUND LIABIL-  
11 ITY.—No Federal deposit insurance funds may be  
12 used in connection with the failure of, or any pro-  
13 posed assistance to, a wholesale financial institution  
14 or an investment bank holding company.

15           “(5) CAPITAL OF IBHC.—

16                 “(A) IN GENERAL.—The Board shall not  
17 impose any capital requirement on investment  
18 bank holding companies or subsidiaries of such  
19 companies (other than depository institutions)  
20 unless any such requirement is based upon ap-  
21 propriate risk-weighting considerations.

22                 “(B) APPLICABLE ACCOUNTING PRIN-  
23 CIPLES.—In applying any capital standard to  
24 investment bank holding companies, or subsidi-  
25 aries of such companies, the Board shall utilize

1 uniform accounting principles consistent with  
2 generally accepted accounting principles in ac-  
3 cordance with section 37(a)(2) of the Federal  
4 Deposit Insurance Act.

5 “(b) QUALIFICATION OF FOREIGN BANK AS INVEST-  
6 MENT BANK HOLDING COMPANY.—

7 “(1) IN GENERAL.—Any foreign bank that—

8 “(A) operates a branch, agency or commer-  
9 cial lending company in the United States (and  
10 any company that owns or controls such foreign  
11 bank), including a foreign bank that does not  
12 own or control a wholesale financial institution;  
13 and

14 “(B) controls a security affiliate that en-  
15 gages in underwriting corporate equity securi-  
16 ties,

17 may request a determination from the Board that  
18 such bank or company be treated as an investment  
19 bank holding company.

20 “(2) CONDITIONS FOR TREATMENT AS AN IN-  
21 VESTMENT BANK HOLDING COMPANY.—A foreign  
22 bank and a company that owns or controls a foreign  
23 bank may not be treated as an investment bank  
24 holding company unless the bank and company meet  
25 and continue to meet the following criteria:

1           “(A) NO INSURED DEPOSITS.—No deposits  
2 held directly by a foreign bank or through an  
3 affiliate are insured under the Federal Deposit  
4 Insurance Act.

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

11           “(C) TRANSACTIONS WITH AFFILIATES.—  
12 Transactions between a branch, agency, or com-  
13 mercial lending company subsidiary of the for-  
14 eign bank in the United States, and any securi-  
15 ties affiliate or company in which the foreign  
16 bank (or any company that owns or controls  
17 such foreign bank) has invested pursuant to  
18 subsection (a)(1)(B), comply with the provisions  
19 of sections 23A and 23B of the Federal Reserve  
20 Act in the same manner and to the same extent  
21 as such transactions would be required to com-  
22 ply with such sections if the bank were a mem-  
23 ber bank.

24           “(3) TREATMENT AS A WHOLESALE FINANCIAL  
25 INSTITUTION.—Any foreign bank which is, or is

1 affiliated with a company which is treated as an  
2 investment bank holding company under this  
3 subsection shall be treated as a wholesale financial  
4 institution for purposes of clauses (iii) and (iv) of  
5 subsection (a)(1)(B), subsection (a)(2)(B)(ii), and  
6 section 5(g), except that the Board may adopt such  
7 modifications, conditions, or exemptions as the  
8 Board deems appropriate, giving due regard to the  
9 principle of national treatment and equality of com-  
10 petitive opportunity.

11 “(4) NONAPPLICABILITY OF OTHER EXEMP-  
12 TION.—Any foreign bank or company which is treat-  
13 ed as an investment bank holding company under  
14 this subsection shall not be eligible for any exemp-  
15 tion described in section 2(h).

16 “(c) ELIGIBILITY OF FOREIGN BANKS FOR CERTAIN  
17 TREATMENT.—

18 “(1) RECIPROCAL NATIONAL TREATMENT.—

19 “(A) IN GENERAL.—A foreign bank that  
20 operates a branch, agency or commercial lend-  
21 ing company in the United States, and any  
22 company that owns or controls such a foreign  
23 bank, shall be eligible for the treatment af-  
24 farded under subsection (b) or section 11(l)  
25 only if the home country of such foreign bank

1 or company accords to United States banks the  
2 same competitive opportunities in banking as  
3 such country accords to domestic banks of such  
4 country.

5 “(B) COORDINATION WITH NAFTA.—Sub-  
6 paragraph (A) shall not apply in derogation of  
7 any obligation under the North American Free  
8 Trade Agreement.

9 “(C) HOME COUNTRY DEFINED.—For pur-  
10 poses of subparagraph (A), the term ‘home  
11 country’ means, with respect to any foreign  
12 bank or company referred to in subparagraph  
13 (A), the country under the laws of which the  
14 foreign bank or company is organized.

15 “(2) PREVENTION OF EVASION.—No foreign  
16 bank or bank owned by a former United States na-  
17 tional may operate a branch or agency in the United  
18 States if the predominance of the assets of such  
19 bank were acquired in connection with a merger  
20 with, or purchase or assumption of all or substan-  
21 tially all the assets of, a wholesale financial institu-  
22 tion.

23 “(d) RULE FOR FINANCIAL SERVICES HOLDING  
24 COMPANIES.—For purposes of section 5(g)(2)(A)(ii), any

1 foreign bank (as defined in section 1(b) of the Inter-  
2 national Banking Act of 1978) which is directly or indi-  
3 rectly owned, controlled, or operated by a company that—

4           “(1) as of January 1, 1995, was registered as  
5 a banking holding company; or

6           “(2) is a successor to any such bank holding  
7 company,

8 shall be treated as a wholesale financial institution.”.

9       (c) CONFORMING AMENDMENTS.—

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

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

19                   “(A) any State member insured bank (ex-  
20 cept a District bank) and wholesale financial in-  
21 stitution as authorized pursuant to section 9B  
22 of the Federal Reserve Act;”.

1 **SEC. 117. WHOLESALE FINANCIAL INSTITUTIONS.**

2 (a) IN GENERAL.—The Federal Reserve Act (12  
3 U.S.C. 221 et seq.) is amended by inserting after section  
4 9A the following new section:

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

6 “(a) APPLICATION FOR MEMBERSHIP AS WHOLE-  
7 SALE FINANCIAL INSTITUTION.—

8 “(1) APPLICATION REQUIRED.—

9 “(A) IN GENERAL.—Any bank may apply  
10 to the Board of Governors of the Federal Re-  
11 serve System to become a wholesale financial  
12 institution and as a wholesale financial institu-  
13 tion, to subscribe to the stock of the Federal re-  
14 serve bank organized within the district where  
15 the applying bank is located.

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

20 “(2) INSURANCE TERMINATION.—No bank that  
21 is insured under the Federal Deposit Insurance Act  
22 may become a wholesale financial institution unless  
23 it has met all requirements under that Act for vol-  
24 untary termination of deposit insurance.

25 “(3) APPLICATION FEE.—No bank or organiza-  
26 tion may become a wholesale financial institution

1 unless the Board has received, from the bank or or-  
2 ganization, full payment of a fee which the Board  
3 shall impose in the manner provided under section  
4 5(h) of the Financial Services Holding Company Act  
5 of 1997.

6 “(b) GENERAL REQUIREMENTS APPLICABLE TO  
7 WHOLESALE FINANCIAL INSTITUTIONS.—

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

19 “(2) PROMPT CORRECTIVE ACTION.—A whole-  
20 sale financial institution shall be deemed to be an in-  
21 sured depository institution for purposes of section  
22 38 of the Federal Deposit Insurance Act except  
23 that—

24 “(A) the relevant capital levels and capital  
25 measures for each capital category shall be the

1 levels specified by the Board for wholesale fi-  
2 nancial institutions; and

3 “(B) all references to the appropriate Fed-  
4 eral banking agency or to the Corporation in  
5 that section shall be deemed to be references to  
6 the Board.

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

17 “(4) CERTAIN OTHER STATUTES APPLICA-  
18 BLE.—A wholesale financial institution shall be  
19 deemed to be a banking institution, and the Board  
20 shall be the appropriate Federal banking agency for  
21 such bank and all such bank’s affiliates, for pur-  
22 poses of the International Lending Supervision Act.

23 “(5) BANK MERGER ACT.—A wholesale finan-  
24 cial institution shall be subject to provisions of sec-  
25 tions 18(c) and 44 of the Federal Deposit Insurance

1 Act in the same manner and to the same extent the  
2 wholesale financial institution would be subject to  
3 such sections if the institution were a State member  
4 insured bank.

5 “(6) REGISTRATION FEE.—The Board shall as-  
6 sess an annual registration fee in the manner pro-  
7 vided in section 5(h) of the Financial Services Hold-  
8 ing Company Act of 1997 on each wholesale finan-  
9 cial institution.

10 “(c) SPECIFIC REQUIREMENTS APPLICABLE TO  
11 WHOLESALE FINANCIAL INSTITUTIONS.—

12 “(1) LIMITATIONS ON DEPOSITS.—

13 “(A) MINIMUM AMOUNT.—

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

18 “(ii) LIMITATION ON DEPOSITS OF  
19 LESS THAN \$100,000.—No bank may be  
20 treated as a wholesale financial institution  
21 if the total amount of the initial deposits  
22 of \$100,000 or less at such bank constitute  
23 more than 5 percent of the bank’s total de-  
24 posits.

1           “(B) NO DEPOSIT INSURANCE.—No depos-  
2 its held by a wholesale financial institution shall  
3 be insured deposits under the Federal Deposit  
4 Insurance Act.

5           “(C) ADVERTISING AND DISCLOSURE.—  
6 The Board shall prescribe regulations pertain-  
7 ing to advertising and disclosure by wholesale  
8 financial institutions to ensure that each deposi-  
9 tor is notified that deposits at the wholesale fi-  
10 nancial institution are not federally insured or  
11 otherwise guaranteed by the United States Gov-  
12 ernment.

13           “(2) SPECIAL CAPITAL REQUIREMENTS APPLI-  
14 CABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—

15           “(A) MINIMUM CAPITAL LEVELS.—

16           “(i) IN GENERAL.—The Board shall,  
17 by regulation, adopt capital requirements  
18 for wholesale financial institutions—

19           “(I) to account for the status of  
20 wholesale financial institutions as in-  
21 stitutions that accept deposits that  
22 are not insured under the Federal De-  
23 posit Insurance Act; and

1                   “(II) to provide for the safe and  
2                   sound operation of the wholesale fi-  
3                   nancial institution without undue risk  
4                   to creditors or other persons, includ-  
5                   ing Federal reserve banks, engaged in  
6                   transactions with the bank.

7                   “(ii) MINIMUM TIER 1 CAPITAL  
8                   RATIO.—The minimum ratio of tier 1 cap-  
9                   ital to total risk-weighted assets of whole-  
10                  sale financial institutions shall be not less  
11                  than the level required for a State member  
12                  insured bank to be well capitalized unless  
13                  the Board determines otherwise, consistent  
14                  with safety and soundness.

15                  “(3) ADDITIONAL REQUIREMENTS APPLICABLE  
16                  TO WHOLESAL FINANCIAL INSTITUTIONS.—In addi-  
17                  tion to any requirement otherwise applicable to State  
18                  member banks or applicable, under this section, to  
19                  wholesale financial institutions, the Board may pre-  
20                  scribe, by regulation or order, for wholesale financial  
21                  institutions—

22                  “(A) limitations on transactions with affili-  
23                  ates to prevent—

24                  “(i) the transfer of risk to the deposit  
25                  insurance funds; or

1           “(ii) an affiliate from gaining access  
2           to, or the benefits of, credit from a Federal  
3           reserve bank, including overdrafts at a  
4           Federal reserve bank;

5           “(B) special clearing balance requirements;  
6           and

7           “(C) any additional requirements that the  
8           Board determines to be appropriate or nec-  
9           essary to—

10           “(i) promote the safety and soundness  
11           of the wholesale financial institution or any  
12           insured depository institution affiliate of  
13           the wholesale financial institution;

14           “(ii) prevent the transfer of risk to  
15           the deposit insurance funds; or

16           “(iii) protect creditors and other per-  
17           sons, including Federal reserve banks, en-  
18           gaged in transactions with the wholesale fi-  
19           nancial institution.

20           “(4) EXEMPTIONS FOR WHOLESale FINANCIAL  
21           INSTITUTIONS.—The Board may, by regulation or  
22           order, exempt any wholesale financial institution  
23           from any provision applicable to a member bank  
24           that is not a wholesale financial institution, if the

1 Board finds that such exemption is not inconsistent  
2 with—

3 “(A) the promotion of the safety and  
4 soundness of the wholesale financial institution  
5 or any insured depository institution affiliate of  
6 the wholesale financial institution;

7 “(B) the protection of the deposit insur-  
8 ance funds; and

9 “(C) the protection of creditors and other  
10 persons, including Federal reserve banks, en-  
11 gaged in transactions with the wholesale finan-  
12 cial institution.

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

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

1 “(d) CONSERVATORSHIP AUTHORITY.—

2 “(1) IN GENERAL.—The Board may appoint a  
3 conservator to take possession and control of a  
4 wholesale financial institution to the same extent  
5 and in the same manner as the Comptroller of the  
6 Currency may appoint a conservator for a national  
7 bank under section 203 of the Bank Conservation  
8 Act, and the conservator shall exercise the same  
9 powers, functions, and duties, subject to the same  
10 limitations, as are provided under such Act for con-  
11 servators of national banks.

12 “(2) BOARD AUTHORITY.—The Board shall  
13 have the same authority with respect to any con-  
14 servator appointed under paragraph (1) and the  
15 wholesale financial institution for which such con-  
16 servator has been appointed as the Comptroller of  
17 the Currency has under the Bank Conservation Act  
18 with respect to a conservator appointed under such  
19 Act and a national bank for which the conservator  
20 has been appointed.

21 “(e) EXCLUSIVE JURISDICTION.—Subsections (c)  
22 and (e) of section 43 of the Federal Deposit Insurance  
23 Act shall not apply to any wholesale financial institution.”.

24 (b) VOLUNTARY TERMINATION OF INSURED STATUS  
25 BY CERTAIN INSTITUTIONS.—

1           (1) SECTION 8 DESIGNATIONS.—Section 8(a) of  
2           the Federal Deposit Insurance Act (12 U.S.C.  
3           1818(a)) is amended—

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

5                     (B) by redesignating paragraphs (2)  
6           through (9) as paragraphs (1) through (8), re-  
7           spectively.

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       **“§ 8A. Voluntary termination of status as insured de-**  
13                     **pository institution**

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

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

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

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

4           “(2) either—

5           “(A) the deposit insurance fund of which  
6           such bank is a member equals or exceeds the  
7           fund’s designated reserve ratio as of the date  
8           the bank provides a written notice under para-  
9           graph (1) and the Corporation determines that  
10          the fund will equal or exceed the applicable des-  
11          ignated reserve ratio for the 2 semiannual as-  
12          sessment periods immediately following such  
13          date; or

14          “(B) the Corporation and the Board of  
15          Governors of the Federal Reserve System ap-  
16          prove the termination of the bank’s insured sta-  
17          tus and the bank pays an exit fee in accordance  
18          with subsection (e).

19          “(b) EXCEPTION.—Subsection (a) shall not apply  
20          with respect to—

21                 “(1) an insured savings association;

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

1           “(3) any institution described in section 2(e)(2)  
2           of the Bank Holding Company Act of 1956.

3           “(c) ELIGIBILITY FOR INSURANCE TERMINATED.—  
4 Any bank that voluntarily elects to terminate the bank’s  
5 insured status under subsection (a) shall not be eligible  
6 for insurance on any deposits or any assistance authorized  
7 under this Act after the period specified in subsection  
8 (f)(1).

9           “(d) INSTITUTION MUST BECOME WHOLESALe FI-  
10 NANCIAL INSTITUTION OR TERMINATE DEPOSIT-TAKING  
11 ACTIVITIES.—Any depository institution which voluntarily  
12 terminates such institution’s status as an insured depository  
13 institution under this section may not, upon termination  
14 of insurance, accept any deposits unless the institution  
15 is a wholesale financial institution under section 9B  
16 of the Federal Reserve Act.

17          “(e) EXIT FEES.—

18           “(1) IN GENERAL.—Any bank that voluntarily  
19 terminates such bank’s status as an insured depository  
20 institution under this section shall pay an exit  
21 fee in an amount that the Corporation determines is  
22 sufficient to account for the institution’s pro rata  
23 share of the amount (if any) which would be re-  
24 quired to restore the relevant deposit insurance fund  
25 to the fund’s designated reserve ratio as of the date

1 the bank provides a written notice under subsection  
2 (a)(1).

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

6 “(f) TEMPORARY INSURANCE OF DEPOSITS INSURED  
7 AS OF TERMINATION.—

8 “(1) TRANSITION PERIOD.—The insured depos-  
9 its of each depositor in a State bank or a national  
10 bank on the effective date of the voluntary termi-  
11 nation of the bank’s insured status, less all subse-  
12 quent withdrawals from any deposits of such deposi-  
13 tor, shall continue to be insured for a period of not  
14 less than 6 months and not more than 2 years, as  
15 determined by the Corporation. During such period,  
16 no additions to any such deposits, and no new de-  
17 posits in the depository institution made after the ef-  
18 fective date of such termination shall be insured by  
19 the Corporation.

20 “(2) TEMPORARY ASSESSMENTS; OBLIGATIONS  
21 AND DUTIES.—During the period specified in para-  
22 graph (1) with respect to any bank, the bank shall  
23 continue to pay assessments under section 7 as if  
24 the bank were an insured depository institution. The  
25 bank shall, in all other respects, be subject to the

1 authority of the Corporation and the duties and obli-  
2 gations of an insured depository institution under  
3 this Act during such period, and in the event that  
4 the bank is closed due to an inability to meet the de-  
5 mands of the bank's depositors during such period,  
6 the Corporation shall have the same powers and  
7 rights with respect to such bank as in the case of  
8 an insured depository institution.

9 “(g) ADVERTISEMENTS.—

10 “(1) IN GENERAL.—A bank that voluntarily  
11 terminates the bank's insured status under this sec-  
12 tion shall not advertise or hold itself out as having  
13 insured deposits, except that the bank may advertise  
14 the temporary insurance of deposits under sub-  
15 section (f) if, in connection with any such advertise-  
16 ment, the advertisement also states with equal prom-  
17 inence that additions to deposits and new deposits  
18 made after the effective date of the termination are  
19 not insured.

20 “(2) CERTIFICATES OF DEPOSIT, OBLIGATIONS,  
21 AND SECURITIES.—Any certificate of deposit or  
22 other obligation or security issued by a State bank  
23 or a national bank after the effective date of the vol-  
24 untary termination of the bank's insured status

1 under this section shall be accompanied by a con-  
2 spicuous, prominently displayed notice that such cer-  
3 tificate of deposit or other obligation or security is  
4 not insured under this Act.

5 “(h) NOTICE REQUIREMENTS.—

6 “(1) NOTICE TO THE CORPORATION.—The no-  
7 tice required under subsection (a)(1)(A) shall be in  
8 such form as the Corporation may require.

9 “(2) NOTICE TO DEPOSITORS.—The notice re-  
10 quired under subsection (a)(1)(B) shall be—

11 “(A) sent to each depositor’s last address  
12 of record with the bank; and

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

16 (3) DEFINITION.—Section 19(b)(1)(A)(i) of the  
17 Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i)) is  
18 amended after “such Act” by inserting “, or any  
19 wholesale financial institution as defined in section  
20 9B of this Act”.

21 (c) REPORTS ON DISCOUNTS AND ADVANCES TO  
22 WHOLESALE FINANCIAL INSTITUTIONS.—Section 10B of  
23 the Federal Reserve Act (12 U.S.C. 347(b)) is amended  
24 by adding at the end the following new subsection:

1       “(c) REPORTS ON DISCOUNTS AND ADVANCES TO  
2 WHOLESALE FINANCIAL INSTITUTIONS.—

3               “(1) IN GENERAL.—The Board shall submit a  
4 report to the Congress at the end of any year in  
5 which any wholesale financial institution has ob-  
6 tained a discount, advance, or other extension of  
7 credit from a Federal reserve bank.

8               “(2) CONTENTS.—Any report submitted under  
9 paragraph (1) shall explain the circumstances and  
10 need for any discount, advance, or other extension of  
11 credit to a wholesale financial institution during the  
12 period covered by the report, including the type and  
13 amount of credit extended and the amount of credit  
14 remaining outstanding as of the date of the report.”.

## 15       **Subtitle C—Financial Activities**

### 16       **SEC. 121. FINANCIAL ACTIVITIES.**

17       Section 4(c)(8) of the Bank Holding Company Act  
18 of 1956 (12 U.S.C. 1843(c)(8)) is amended—

19               (1) by striking “shares of any company” and all  
20 that follows through “for a bank holding company to  
21 provide” and inserting “shares of any company the  
22 activities of which the Board after due notice has de-  
23 termined (by order, regulation, or advisory opinion)  
24 to be financial in nature or incidental to such finan-  
25 cial activities. In determining whether an activity is

1 financial in nature or incidental to financial activi-  
2 ties, the Board shall take into account changes or  
3 reasonably expected changes in the marketplace in  
4 which financial services holding companies compete  
5 as well as changes or reasonably expected changes in  
6 the technology by which these services are delivered.  
7 In addition, the Board shall take into account activi-  
8 ties considered financial activities or banking or fi-  
9 nancial operations for purposes of the regulation of  
10 the Board designated as ‘Regulation K’ (12 CFR  
11 211.23(f)(5)(iii)(B)) as in effect on the date of the  
12 enactment of the Financial Services Competitiveness  
13 Act of 1997. Any activity that the Board has deter-  
14 mined, by order or regulation that is in effect on  
15 such date to be so closely related to banking or man-  
16 aging or controlling banks as to be a proper incident  
17 thereto shall be deemed to be of a financial nature  
18 for purposes of this paragraph without further ac-  
19 tion by the Board (subject to the same terms and  
20 conditions contained in such order or regulation, un-  
21 less modified by the Board), but for purposes of this  
22 subsection it shall not be closely related to banking  
23 or managing or controlling banks or financial in na-  
24 ture or incidental to a financial activity for a finan-  
25 cial services holding company to provide’;

1           (2) in the third sentence, by inserting “and be-  
2           tween activities commenced by affiliates of different  
3           classes of banks” before the period at the end; and  
4           (3) by striking the second sentence.

5 **SEC. 122. RESERVED.**

6 **SEC. 123. STREAMLINED EXAMINATION AND REPORTING**  
7           **REQUIREMENTS FOR ALL FINANCIAL SERV-**  
8           **ICES HOLDING COMPANIES.**

9           Section 5(c) of the Bank Holding Company Act of  
10 1956 (12 U.S.C. 1844(c)) is amended to read as follows:

11           “(c) REPORTS AND EXAMINATIONS.—

12           “(1) PURPOSES.—

13           “(A) IN GENERAL.—The purpose of this  
14           subsection is to authorize the Board, through  
15           reports and examinations, to gather information  
16           from a financial services holding company and  
17           the subsidiaries of any such holding company  
18           regarding the structure, activities, and financial  
19           condition of the financial services holding com-  
20           pany and such subsidiaries so that the Board  
21           can monitor risks within the holding company  
22           system that could adversely affect any deposi-  
23           tory institution subsidiary of the holding com-  
24           pany and may monitor and enforce compliance  
25           with this Act.

1           “(B) PURPOSE NOT TO IMPOSE ADDI-  
2           TIONAL BURDENS ON HOLDING COMPANIES.—It  
3           is the intended purpose of this subsection that  
4           the Board shall—

5                   “(i) exercise the Board’s authority to  
6                   collect information under this section in a  
7                   manner that is the least burdensome to fi-  
8                   nancial services holding companies and the  
9                   subsidiaries of such companies; and

10                   “(ii) rely, to the fullest extent pos-  
11                   sible, on reports prepared for and examina-  
12                   tions conducted by or for other Federal  
13                   and State supervisors.

14           “(C) PURPOSE TO REQUIRE CAREFULLY  
15           TAILORED EXAMINATIONS.—It is the intended  
16           purpose of this subsection that the Board shall  
17           tailor the focus and scope of any examination  
18           under this section to a financial services holding  
19           company or to any subsidiary of such company  
20           which, because of financial conditions, activities  
21           operations of such subsidiary, the transactions  
22           between such subsidiary and other affiliates, or  
23           the size of any such subsidiary poses a potential  
24           material risk to a depository institution subsidi-  
25           ary of such holding company.

1           “(2) REPORTS.—

2                   “(A) IN GENERAL.—The Board from time  
3 to time may require any financial services hold-  
4 ing company and any subsidiary of such com-  
5 pany to submit reports under oath to keep the  
6 Board informed as to—

7                           “(i) the company’s or the subsidiary’s  
8 activities, financial condition, policies, sys-  
9 tems for monitoring and controlling finan-  
10 cial and operational risks, and transactions  
11 with depository institution subsidiaries of  
12 the holding company; and

13                           “(ii) the extent to which the company  
14 or subsidiary has complied with the provi-  
15 sions of this Act and regulations prescribed  
16 and orders issued under this Act.

17           “(B) USE OF EXISTING REPORTS.—

18                   “(i) IN GENERAL.—The Board shall,  
19 to the fullest extent possible, accept re-  
20 ports in fulfillment of the Board’s report-  
21 ing requirements under this paragraph  
22 that a financial services holding company  
23 or any subsidiary of such company has  
24 been required to provide to other Federal

1 and State supervisors or to appropriate  
2 self-regulatory organizations.

3 “(ii) AVAILABILITY.—A financial serv-  
4 ices holding company or a subsidiary of  
5 such company shall provide to the Board,  
6 at the request of the Board, a report re-  
7 ferred to in clause (i).

8 “(3) EXAMINATIONS.—

9 “(A) LIMITED USE OF EXAMINATION AU-  
10 THORITY.—The Board may make examinations  
11 of each financial services holding company and  
12 each subsidiary of such company in order to—

13 “(i) inform the Board of the nature of  
14 the operations and financial condition of  
15 the financial services holding company and  
16 such subsidiaries;

17 “(ii) inform the Board of the—

18 “(I) financial and operational  
19 risks within the financial services  
20 holding company system that may af-  
21 fect any depository institution owned  
22 by such holding company; and

23 “(II) the systems of the holding  
24 company and such subsidiaries for

1 monitoring and controlling those  
2 risks; and

3 “(iii) monitor compliance with the  
4 provisions of this Act and those governing  
5 transactions and relationships between any  
6 depository institution controlled by a finan-  
7 cial services holding company and any of  
8 the company’s other subsidiaries.

9 “(B) RESTRICTED FOCUS OF EXAMINATIONS.—  
10 The Board shall, to the fullest extent possible, limit  
11 the focus and scope of any examination of a finan-  
12 cial services holding company to—

13 “(i) the holding company; and

14 “(ii) to any subsidiary (other than a  
15 depository institution subsidiary) of the  
16 holding company which, because of the  
17 size, condition, or activities of the subsidi-  
18 ary, the nature or size of transactions be-  
19 tween such subsidiary and any depository  
20 institution affiliate, or the centralization of  
21 functions within the holding company sys-  
22 tem, could have a materially adverse effect  
23 on the safety and soundness of any deposi-  
24 tory institution affiliate of the subsidiary  
25 or of the holding company.

1           “(C) DEFERENCE TO BANK EXAMINA-  
2 TIONS.—The Board shall, to the fullest extent  
3 possible, use the report of examinations of de-  
4 pository institutions made by the Comptroller of  
5 the Currency, the Federal Deposit Insurance  
6 Corporation, the Office of Thrift Supervision or  
7 the appropriate State depository institution su-  
8 pervisory authority for the purposes of this sec-  
9 tion.

10           “(D) DEFERENCE TO OTHER EXAMINA-  
11 TIONS.—The Board shall, to the fullest extent  
12 possible, use the reports of examination made  
13 of—

14                   “(i) any registered broker or dealer by  
15 or on behalf of the Securities Exchange  
16 Commission,

17                   “(ii) any licensed insurance company  
18 by or on behalf of any state government in-  
19 surance agency responsible for the super-  
20 vision of the insurance company, and

21                   “(iii) any other subsidiary that the  
22 Board finds to be comprehensively super-  
23 vised under relevant Federal or State law  
24 by a Federal or state agency or authority.

1           “(E) CONFIDENTIALITY OF REPORTED INFOR-  
2           MATION.—

3                   “(i) IN GENERAL.—Notwithstanding  
4                   any other provision of law, the Board shall  
5                   not be compelled to disclose any informa-  
6                   tion required to be reported under this  
7                   paragraph, or any information supplied to  
8                   the Board by any domestic or foreign regu-  
9                   latory agency, that relates to the financial  
10                  or operational condition of any financial  
11                  services holding company or any subsidiary  
12                  of such company.

13                  “(ii) COMPLIANCE WITH REQUESTS  
14                  FOR INFORMATION.—No provision of this  
15                  subparagraph shall be construed as author-  
16                  izing the Board to withhold information  
17                  from Congress, or preventing the Board  
18                  from complying with a request for informa-  
19                  tion from any other Federal department or  
20                  agency for purposes within the scope of  
21                  such department’s or agency’s jurisdiction,  
22                  or from complying with an order of a court  
23                  of competent jurisdiction in an action  
24                  brought by the United States or the  
25                  Board.



1       “(g) REDUCED SUPERVISION OF COMPANIES CON-  
2 TROLLING PRINCIPALLY NONDEPOSITORY INSTITU-  
3 TIONS.—

4           “(1) ELECTION.—

5               “(A) IN GENERAL.—Any financial services  
6 holding company that qualifies under paragraph  
7 (2) may make an election to be governed by the  
8 approval, capital, reporting and examination re-  
9 quirements of paragraphs (3), (4), (5) and (6)  
10 by—

11                   “(i) filing a written notice of such  
12 election with the Board; and

13                   “(ii) if applicable, providing a written  
14 guarantee to the Federal Deposit Insur-  
15 ance Corporation pursuant to paragraph  
16 (2).

17           “(B) EFFECTIVE PERIOD OF ELECTION.—

18 An election under subparagraph (A) shall re-  
19 main in effect—

20                   “(i) so long as the financial services  
21 holding company continues to qualify  
22 under paragraph (2); or

23                   “(ii) until the financial services hold-  
24 ing company revokes the election.

1           “(2) CRITERIA FOR ELECTION.—A financial  
2 services holding company may make an election  
3 under paragraph (1) if the company meets all of the  
4 following criteria:

5                   “(A) COMPANY PRINCIPALLY CONTROLS  
6 NONDEPOSITORY COMPANIES.—

7                           “(i) FINANCIAL SERVICES HOLDING  
8 COMPANIES WITH DEPOSITORY INSTITU-  
9 TIONS.—In the case of a financial services  
10 holding company (other than an invest-  
11 ment bank holding company), the consoli-  
12 dated total risk-weighted assets of all de-  
13 pository institutions and foreign banks (as  
14 defined in section 1(b)(7) of the Inter-  
15 national Banking Act of 1978) controlled  
16 by the financial services holding com-  
17 pany—

18                                   “(I) constitute less than 10 per-  
19 cent of the consolidated total risk-  
20 weighted assets of such company; and

21   “(II) are less than  
22 \$5,000,000,000.

23                           “(ii) INVESTMENT BANK HOLDING  
24 COMPANIES.—In the case of an investment  
25 bank holding company, the consolidated

1 total risk-weighted assets of all wholesale  
2 financial institutions controlled by the in-  
3 vestment bank holding company—

4 “(I) constitute less than 25 per-  
5 cent of the consolidated total risk-  
6 weighted assets of such company; and

7 “(II) are less than  
8 \$15,000,000,000.

9 “(iii) INFLATION ADJUSTMENT.—The  
10 dollar limitation contained in clauses  
11 (i)(II) and (ii)(II) shall be adjusted annu-  
12 ally after December 31, 1997, by the an-  
13 nual percentage increase in the Consumer  
14 Price Index for Urban Wage Earners and  
15 Clerical Workers published by the Bureau  
16 of Labor Statistics.

17 “(iv) AUTHORITY TO INCREASE LIM-  
18 ITS.—The Board may increase any of the  
19 percentages referred to in clauses (i)(I)  
20 and (ii)(I) and the dollar amounts de-  
21 scribed in clauses (i)(II) and (ii)(II) as the  
22 Board may determine to be appropriate.

1           “(B) WELL CAPITALIZED INSTITUTIONS.—  
2           Each depository institution controlled by the fi-  
3           nancial services holding company is well capital-  
4           ized.

5           “(C) WELL MANAGED INSTITUTIONS.—

6           “(i) IN GENERAL.—Each depository  
7           institution controlled by the financial serv-  
8           ices holding company received a CAMEL  
9           composite rating of 1 or 2 (or an equiva-  
10          lent rating under an equivalent rating sys-  
11          tem) in the most recent examination of  
12          such institution.

13          “(ii) EXCLUSION FOR NEWLY AC-  
14          QUIRED INSTITUTIONS.—A depository in-  
15          stitution acquired by a financial services  
16          holding company during the 12-month pe-  
17          riod ending on the date of the election by  
18          such company under paragraph (1) may be  
19          excluded for purposes of clause (i) if the fi-  
20          nancial services holding company has de-  
21          veloped a plan acceptable to the appro-  
22          priate Federal banking agency (for such  
23          institution) to restore the capital and man-  
24          agement of the institution.

25          “(D) HOLDING COMPANY GUARANTEE.—

1           “(i) IN GENERAL.—The financial  
2 services holding company provides a writ-  
3 ten guarantee acceptable to the Federal  
4 Deposit Insurance Corporation to maintain  
5 the capital levels of each insured deposi-  
6 tory institution controlled by the financial  
7 services holding company at not less than  
8 the levels required for such institution to  
9 remain well capitalized.

10           “(ii) LIMITATION ON LIABILITY.—The  
11 liability of a financial services holding com-  
12 pany under a guarantee provided under  
13 this subparagraph shall not exceed an  
14 amount equal to 10 percent of the total  
15 risk-weighted assets of the insured deposi-  
16 tory institution, measured as of the date  
17 that the institution becomes undercapital-  
18 ized.

19           “(iii) DURATION OF GUARANTEE.—  
20 Notwithstanding paragraph (1), a financial  
21 services holding company that has elected  
22 treatment under this subsection shall con-  
23 tinue to be bound by the guarantee made  
24 under this subsection until released in ac-  
25 cordance with this subparagraph.

1                   “(iv) RELEASE FROM LIABILITY.—  
2                   The Board shall release a financial services  
3                   holding company from the guarantee appli-  
4                   cable with respect to any depository insti-  
5                   tution subsidiary of such company—

6                   “(I) upon the written request of  
7                   the financial services holding company  
8                   to revoke the company’s election  
9                   under paragraph (1) if the Board de-  
10                  termines that each depository institu-  
11                  tion controlled by the financial serv-  
12                  ices holding company is well capital-  
13                  ized and well managed at the time of  
14                  such revocation;

15                  “(II) in the case of a financial  
16                  services holding company which no  
17                  longer meets the requirements of sub-  
18                  paragraph (A), upon a determination  
19                  by the Board that each depository in-  
20                  stitution controlled by the financial  
21                  services holding company is well cap-  
22                  italized and well managed;

1           “(III) upon the written request  
2           of the financial services holding com-  
3           pany following the divestiture of con-  
4           trol of the depository institution in a  
5           transaction that does not require Fed-  
6           eral assistance if the Board deter-  
7           mines that, immediately following the  
8           divestiture, the depository institution  
9           is or will be well capitalized; or

10           “(IV) upon a determination by  
11           the Board, after consultation with the  
12           Federal Deposit Insurance Corpora-  
13           tion, that, subject to the limit on li-  
14           ability provided in clause (ii), the fi-  
15           nancial services holding company has  
16           fully performed under the guarantee.

17           “(E) RESPONSIVENESS TO COMMUNITY  
18           NEEDS.—The lead insured depository institu-  
19           tion subsidiary of the financial services holding  
20           company and insured depository institutions  
21           controlling at least 80 percent of the aggregate  
22           total risk-weighted assets of insured depository  
23           institutions controlled by the financial services  
24           holding company have achieved a satisfactory  
25           record of meeting community credit needs’, or

1 better, during the most recent examination of  
2 such insured depository institutions.

3 “(3) NO NOTICE OR APPROVAL REQUIRED FOR  
4 CERTAIN PURPOSES UNDER PARAGRAPH (8), (13), OR  
5 (15) OF SECTION 4(c).—

6 “(A) IN GENERAL.—Notwithstanding  
7 paragraphs (8), (13), and, in the case of an in-  
8 vestment bank holding company, (15) of section  
9 4(c), a financial services holding company that  
10 has in effect an election under paragraph (1),  
11 and any subsidiary of such holding company,  
12 may, without prior notice to, or the approval of,  
13 the Board under paragraph (8), (13), or, in the  
14 case of an investment bank holding company,  
15 (15) of section 4(c), engage de novo in any ac-  
16 tivity, or acquire shares of any company en-  
17 gaged in any activity, if—

18 “(i) the Board has determined, by  
19 order or regulation in effect at the time  
20 the company or subsidiary commences to  
21 engage in such activity or acquire such  
22 shares, that the activity is permissible for  
23 a financial services holding company or a  
24 subsidiary of such company to engage in  
25 under paragraph (8) or (13) of section 4(c)

1 (and regulations prescribed under such  
2 paragraphs); and

3 “(ii) the activity is conducted in com-  
4 pliance with all conditions and limitations  
5 applicable to such activity under any regu-  
6 lation, order, or advisory opinion pre-  
7 scribed or issued by the Board.

8 “(B) SUBSEQUENT NOTICE.—A financial  
9 services holding company that commences to  
10 engage in an activity, or makes an acquisition,  
11 in accordance with subparagraph (A) shall in-  
12 form the Board of such fact, in writing, not  
13 later than 10 days after commencing the activ-  
14 ity or consummating the acquisition.

15 “(4) CAPITAL.—

16 “(A) IN GENERAL.—The Board shall not  
17 (by regulation or order), directly or indirectly,  
18 establish or apply minimum capital require-  
19 ments to a financial services holding company  
20 which has in effect an election under paragraph  
21 (1) unless the Board concludes, on the basis of  
22 all information available to the Board, that the  
23 financial services holding company is not main-  
24 taining sufficient financial resources to meet

1 fully any guarantee required under paragraph  
2 (2).

3 “(B) CRITERIA FOR CONSIDERATION.—For  
4 purposes of making a determination under sub-  
5 paragraph (A), the Board shall consider, in ad-  
6 dition to any other relevant considerations, the  
7 financial condition and the adequacy of the cap-  
8 ital of each of the depository institutions con-  
9 trolled by the financial services holding com-  
10 pany.

11 “(5) REPORTS.—

12 “(A) IN GENERAL—The reporting require-  
13 ments contained in subsection (c)(2) shall apply  
14 to a financial services holding company which  
15 qualifies under this subsection, to the extent  
16 provided by the Board.

17 “(B) EXEMPTIONS FROM REPORTING RE-  
18 QUIREMENTS.—

19 “(i) IN GENERAL. The Board may, by  
20 regulation or order, exempt any company  
21 or class of companies, under such terms  
22 and conditions and for such periods as the  
23 Board shall provide in such regulation or

1 order, from the provisions of this para-  
2 graph and any regulations prescribed  
3 under this paragraph.

4 “(ii) CRITERIA FOR CONSIDER-  
5 ATION.—In granting any exemption under  
6 clause (i), the Board shall consider, among  
7 other factors—

8 “(I) whether information of the  
9 type required under this paragraph is  
10 available from a supervisory agency  
11 (as defined in section 1101(7) of the  
12 Right to Financial Privacy Act of  
13 1978), the Commodity Futures Trad-  
14 ing Commission, or a foreign regu-  
15 latory body of a similar type;

16 “(II) the primary business of the  
17 company; and

18 “(III) the nature and extent of  
19 domestic or foreign regulations of the  
20 company’s activities.

21 “(6) EXAMINATIONS.—

22 “(A) LIMITED USE OF EXAMINATION AU-  
23 THORITY FOR FINANCIAL SERVICES HOLDING  
24 COMPANIES.—The Board shall not examine,

1 under this section, any financial services hold-  
2 ing company described in paragraph (2)(A)(i)  
3 for which an election is in effect under para-  
4 graph (1) or any subsidiary (other than a de-  
5 pository institution) of such holding company  
6 unless—

7 “(i) the Board determines, on the  
8 basis of all information available to the  
9 Board, that—

10 “(I) the operations or activities  
11 of the financial services holding com-  
12 pany or any subsidiary of such com-  
13 pany, or any transaction involving  
14 such company or subsidiary and an  
15 affiliated depository institution, may  
16 pose a material risk to the safety and  
17 soundness of any depository institu-  
18 tion owned by such holding company;  
19 or

20 “(II) the financial services hold-  
21 ing company does not appear to have  
22 sufficient resources to meet the guar-  
23 antee required under paragraph (2);  
24 or

1           “(ii) the Board is unable to accom-  
2           plish the purposes describe in subsection  
3           (c)(3)(A) without such examinations.

4           “(B) LIMITED USE OF EXAMINATION AU-  
5           THORITY FOR INVESTMENT BANK HOLDING  
6           COMPANIES.—The Board shall not examine,  
7           under this section, any investment bank holding  
8           company described in paragraph (2)(A)(ii)  
9           which has an election in effect under paragraph  
10          (1) or any subsidiary (other than a depository  
11          institution) of such holding company unless—

12           “(i) the Board determines that the op-  
13           erations or activities of the investment  
14           bank holding company or any subsidiary of  
15           such company, or any transaction involving  
16           such company or subsidiary and an affili-  
17           ated depository institution, may pose a ma-  
18           terial risk to the safety and soundness of  
19           any depository institution owned by such  
20           holding company; or

21           “(ii) the Board is unable to determine  
22           from reports the nature of the operations,  
23           financial condition, activities, or effective-  
24           ness of the risk management systems of  
25           the investment bank holding company or

1 any subsidiary of such company, or to as-  
2 sess compliance with the provisions of this  
3 Act and those governing transactions and  
4 relationships between any depository insti-  
5 tution controlled by the investment bank  
6 holding company and the investment bank  
7 holding company or any of such subsidi-  
8 aries.

9 “(C) RESTRICTED FOCUS AND DEFERENCE  
10 IN EXAMINATIONS.—The Board shall limit the  
11 focus and scope of any examination, under this  
12 section, of a financial services holding company  
13 or investment bank holding company for which  
14 an election is in effect under paragraph (1) or  
15 of any subsidiary (other than a depository insti-  
16 tution) of such holding company and shall defer  
17 to examinations conducted by the Securities Ex-  
18 change Commission or other supervisors in ac-  
19 cordance with subparagraphs (B), (C), and (D)  
20 of subsection (e)(3).

21 “(h) CAPITAL REQUIREMENTS FOR HOLDING COM-  
22 PANIES SUBJECT TO DUAL REGULATION.—In determin-  
23 ing whether to establish and the extent of capital require-  
24 ments that apply to a financial services holding company,  
25 the Board shall give due consideration to the activities

1 conducted by the holding company and its subsidiaries and  
2 any comparable capital requirements that are imposed on  
3 the holding company by any other State or Federal regu-  
4 latory authority.”.

5 **SEC. 125. CONVERSION OF UNITARY SAVINGS AND LOAN**  
6 **HOLDING COMPANIES TO FINANCIAL SERV-**  
7 **ICES HOLDING COMPANIES.**

8 The Bank Holding Company Act of 1956 (12 U.S.C.  
9 1841 et seq.) is amended by inserting after section 5 the  
10 following new section:

11 **“§ 6. Conversion of unitary savings and loan holding**  
12 **companies to financial services holding**  
13 **companies**

14 **“(a) STREAMLINED PROCEDURE FOR CONVER-**  
15 **SION.—**

16 **“(1) IN GENERAL.—**During the 18-month pe-  
17 riod beginning on the date of the enactment of the  
18 Financial Services Competitiveness Act of 1997, no  
19 approval shall be required under section 3(a) or  
20 paragraph (8) or (13) of section 4(c) for any quali-  
21 fied savings and loan holding company to become a  
22 financial services holding company for any company  
23 that, both prior to January 1, 1995, and on the date

1 of enactment of the Financial Services Competitive-  
2 ness Act of 1997, is a savings and loan holding com-  
3 pany if the requirements of paragraph (2) are met.

4 “(2) ELIGIBILITY REQUIREMENTS.—A qualified  
5 savings and loan holding company shall be eligible to  
6 become a financial services holding company pursu-  
7 ant to paragraph (1) if—

8 “(A) the company becomes a financial  
9 services holding company as the result of the  
10 conversion of a savings association controlled by  
11 such company as of the date of enactment of  
12 the Financial Services Competitiveness Act of  
13 1997 into a bank;

14 “(B) the company is adequately capitalized  
15 before and immediately after the conversion re-  
16 ferred to in subparagraph (A);

17 “(C) all depository institutions controlled  
18 by such company are well capitalized before and  
19 immediately after such conversion;

20 “(D) all depository institutions controlled  
21 by such company are well managed before the  
22 conversion;

23 “(E) the Board would not be prohibited  
24 under any provision of section 3(d) from ap-  
25 proving the transaction;

1           “(F) the activities of the company and of  
2           each subsidiary of the company comply with  
3           this Act (and regulations prescribed under this  
4           Act); and

5           “(G) the company provides the Board with  
6           at least 30 days written notice of the proposed  
7           conversion, and, before the expiration of such  
8           30-day period, the Board has not objected to  
9           the company becoming a financial services hold-  
10          ing company based on the criteria contained in  
11          this subsection.

12          “(3) QUALIFIED SAVINGS AND LOAN HOLDING  
13          COMPANY DEFINED.—For purposes of this sub-  
14          section, the term ‘qualified savings and loan holding  
15          company’ means any company which became a sav-  
16          ings and loan holding company before January 1,  
17          1995, and is a savings and loan holding company as  
18          of the date of the enactment of the Financial Serv-  
19          ices Competitiveness Act of 1997.

20          “(b) CONVERSION FEE.—No qualified savings and  
21          loan holding company may become a financial services  
22          holding company pursuant to this section unless the Board  
23          has received, from such company, full payment of a fee  
24          which the Board shall impose in accordance with section  
25          5(h).”.

1 **SEC. 126. RESERVED.**

2 **SEC. 127. COORDINATION WITH STATE LAW.**

3 Except as specifically provided in section 109, no pro-  
 4 vision of this title, and no amendment made by this title  
 5 to any other provision of law, may be construed as super-  
 6 seding any provision of the law of any State which imposes  
 7 additional requirements or establishes higher standards  
 8 for the safe and sound operation and condition of deposi-  
 9 tory institutions (as defined in section 3 of the Federal  
 10 Deposit Insurance Act) and the protection of consumers  
 11 than the requirements imposed or the standards estab-  
 12 lished under this title and the amendments made by this  
 13 title to other provisions of law (including capital standards  
 14 and other safeguards placed on affiliates).

15 **SEC. 128. CONFORMING AMENDMENTS TO THE BANK HOLD-**  
 16 **ING COMPANY ACT OF 1956.**

17 (a) **SHORT TITLE; TABLE OF CONTENTS.**—The first  
 18 section of the Bank Holding Company Act of 1956 (12  
 19 U.S.C. 1841 nt.) is amended to read as follows:

20 **“§ 1. Short title; table of contents**

21 “(a) **SHORT TITLE.**—This Act may be cited as the  
 22 ‘Financial Services Holding Company Act of 1997’.

23 “(b) **TABLE OF CONTENTS.**—The table of contents  
 24 for this Act is as follows:

“Sec. 1. Short title; table of contents.

“Sec. 2. Definitions.

“Sec. 3. Acquisition of bank shares or assets.

“Sec. 4. Interests in nonbanking organizations.

“Sec. 5. Administration.

“Sec. 6. Conversion of unitary savings and loan holding companies to financial services holding companies.

“Sec. 7. Reservation of rights to States.

“Sec. 8. Penalties.

“Sec. 9. Judicial review.

“Sec. 10. Securities activities.

“Sec. 11. Safeguards relating to securities activities.

“Sec. 12. Investment bank holding companies and other financial activities.

“Sec. 13. Saving provision.

“Sec. 14. Separability of provisions.

1       “(c) REFERENCES IN OTHER LAWS.—Any reference  
2 in any Federal or State law to a provision of the Bank  
3 Holding Company Act of 1956 shall be deemed to be a  
4 reference to the corresponding provision of this Act.”.

5       (d) DEFINITIONS.—

6           (1) Subsection (n) of section 2 of the Bank  
7 Holding Company Act of 1956 (12 U.S.C. 1841(n))  
8 is amended by inserting “‘depository institution’,”  
9 before “‘insured depository institution’”.

10          (2) Subsection (o) of section 2 of the Bank  
11 Holding Company Act of 1956 (12 U.S.C. 1841(o))  
12 is amended—

13           (A) by striking paragraph (1) and insert-  
14 ing the following new paragraph:

15           “(1) LEAD DEPOSITORY INSTITUTION.—The  
16 term ‘lead depository institution’ means the largest  
17 depository institution controlled by the financial  
18 services holding company, based on a comparison of

1 the average total assets controlled by each deposi-  
2 tory institution during the previous 12-month pe-  
3 riod.”; and

4 (B) by adding at the end the following new  
5 paragraphs:

6 “(8) DEPOSITORY INSTITUTION FOR CERTAIN  
7 SECTIONS.—Notwithstanding subsection (n), the  
8 term ‘depository institution’ includes, for purposes of  
9 paragraph (1) and sections 4(k), 10, and 11, any  
10 branch, agency, or commercial lending company op-  
11 erated in the United States by a foreign bank.

12 “(9) WELL MANAGED.—The term ‘well man-  
13 aged’ means—

14 “(A) in the case of any company or deposi-  
15 tory institution which receives examinations, the  
16 achievement of—

17 “(i) a CAMEL composite rating of 1  
18 or 2 (or an equivalent rating under an  
19 equivalent rating system) in connection  
20 with the most recent examination or subse-  
21 quent review of such company or institu-  
22 tion; and

23 “(ii) at least a satisfactory rating for  
24 management, if such rating is given; or

1           “(B) in the case of a company or deposi-  
2           tory institution that has not received an exam-  
3           ination rating, the existence and use of manage-  
4           rial resources which the Board determines are  
5           satisfactory.”.

6           (3) Section 2 of the Bank Holding Company  
7           Act of 1956 (12 U.S.C. 1841) (as amended by sec-  
8           tion 116(a)(1) of this Act) is amended by inserting  
9           after subsection (o) the following new subsections:

10          “(p) SECURITIES AFFILIATE.—The term ‘securities  
11 affiliate’ means any company—

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

15           “(2) the acquisition or retention of the shares  
16           or assets of which the Board has approved under  
17           section 10.

18          “(q) CAPITAL TERMS.—

19           “(1) DEPOSITORY INSTITUTIONS.—With respect  
20           to depository institutions, the terms ‘well capital-  
21           ized,’ ‘adequately capitalized’ and ‘undercapitalized’  
22           have the meanings given to such terms in accord-  
23           ance with section 38(b) of the Federal Deposit In-  
24           surance Act.

1           “(2) FINANCIAL SERVICES HOLDING COM-  
2 PANY.—The following definitions shall apply with re-  
3 spect to financial services holding companies:

4           “(A) ADEQUATELY CAPITALIZED.—The  
5 term ‘adequately capitalized’ means a level of  
6 capitalization which meets or exceeds the re-  
7 quired minimum level established by the Board  
8 for each relevant capital measure for financial  
9 services holding companies.

10           “(B) WELL CAPITALIZED.—The term ‘well  
11 capitalized’ means a level of capitalization  
12 which meets or exceeds the required capital lev-  
13 els established by the Board for well capitalized  
14 financial services holding companies.

15           “(3) OTHER CAPITAL TERMS.—The terms ‘tier  
16 1’ and ‘risk-weighted assets’ have the meaning given  
17 those terms in the capital guidelines or regulations  
18 established by the Board for financial services hold-  
19 ing companies.

20           “(r) FOREIGN BANK TERMS.—For purposes of sub-  
21 sections (s) and (u), sections 4(k), 10, and 11, and sub-  
22 sections (b) and (c) of section 12—

23           “(1) the terms ‘agency’, ‘branch’, and ‘commer-  
24 cial lending company’ have the same meaning as in

1 section 1(b) of the International Banking Act of  
2 1978.

3 “(2) the term ‘foreign bank’ means a foreign  
4 bank (as defined in section 1(b) of the International  
5 Banking Act of 1978) which operates a branch,  
6 agency or commercial lending company, or owns or  
7 controls a bank, in the United States.”.

8 (c) AMENDMENT REGARDING CONDITIONAL AP-  
9 PROVAL OF NOTICES.—Section 4(a)(2) of the Bank Hold-  
10 ing Company Act of 1956 (12 U.S.C. 1843(a)(2)) is  
11 amended by striking “paragraph (8)” and all that follows  
12 through “issued by the Board under such paragraph” and  
13 inserting “subsection (c)(8) or section 4(k), 10, or 11,  
14 subject to all the conditions specified in those provisions  
15 or in any order or regulation issued by the Board under  
16 those provisions”.

17 (d) AMENDMENT TO NOTICE PROCEDURES.—Section  
18 4(j) of the Bank Holding Company Act of 1956 (12  
19 U.S.C. 1843(j)) (as amended by section 122 of this title)  
20 is amended—

21 (1) in paragraph (1)(A), by striking “subsection  
22 (c)(8) or (a)(2)” and inserting “subsection (a)(2),  
23 (c)(8), (e)(15), or (k)”;

24 (2) in paragraph (1)(E)—

1 (A) by striking “subsection (c)(8) or  
2 (a)(2)” and inserting “subsection (a)(2), (c)(8),  
3 (c)(15), or (k)”; and

4 (B) by striking the last sentence and in-  
5 serting the following: “In no event may the  
6 Board, without the agreement of the financial  
7 services holding company submitting the notice,  
8 extend the notice period under this subpara-  
9 graph beyond the period that ends 180 days  
10 after the date that a notice is filed with the  
11 Board or the relevant Federal reserve bank in  
12 accordance with the regulations of the Board”;  
13 and

14 (3) in paragraph (2), by redesignating subpara-  
15 graphs (B) and (C) as subparagraphs (C) and (D),  
16 respectively, and inserting after subparagraph (A)  
17 the following new subparagraph:

18 “(B) CRITERIA FOR NOTICES INVOLVING  
19 SECURITIES AFFILIATES.—In considering any  
20 notice that involves the acquisition of shares of  
21 a securities affiliate pursuant to section  
22 4(c)(15), the Board shall apply the criteria and  
23 safeguards contained in this paragraph and in  
24 sections 10 and 11.”.

1 (e) ELIMINATION OF OBSOLETE PROVISIONS.—The  
2 Bank Holding Company Act of 1956 (12 U.S.C. 1841  
3 through 1849) is amended—

4 (1) in section 4(a)(2)—

5 (A) by striking “or in the case of a com-  
6 pany” and ending “after December 31, 1980,”;  
7 and

8 (B) by striking the sentence beginning  
9 “Notwithstanding any other provision of this  
10 paragraph”;

11 (2) in section 4(b), by striking “After two years  
12 from the date of enactment of this Act, no” and in-  
13 serting “No”; and

14 (3) in section 5(a)—

15 (A) by striking “Within one hundred and  
16 eighty days after the date of enactment of this  
17 Act, or within” and inserting “Within”; and

18 (B) by striking “whichever is later,”.

19 (f) CONFORMING AMENDMENTS.—The Bank Holding  
20 Company Act of 1956 (12 U.S.C. 1841 et seq.) is amend-  
21 ed as follows:

22 (1) In section 3(c)(4), by striking “one-bank  
23 holding company” each place such term appears and  
24 inserting “one-bank financial services holding com-  
25 pany”.

1           (2) In section 3(f)(5), by striking “bank holding  
2           company” the first and second time such term ap-  
3           pears and inserting “financial services holding com-  
4           pany”.

5           (3) In section 4(i)(3)(A), by striking “is ac-  
6           quired” and inserting “was acquired”.

7           (4) By striking “bank holding companies” each  
8           place such term appears in the following sections  
9           and inserting “financial services holding companies”:

10                   (A) Section 3(d).

11                   (B) Section 4(f).

12                   (C) Section 7(a).

13           (5) By striking “bank holding company’s” each  
14           place such term appears in section 4(c)(14) and in-  
15           serting “financial services holding company’s”.

16           (6) By striking “bank holding company” each  
17           place such term appears in the following sections  
18           and inserting “financial services holding company”:

19                   (A) Subsections (a), (d), (e), (g), (h), and  
20                   (o) of section 2.

21                   (B) Subsections (a), (b), (d), (f)(1), (f)(2),  
22                   and (f)(3) of section 3.

23                   (C) Subsections (a), (d), (e), (g), (h), and  
24                   (j) of section 4.

1 (D) Clause (ii) in the portion of section  
2 4(e) which precedes paragraph (1) of such sec-  
3 tion.

4 (E) Paragraphs (2), (3), (7), (8), (10),  
5 (11), (12)(A), and (14) of section 4(c).

6 (F) Paragraphs (4), (5), and (9) of section  
7 4(f).

8 (G) Paragraphs (1) and (2) of section 4(i).

9 (H) Sections 5, 7(b), 8, and 11.

10 (7) In section 4(f)(1), by striking “bank holding  
11 company” the second place such term appears and  
12 inserting “financial services holding company”.

13 (8) In the headings for sections 3(f) and 4(f),  
14 by striking “BANK HOLDING” and inserting “FI-  
15 NANCIAL SERVICES HOLDING”.

16 (9) In the heading for section 2(o)(7), by strik-  
17 ing “BANK” and inserting “FINANCIAL SERVICES”.

18 (g) TREATMENT OF EXISTING BANK HOLDING COM-  
19 PANIES.—Section 2(a)(6) of the Bank Holding Company  
20 Act of 1956 (12 U.S.C. 1841(a)(6)) is amended by insert-  
21 ing at the end the following: “Any company that was a  
22 bank holding company on the day before the date of enact-  
23 ment of the Financial Services Competitiveness Act of  
24 1997 shall, for purposes of this chapter, be deemed to have

1 been a financial services holding company as of the date  
2 on which the company became a bank holding company.”.

3 (h) OTHER REFERENCES.—Any reference in any  
4 Federal law to “bank holding company” or “bank holding  
5 companies” as those terms were defined under the Bank  
6 Holding Company Act of 1956 before the enactment of  
7 this Act shall be deemed to include a reference to “finan-  
8 cial services holding company” and “financial services  
9 holding companies”, respectively, as such terms are de-  
10 fined under the Financial Services Holding Company Act  
11 of 1997.

12 **SEC. 129. CONFORMING AMENDMENTS TO THE BANK HOLD-**  
13 **ING COMPANY ACT AMENDMENTS OF 1970.**

14 Section 106 of the Bank Holding Company Act  
15 Amendments of 1970 (12 U.S.C. 1971 through 1978) is  
16 amended by striking “bank holding company” each place  
17 such term appears and inserting “financial services hold-  
18 ing company”.

19 **SEC. 130. CREDIT CARDS FOR BUSINESS PURPOSES.**

20 Section 2(e)(2)(F) of the Bank Holding Company Act  
21 of 1956 (relating to the definition of credit card banks)  
22 is amended—

23 (1) in clause (i), by inserting “including the  
24 provision of credit card accounts for business pur-  
25 poses” before the semicolon; and

1 (2) in clause (v), by inserting “(other than the  
2 provision of credit card accounts for business pur-  
3 poses in connection with the credit card operations  
4 referred to in clause (i))” before the period.

5 **Subtitle D—Interagency Banking**  
6 **and Financial Services Advisory**  
7 **Committee**

8 **SEC. 141. INTERAGENCY BANKING AND FINANCIAL SERV-**  
9 **ICES ADVISORY COMMITTEE.**

10 (a) ESTABLISHMENT; COMPOSITION.—There is es-  
11 tablished the Banking and Financial Services Advisory  
12 Committee which shall consist of 6 members as follows:

13 (1) The Secretary of the Treasury.

14 (2) The Chairman of the Board of Governors of  
15 the Federal Reserve System.

16 (3) The Chairperson of the Board of Directors  
17 of the Federal Deposit Insurance Corporation.

18 (4) The Chairman of the Securities and Ex-  
19 change Commission.

20 (5) The Chairperson of the Commodities Fu-  
21 tures Trading Commission.

22 (6) The Comptroller of the Currency.

23 (b) CHAIRPERSON.—The chairperson of the Commit-  
24 tee shall be the Secretary of the Treasury.

1 (c) DESIGNATION OF OFFICERS AND EMPLOYEES.—

2 The members of the Committee may, from time to time,  
3 designate other officers or employees of their respective  
4 agencies to carry out their duties on the Committee.

5 (d) COMPENSATION AND EXPENSES.—Each member  
6 of the Committee shall serve without additional compensa-  
7 tion but shall be entitled to reasonable expenses incurred  
8 in carrying out official duties as a member.

9 (e) FUNCTION OF THE COMMITTEE.—

10 (1) IN GENERAL.—The Committee shall meet  
11 as appropriate to consider matters of mutual inter-  
12 est to the members and to consider making rec-  
13 ommendations to the Board of Governors of the  
14 Federal Reserve System regarding the types of ac-  
15 tivities that may be financial in nature for purposes  
16 of the Financial Services Holding Company Act and  
17 to the Comptroller of the Currency regarding the  
18 types of activities that may be incidental to banking  
19 for purposes of section 5136 of the Revised Statutes  
20 of the United States.

21 (2) CONSIDERATION OF RECOMMENDATIONS.—

22 The Board of Governors of the Federal Reserve Sys-  
23 tem and the Comptroller of the Currency, as appro-  
24 priate, shall take into account any recommendation  
25 made to the respective agency by the Committee

1 and, if the agency does not adopt the recommenda-  
2 tion, shall provide a written explanation to the Com-  
3 mittee.

4 (f) IMPROVING THE SUPERVISION, EFFICIENCY, AND  
5 COMPETITIVENESS OF THE FINANCIAL SERVICES INDUS-  
6 TRY.—

7 (1) IN GENERAL.—The Committee shall seek to  
8 improve the supervision, efficiency, and competitive-  
9 ness of the financial services industry by making  
10 recommendations for such legislative or administra-  
11 tive action as the Committee determines to be appro-  
12 priate to the Congress, each agency or office rep-  
13 resented by a member on the Committee, and other  
14 agencies or departments of the United States, in-  
15 cluding recommendations for changes in law and in  
16 the regulations, policies, and procedures of any de-  
17 partment or agency.

18 (2) PRINTING IN FEDERAL REGISTER.—Rec-  
19 ommendations from paragraph (1) shall be printed  
20 in the Federal Register and submitted to the Com-  
21 mittee on Banking and Financial Services of the  
22 House of Representatives and the Committee on  
23 Banking, Housing, and Urban Affairs of the Senate.

1           **Subtitle E—Application and**  
2                           **Registration Fees**

3 **SEC. 151. AUTHORITY TO IMPOSE FEES.**

4           Section 5 of the Bank Holding Company Act of 1956  
5 (12 U.S.C. 1844) is amended by inserting after subsection  
6 (g) (as added by section 124 of this Act) the following  
7 new subsection:

8           “(h) FEES.—In connection with the administration  
9 of this Act, the Board may impose fees on any financial  
10 services holding company, or any company controlled di-  
11 rectly or indirectly by such holding company—

12                   “(1) for such purposes as the Board determines  
13                   to be reasonable and appropriate; and

14                   “(2) in amounts, determined by the Board,  
15                   which are at least sufficient to meet the Board’s ex-  
16                   penses in carrying out this Act with respect to the  
17                   activity, application, examination, or other incident  
18                   or status (of such company) for which a fee is im-  
19                   posed under this subsection.”.

20                           **TITLE II—FUNCTIONAL**  
21                                   **REGULATION**

22           **Subtitle A—Brokers and Dealers**

23 **SEC. 201. DEFINITION OF BROKER.**

24           Section 3(a)(4) of the Securities Exchange Act of  
25 1934 (15 U.S.C. 78c(a)(4)) is amended to read as follows:

1 “(4) BROKER.—

2 “(A) IN GENERAL.—The term ‘broker’  
3 means any person engaged in the business of  
4 effecting transactions in securities for the ac-  
5 count of others.

6 “(B) EXCLUSION OF BANKS.—The term  
7 ‘broker’ does not include a bank unless such  
8 bank—

9 “(i) publicly solicits the business of  
10 effecting securities transactions for the ac-  
11 count of others; or

12 “(ii) is compensated for such business  
13 by the payment of commissions or similar  
14 remuneration based on effecting trans-  
15 actions in securities (other than fees cal-  
16 culated as a percentage of assets under  
17 management) in excess of the bank’s incre-  
18 mental costs directly attributable to  
19 effecting such transactions (hereafter re-  
20 ferred to as ‘incentive compensation’).

21 “(C) EXEMPTION FOR CERTAIN BANK AC-  
22 TIVITIES.—A bank shall not be considered to be  
23 a broker because the bank engages in any of  
24 the following activities under the conditions de-  
25 scribed:

1           “(i) THIRD PARTY BROKERAGE AR-  
2           RANGEMENTS.—The bank enters into a  
3           contractual or other arrangement with a  
4           broker or dealer registered under this title  
5           under which the broker or dealer offers  
6           brokerage services on or off the premises  
7           of the bank if—

8                   “(I) such broker or dealer is  
9                   clearly identified as the person per-  
10                  forming the brokerage services;

11                  “(II) the broker or dealer per-  
12                  forms brokerage services in an area  
13                  that is clearly marked and, unless  
14                  made impossible by space or personnel  
15                  considerations, physically separate  
16                  from the routine deposit-taking activi-  
17                  ties of the bank;

18                  “(III) any materials used by the  
19                  bank to advertise or promote generally  
20                  the availability of brokerage services  
21                  under the contractual or other ar-  
22                  rangement clearly indicate that the  
23                  brokerage services are being provided  
24                  by the broker or dealer and not by the  
25                  bank;

1           “(IV) any materials used by the  
2 bank to advertise or promote generally  
3 the availability of brokerage services  
4 under the contractual or other ar-  
5 rangement are in compliance with the  
6 Federal securities laws before dis-  
7 tribution;

8           “(V) bank employees perform  
9 only clerical or ministerial functions in  
10 connection with brokerage trans-  
11 actions, including scheduling appoint-  
12 ments with the associated persons of  
13 a broker or dealer and, on behalf of a  
14 broker or dealer, transmitting orders  
15 or handling customers funds or secu-  
16 rities, except that bank employees who  
17 are not so qualified may describe in  
18 general terms investment vehicles  
19 under the contractual or other ar-  
20 rangement and accept customer or-  
21 ders on behalf of the broker or dealer  
22 if such employees have received train-  
23 ing that is substantially equivalent to  
24 the training required for personnel  
25 qualified to sell securities pursuant to

1 the requirements of a self-regulatory  
2 organization (as defined in section  
3 3(a) of the Securities Exchange Act of  
4 1934);

5 “(VI) bank employees do not di-  
6 rectly receive incentive compensation  
7 for any brokerage transaction unless  
8 such employees are associated persons  
9 of a broker or dealer and are qualified  
10 pursuant to the requirements of a  
11 self-regulatory organization (as so de-  
12 fined) except that the bank employees  
13 may receive nominal cash and  
14 noncash compensation for customer  
15 referrals if the cash compensation is a  
16 one-time fee of a fixed dollar amount  
17 and the payment of the fee is not con-  
18 tingent on whether the referral results  
19 in a transaction;

20 “(VII) such services are provided  
21 by the broker or dealer on a basis in  
22 which all customers which receive any  
23 services are fully disclosed to the  
24 broker or dealer; and

1           “(VIII) the broker or dealer in-  
2 forms each customer that the broker-  
3 age services are provided by the  
4 broker or dealer and not by the bank  
5 and that the securities are not depos-  
6 its or other obligations of the bank,  
7 are not guaranteed by the bank, and  
8 are not insured by the Federal De-  
9 posit Insurance Corporation.

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

22           “(I) publicly solicits brokerage  
23 business, other than by advertising

1 that it effects transactions in securi-  
2 ties in conjunction with advertising its  
3 other trust activities; or

4 “(II) receives incentive com-  
5 pensation for such brokerage activi-  
6 ties.

7 “(iii) PERMISSIBLE SECURITIES  
8 TRANSACTIONS.—The bank effects trans-  
9 actions in exempted securities, other than  
10 municipal securities, in commercial paper,  
11 bankers acceptances, commercial bills,  
12 qualified Canadian government obligations  
13 as defined in section 5136 of the Revised  
14 Statutes, obligations of the Washington  
15 Metropolitan Area Transit Authority which  
16 are guaranteed by the Secretary of Trans-  
17 portation under section 9 of the National  
18 Capital Transportation Act of 1969, obli-  
19 gations of the North American Develop-  
20 ment Bank, and obligations of any local  
21 public agency (as defined in section 110(h)  
22 of the Housing Act of 1949) or any public  
23 housing agency (as defined in the United  
24 States Housing Act of 1937) that are ex-  
25 pressly authorized by section 5136 of the

1 Revised Statutes of the United States as  
2 permissible for a national bank to under-  
3 write or deal in.

4 “(iv) MUNICIPAL SECURITIES.—The  
5 bank effects transactions in municipal se-  
6 curities.

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

16 “(vi) SWEEP ACCOUNTS.—The bank  
17 effects transactions as part of a program  
18 for the investment or reinvestment of bank  
19 deposit funds into any no-load, open-end  
20 management investment company reg-  
21 istered under the Investment Company Act  
22 of 1940 that holds itself out as a money  
23 market fund.

1           “(vii) AFFILIATE TRANSACTIONS.—  
2           The bank effects transactions for the ac-  
3           count of any affiliate of the bank, as de-  
4           fined in section 2 of the Financial Services  
5           Holding Company Act of 1997.

6           “(viii) PRIVATE SECURITIES OFFER-  
7           INGS.—The bank—

8                   “(I) effects sales as part of a pri-  
9                   mary offering of securities by an is-  
10                   suer, not involving a public offering,  
11                   pursuant to section 3(b), 4(2), or 4(6)  
12                   of the Securities Act of 1933 and the  
13                   rules and regulations issued there-  
14                   under; and

15                   “(II) effects such sales exclu-  
16                   sively to an accredited investor, as de-  
17                   fined in section 3 of the Securities Act  
18                   of 1933.

19           “(ix) DE MINIMUS EXEMPTION.—If  
20           the bank does not have a subsidiary or af-  
21           filiate registered as a broker or dealer  
22           under section 15, the bank effects, other  
23           than in transactions referred to in clauses  
24           (i) through (viii), not more than—

1           “(I) 800 transactions in any cal-  
2           endar year in securities for which a  
3           ready market exists, and

4           “(II) 200 other transactions in  
5           securities in any calendar year.

6           “(x) SAFEKEEPING AND CUSTODY  
7           SERVICES.—The bank, as part of cus-  
8           tomary banking activities—

9           “(I) provides safekeeping or cus-  
10          tody services with respect to securi-  
11          ties, including the exercise of warrants  
12          or other rights on behalf of customers;

13          “(II) clears or settles trans-  
14          actions in securities;

15          “(III) effects securities lending  
16          or borrowing transactions with or on  
17          behalf of customers as part of services  
18          provided to customers pursuant to  
19          subclauses (I) and (II) or invests cash  
20          collateral pledged in connection with  
21          such transactions; or

22          “(IV) holds securities pledged by  
23          one customer to another customer or  
24          securities subject to resale agreements  
25          between customers or facilities the

1 pledging or transfer of such securities  
2 by book entry.

3 “(xi) BANKING PRODUCTS.—The bank  
4 effects transactions in products that—

5 “(I) are described in section  
6 10(l)(3)(B) of the Financial Services  
7 Holding Company Act of 1997; or

8 “(II) have been exempted by the  
9 Board of Governors of the Federal  
10 Reserve System pursuant to section  
11 10(l)(3)(C) of such Act.

12 “(D) EXEMPTION FOR ENTITIES SUBJECT  
13 TO SECTION 15(e).—The term ‘broker’ does not  
14 include a bank that—

15 “(i) was, immediately prior to the en-  
16 actment of the Financial Services Competi-  
17 tiveness Act of 1997, subject to section  
18 15(e); and

19 “(ii) is subject to such restrictions  
20 and requirements as the Commission con-  
21 siders appropriate.”.

22 **SEC. 202. DEFINITION OF DEALER.**

23 Section 3(a)(5) of the Securities Exchange Act of  
24 1934 (15 U.S.C. 78c(a)(5)) is amended to read as follows:

25 “(5) DEALER.—

1           “(A) IN GENERAL.—The term ‘dealer’  
2 means any person engaged in the business of  
3 buying and selling securities for such person’s  
4 own account through a broker or otherwise.

5           “(B) EXCEPTION FOR PERSON NOT EN-  
6 GAGED IN THE BUSINESS OF DEALING.—The  
7 term ‘dealer’ does not include a person that  
8 buys or sells securities for such person’s own  
9 account, either individually or in a fiduciary ca-  
10 pacity, but not as a part of a regular business.

11           “(C) EXEMPTION FOR CERTAIN BANK AC-  
12 TIVITIES.—A bank shall not be considered to be  
13 a dealer because the bank engages in any of the  
14 following activities under the conditions de-  
15 scribed:

16           “(i) The bank buys and sells commer-  
17 cial paper, bankers acceptances, exempted  
18 securities (other than municipal securities),  
19 qualified Canadian Government obligations  
20 as defined in section 5136 of the Revised  
21 Statutes, obligations of the Washington  
22 Metropolitan Area Transit Authority which  
23 are guaranteed by the Secretary of Trans-  
24 portation under section 9 of the National

1 Capital Transportation Act of 1969, obli-  
2 gations of the North American Develop-  
3 ment Bank, and obligations of any local  
4 public agency (as defined in section 110(h)  
5 of the Housing Act of 1949) or any public  
6 housing agency (as defined in the United  
7 States Housing Act of 1937) that are ex-  
8 pressly authorized by section 5136 of the  
9 Revised Statutes of the United States as  
10 permissible for a national bank to under-  
11 write or deal in.

12 “(ii) The bank buys and sells municipi-  
13 pal securities.

14 “(iii) The bank buys and sells securi-  
15 ties for investment purposes for the bank  
16 or for accounts for which the bank acts as  
17 a trustee or fiduciary.

18 “(iv) The bank—

19 “(I) has not been affiliated with  
20 a securities affiliate under section 10  
21 of the Financial Services Holding  
22 Company Act of 1997 for more than  
23 1 year; and

1 “(II) engages in the issuance or  
2 sale, through a grantor trust or other-  
3 wise, of securities backed by or rep-  
4 resenting an interest in notes, drafts,  
5 acceptances, loans, leases, receivables,  
6 other obligations, or pools of any such  
7 obligations originated or purchased by  
8 the bank or any affiliate of the bank.

9 “(v) The bank buys and sells products  
10 that—

11 “(I) are described in section  
12 10(l)(3)(B) of the Financial Services  
13 Holding Company Act of 1997; or

14 “(II) have been exempted by the  
15 Board of Governors of the Federal  
16 Reserve System pursuant to section  
17 10(l)(3)(C) of such Act.”.

18 **SEC. 203. POWER TO EXEMPT FROM THE DEFINITIONS OF**  
19 **BROKER AND DEALER.**

20 Section 3 of the Securities Exchange Act of 1934 (15  
21 U.S.C. 78c) is amended by adding at the end the follow-  
22 ing:

23 “(e) EXEMPTION FROM DEFINITION OF BROKER OR  
24 DEALER.—The Commission, by regulation or order, upon  
25 its own motion or upon application, may conditionally or

1 unconditionally exclude any person or class of persons  
 2 from the definitions of ‘broker’ or ‘dealer’, if the Commis-  
 3 sion finds that such exclusion is consistent with the public  
 4 interest, the protection of investors, and the purposes of  
 5 this title.”.

6 **SEC. 204. EFFECTIVE DATE.**

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

9 **Subtitle B—Bank Investment**  
 10 **Company Activities**

11 **SEC. 211. CUSTODY OF INVESTMENT COMPANY ASSETS BY**  
 12 **AFFILIATED BANK.**

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

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

18 (2) by striking “(f) Every registered” and in-  
 19 serting

20 “(f) CUSTODY OF SECURITIES.—

21 “(1) Every registered”;

22 (3) by designating the 2d, 3d, 4th, and 5th sen-  
 23 tences of such subsection as paragraphs (2) through  
 24 (5), respectively, and indenting the left margin of  
 25 such paragraphs appropriately; and

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

3           “(6) Notwithstanding any provision of this sub-  
4 section, if a bank described in paragraph (1) or an  
5 affiliated person of such bank is an affiliated person,  
6 promoter, organizer, or sponsor of, or principal un-  
7 derwriter for the registered company, such bank may  
8 serve as custodian under this subsection in accord-  
9 ance with such rules, regulations, or orders as the  
10 Commission may prescribe, consistent with the pro-  
11 tection of investors, after consulting in writing with  
12 the appropriate Federal banking agency, as defined  
13 in section 3 of the Federal Deposit Insurance Act.”.

14       (b) UNIT INVESTMENT TRUSTS.—Section 26(a)(1) of  
15 the Investment Company Act of 1940 (15 U.S.C. 80a-  
16 6(a)(1)) is amended by inserting before the semicolon at  
17 the end the following: “, except that, if the trustee or cus-  
18 todian described in this subsection is an affiliated person  
19 of such underwriter or depositor, the Commission may  
20 adopt rules and regulations or issue orders, consistent  
21 with the protection of investors, prescribing the conditions  
22 under which such trustee or custodian may serve, after  
23 consulting in writing with the appropriate Federal bank-  
24 ing agency (as defined in section 3 of the Federal Deposit  
25 Insurance Act)”.

1 (c) FIDUCIARY DUTY OF CUSTODIAN.—Section 36(a)  
2 of the Investment Company Act of 1940 (15 U.S.C. 80a–  
3 35(a)) is amended—

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

6 (2) in paragraph (2), by striking the period at  
7 the end and inserting “; or “; and

8 (3) by inserting after paragraph (2) the follow-  
9 ing:

10 “(3) as custodian.”.

11 **SEC. 212. LENDING TO AN AFFILIATED INVESTMENT COM-**  
12 **PANY.**

13 Section 18 of the Investment Company Act of 1940  
14 (15 U.S.C. 80a–18) is amended by adding at the end the  
15 following:

16 “(1) Notwithstanding any provision of this sec-  
17 tion, it shall be unlawful for any affiliated person of  
18 a registered investment company or any affiliated  
19 person of such a person to loan money to such in-  
20 vestment company in contravention of such rules,  
21 regulations, or orders as the Commission may pre-  
22 scribe in the public interest and consistent with the  
23 protection of investors.”.

1 **SEC. 213. INDEPENDENT DIRECTORS.**

2 (a) IN GENERAL.—Section 2(a)(19)(A) of the Invest-  
3 ment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)(A))  
4 is amended—

5 (1) by striking clause (v) and inserting the fol-  
6 lowing new clause:

7 “(v) any person (other than a reg-  
8 istered investment company) that, at any  
9 time during the preceding 6 months, has  
10 executed any portfolio transactions for, en-  
11 gaged in any principal transactions with,  
12 or distributed shares for—

13 “(I) the investment company,

14 “(II) any other investment com-  
15 pany having the same investment ad-  
16 viser as such investment company or  
17 holding itself out to investors as a re-  
18 lated company for purposes of invest-  
19 ment or investor services, or

20 “(III) any account over which the  
21 investment company’s investment ad-  
22 viser has brokerage placement discre-  
23 tion, or any affiliated person of such  
24 a person,”;

25 (2) by redesignating clause (vi) as clause (vii);

26 and

1           (3) by inserting after clause (v) the following  
2 new clause:

3                   “(vi) any person (other than a reg-  
4 istered investment company) that, at any  
5 time during the preceding 6 months, has  
6 loaned money to—

7                           “(I) the investment company,

8                           “(II) any other investment com-  
9 pany having the same investment ad-  
10 viser as such investment company or  
11 holding itself out to investors as a re-  
12 lated company for purposes of invest-  
13 ment or investor services, or

14                           “(III) any account for which the  
15 investment company’s investment ad-  
16 viser has borrowing authority,

17                   or any affiliated person of such a person,  
18 or”.

19           (b)           CONFORMING           AMENDMENT.—Section  
20 2(a)(19)(B) of the Investment Company Act of 1940 (15  
21 U.S.C. 80a-2(a)(19)(B)) is amended—

22                   (1) by striking clause (v) and inserting the fol-  
23 lowing new clause:

24                           “(v) any person (other than a reg-  
25 istered investment company) that, at any

1 time during the preceding 6 months, has  
2 executed any portfolio transactions for, en-  
3 gaged in any principal transactions with,  
4 or distributed shares for—

5 “(I) any investment company for  
6 which the investment adviser or prin-  
7 cipal underwriter serves as such,

8 “(II) any investment company  
9 holding itself out to investors, for pur-  
10 poses of investment or investor serv-  
11 ices, as a company related to any in-  
12 vestment company for which the in-  
13 vestment adviser or principal under-  
14 writer serves as such, or

15 “(III) any account over which the  
16 investment adviser has brokerage  
17 placement discretion, or any affiliated  
18 person of such a person,”;

19 (2) by redesignating clause (vi) as clause (vii);

20 and

21 (3) by inserting after clause (v) the following  
22 new clause:

23 “(vi) any person (other than a reg-  
24 istered investment company) that, at any

1 time during the preceding 6 months, has  
2 loaned money to—

3 “(I) any investment company for  
4 which the investment adviser or prin-  
5 cipal underwriter serves as such,

6 “(II) any investment company  
7 holding itself out to investors, for pur-  
8 poses of investment or investor serv-  
9 ices, as a company related to any in-  
10 vestment company for which the in-  
11 vestment adviser or principal under-  
12 writer serves as such, or

13 “(III) any account for which the  
14 investment adviser has borrowing au-  
15 thority,

16 or any affiliated person of such a person,  
17 or”.

18 (c) AFFILIATION OF DIRECTORS.—Section 10(c) of  
19 the Investment Company Act of 1940 (15 U.S.C. 80a-  
20 10(c)) is amended by striking “bank, except” and insert-  
21 ing “bank (and its subsidiaries) or any single financial  
22 services holding company (and its affiliates and subsidi-  
23 aries), as those terms are defined in the Financial Services  
24 Holding Company Act of 1997, except”.

1 (d) EFFECTIVE DATE.—The provisions of subsection  
2 (a) of this section shall become effective 1 year after the  
3 date of enactment of this subtitle.

4 **SEC. 214. ADDITIONAL SEC DISCLOSURE AUTHORITY.**

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

8 “(a) MISREPRESENTATION OF GUARANTEES.—

9 “(1) IN GENERAL.—It shall be unlawful for any  
10 person, issuing or selling any security of which a  
11 registered investment company is the issuer, to rep-  
12 resent or imply in any manner whatsoever that such  
13 security or company—

14 “(A) has been guaranteed, sponsored, rec-  
15 ommended, or approved by the United States,  
16 or any agency, instrumentality or officer of the  
17 United States;

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

20 “(C) is guaranteed by or is otherwise an  
21 obligation of any bank or insured depository in-  
22 stitution.

23 “(2) DISCLOSURES.—Any person issuing or  
24 selling the securities of a registered investment com-  
25 pany shall prominently disclose that the investment

1 company or any security issued by the investment  
2 company—

3 “(A) is not insured by the Federal Deposit  
4 Insurance Corporation;

5 “(B) is not guaranteed by an affiliated in-  
6 sured depository institution; and

7 “(C) is not otherwise an obligation of any  
8 bank or insured depository institution,  
9 in accordance with such rules, regulations, or orders  
10 as the Commission may prescribe as reasonably nec-  
11 essary or appropriate in the public interest for the  
12 protection of investors, after consulting in writing  
13 with the appropriate Federal banking agencies.

14 “(3) DEFINITIONS.—The terms ‘insured deposi-  
15 tory institution’ and ‘appropriate Federal banking  
16 agency’ have the meaning given to such terms in  
17 section 3 of the Federal Deposit Insurance Act.”.

18 (b) DECEPTIVE USE OF NAMES.—Section 35(d) of  
19 the Investment Company Act of 1940 (15 U.S.C. 80a-  
20 34(d)) is amended to read as follows:

21 “(d) It shall be unlawful for any registered invest-  
22 ment company to adopt as part of the name or title of  
23 such company, or of any securities of which it is the issuer,  
24 any word or words that the Commission finds are materi-  
25 ally deceptive or misleading. The Commission may adopt

1 such rules or regulations or issue such orders as are nec-  
2 essary or appropriate to prevent the use of deceptive or  
3 misleading names or titles by investment companies.”.

4 **SEC. 215. DEFINITION OF BROKER UNDER THE INVEST-**  
5 **MENT COMPANY ACT OF 1940.**

6 Section 2(a)(6) of the Investment Company Act of  
7 1940 (15 U.S.C. 80a-2(a)(6)) is amended to read as fol-  
8 lows:

9 “(6) The term ‘broker’ has the same meaning as in  
10 the Securities Exchange Act of 1934, except that  
11 such term does not include any person solely by rea-  
12 son of the fact that such person is an underwriter  
13 for one or more investment companies.”.

14 **SEC. 216. DEFINITION OF DEALER UNDER THE INVEST-**  
15 **MENT COMPANY ACT OF 1940.**

16 Section 2(a)(11) of the Investment Company Act of  
17 1940 (15 U.S.C. 80a-2(a)(11)) is amended to read as fol-  
18 lows:

19 “(11) The term ‘dealer’ has the same meaning  
20 as in the Securities Exchange Act of 1934, but does  
21 not include an insurance company or investment  
22 company.”.

1 **SEC. 217. REMOVAL OF THE EXCLUSION FROM THE DEFINI-**  
2 **TION OF INVESTMENT ADVISER FOR BANKS**  
3 **THAT ADVISE INVESTMENT COMPANIES.**

4 (a) INVESTMENT ADVISER.—Section 202(a)(11) of  
5 the Investment Advisers Act of 1940 (15 U.S.C. 80b–  
6 2(a)(11)) is amended in subparagraph (A), by striking  
7 “investment company” and inserting “investment com-  
8 pany, except that the term ‘investment adviser’ includes  
9 any bank or financial services holding company to the ex-  
10 tent that such bank or financial services holding company  
11 acts as an investment adviser to a registered investment  
12 company, or if, in the case of a bank, such services are  
13 performed through a separately identifiable department or  
14 division, the department or division, and not the bank it-  
15 self, shall be deemed to be the investment adviser”.

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

20 “(25) The term ‘separately identifiable depart-  
21 ment or division’ of a bank means a unit—

22 “(A) that is under the direct supervision of  
23 an officer or officers designated by the board of  
24 directors of the bank as responsible for the day-  
25 to-day conduct of the bank’s investment adviser  
26 activities for one or more investment companies,

1 including the supervision of all bank employees  
2 engaged in the performance of such activities;  
3 and

4 “(B) for which all of the records relating  
5 to its investment adviser activities are sepa-  
6 rately maintained in or extractable from such  
7 unit’s own facilities or the facilities of the bank,  
8 and such records are so maintained or other-  
9 wise accessible as to permit independent exam-  
10 ination and enforcement of this Act or the In-  
11 vestment Company Act of 1940 and rules and  
12 regulations promulgated under this Act or the  
13 Investment Company Act of 1940.”.

14 **SEC. 218. DEFINITION OF BROKER UNDER THE INVEST-**  
15 **MENT ADVISERS ACT OF 1940.**

16 Section 202(a)(3) of the Investment Advisers Act of  
17 1940 (15 U.S.C. 80b–2(a)(3)) is amended to read as fol-  
18 lows:

19 “(3) The term ‘broker’ has the same meaning  
20 as in the Securities Exchange Act of 1934.”.

21 **SEC. 219. DEFINITION OF DEALER UNDER THE INVEST-**  
22 **MENT ADVISERS ACT OF 1940.**

23 Section 202(a)(7) of the Investment Advisers Act of  
24 1940 (15 U.S.C. 80b–2(a)(7)) is amended to read as fol-  
25 lows:

1           “(7) The term ‘dealer’ has the same meaning as  
2           in the Securities Exchange Act of 1934, but does  
3           not include an insurance company or investment  
4           company.”.

5 **SEC. 220. INTERAGENCY CONSULTATION.**

6           The Investment Advisers Act of 1940 (15 U.S.C.  
7 80b–1 et seq.) is amended by inserting after section 210  
8 the following new section:

9 **“§ 210A. Consultation**

10           “(a) EXAMINATION RESULTS AND OTHER INFORMA-  
11 TION.—

12           “(1) The appropriate Federal banking agency  
13 shall provide the Commission upon request the re-  
14 sults of any examination, reports, records, or other  
15 information as each may have access to with respect  
16 to the investment advisory activities of any financial  
17 services holding company, bank, or separately identi-  
18 fiable department or division of a bank, that is reg-  
19 istered under section 203 of this title, or, in the case  
20 of a financial services holding company or bank, that  
21 has a subsidiary or a separately identifiable depart-  
22 ment or division registered under that section, to the  
23 extent necessary for the Commission to carry out its  
24 statutory responsibilities.

1           “(2) The Commission shall provide to the ap-  
2           propriate Federal banking agency upon request the  
3           results of any examination, reports, records, or other  
4           information with respect to the investment advisory  
5           activities of any financial services holding company,  
6           bank, or separately identifiable department or divi-  
7           sion of a bank, any of which is registered under sec-  
8           tion 203 of this title, to the extent necessary for the  
9           agency to carry out its statutory responsibilities.

10          “(b) EFFECT ON OTHER AUTHORITY.—Nothing  
11          herein shall limit in any respect the authority of the appro-  
12          priate Federal banking agency with respect to such finan-  
13          cial services holding company, bank, or department or di-  
14          vision under any provision of law.

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

19          **SEC. 221. TREATMENT OF BANK COMMON TRUST FUNDS.**

20          (a) SECURITIES ACT OF 1933.—Section 3(a)(2) of  
21          the Securities Act of 1993 (15 U.S.C. 77c(a)(2)) is  
22          amended by striking “or any interest or participation in  
23          any common trust fund or similar fund maintained by a

1 bank exclusively for the collective investment and reinvest-  
2 ment of assets contributed thereto by such bank in its ca-  
3 pacity as trustee, executor, administrator, or guardian”  
4 and inserting “or any interest or participation in any com-  
5 mon trust fund or similar fund that is excluded from the  
6 definition of the term ‘investment company’ under section  
7 3(c)(3) of the Investment Company Act of 1940”.

8 (b) SECURITIES EXCHANGE ACT OF 1934.—Section  
9 3(a)(12)(A)(iii) of the Securities Exchange Act of 1934  
10 (15 U.S.C. 78c(a)(12)(A)(iii)) is amended to read as fol-  
11 lows:

12 “(iii) any interest or participation in  
13 any common trust fund or similar fund  
14 that is excluded from the definition of the  
15 term ‘investment company’ under section  
16 3(c)(3) of the Investment Company Act of  
17 1940;”.

18 (c) INVESTMENT COMPANY ACT OF 1940.—Section  
19 3(c)(3) of the Investment Company Act of 1940 (15  
20 U.S.C. 80a-3(c)(3)) is amended by inserting before the  
21 period the following: “, if—

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

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

4                     “(i) advertised; or

5                     “(ii) offered for sale to the general  
6           public; and

7           “(C) fees and expenses charged by such  
8           fund are not in contravention of fiduciary prin-  
9           ciples established under applicable Federal or  
10          State law”.

11 **SEC. 222. INVESTMENT ADVISERS PROHIBITED FROM HAV-**  
12 **ING CONTROLLING INTEREST IN REG-**  
13 **ISTERED INVESTMENT COMPANY.**

14          Section 15 of the Investment Company Act of 1940  
15 (15 U.S.C. 80a–15) is amended by adding at the end the  
16 following new subsection:

17          “(g) **CONTROLLING INTEREST IN INVESTMENT COM-**  
18 **PANY PROHIBITED.—**

19                 “(1) **IN GENERAL.—**If any investment adviser  
20                 to a registered investment company, or an affiliated  
21                 person of that investment adviser, holds a control-  
22                 ling interest in that registered investment company  
23                 in a trustee or fiduciary capacity, such person  
24                 shall—

1           “(A) if it holds the shares in a trustee or  
2           fiduciary capacity with respect to any employee  
3           benefit plan subject to the Employee Retirement  
4           Income Security Act of 1974, transfer the  
5           power to vote the shares of the investment com-  
6           pany through to another person acting in a fi-  
7           duciary capacity with respect to the plan who is  
8           not an affiliated person of that investment ad-  
9           viser or any affiliated person thereof; or

10           “(B) if it holds the shares in a trustee or  
11           fiduciary capacity with respect to any other per-  
12           son or entity other than an employee benefit  
13           plan subject to the Employee Retirement In-  
14           come Security Act of 1974—

15                   “(i) transfer the power to vote the  
16                   shares of the investment company through  
17                   to—

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

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

24                           “(III) any person authorized to  
25                           receive statements and information

1 with respect to the trust who is not an  
2 affiliated person of that investment  
3 adviser or any affiliated person there-  
4 of;

5 “(ii) vote the shares of the investment  
6 company held by it in the same proportion  
7 as shares held by all other shareholders of  
8 the investment company; or

9 “(iii) vote the shares of the invest-  
10 ment company as otherwise permitted  
11 under such rules, regulations, or orders as  
12 the Commission may prescribe for the pro-  
13 tection of investors.

14 “(2) EXEMPTION.—Paragraph (1) shall not  
15 apply to any investment adviser to a registered in-  
16 vestment company, or an affiliated person of that in-  
17 vestment adviser, holding shares of the investment  
18 company in a trustee or fiduciary capacity if that  
19 registered investment company consists solely of as-  
20 sets held in such capacities.

21 “(3) SAFE HARBOR.—No investment adviser to  
22 a registered investment company or any affiliated  
23 person of such investment adviser shall be deemed to

1 have acted unlawfully or to have breached a fidu-  
2 ciary duty under State or Federal law solely by rea-  
3 son of acting in accordance with clause (i), (ii), or  
4 (iii) of paragraph (1)(B).

5 “(4) CHURCH PLAN EXEMPTION.—Paragraph  
6 (1) shall not apply to any investment adviser to a  
7 registered investment company, or an affiliated per-  
8 son of that investment adviser, holding shares in  
9 such a capacity, if such investment adviser or such  
10 affiliated person is an organization described in sec-  
11 tion 414(e)(3)(A) of the Internal Revenue Code of  
12 1986.”.

13 **SEC. 223. CONFORMING CHANGE IN DEFINITION.**

14 Section 2(a)(5)) of the Investment Company Act of  
15 1940 (15 U.S.C. 80a–2(a)(5)) is amended by striking  
16 “(A) a banking institution organized under the laws of the  
17 United States” and inserting “(A) a depository institution  
18 (as defined in section 3 of the Federal Deposit Insurance  
19 Act) or a branch or agency of a foreign bank (as such  
20 terms are defined in section 101(b) of the International  
21 Banking Act of 1978)”.

22 **SEC. 224. EFFECTIVE DATE.**

23 This subtitle shall take effect 90 days after the date  
24 of the enactment of this Act.

1       **TITLE III—BANK INSURANCE**  
2                                   **ACTIVITIES**

3       **SEC. 301. NATIONAL BANK AND HOLDING COMPANY INSUR-**  
4                                   **ANCE ACTIVITIES.**

5           (a) STATE SUPERVISION.—Chapter 1 of title LXII  
6 of the Revised Statutes of the United States (12 U.S.C.  
7 21 et seq.) is amended—

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

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

12       **“§ 5136A. State supervision of insurance**

13           “(a) STATE REGULATION OF MANNER IN WHICH IN-  
14 SURANCE IS PROVIDED.—

15                   “(1) IN GENERAL.—Subject to paragraph (2),  
16                   no provision of section 5136, any other section of  
17                   this title, or section 13 of the Federal Reserve Act  
18                   may be construed as limiting or otherwise impairing  
19                   the authority of any State to regulate—

20                                   “(A) the manner (including the manner of  
21                                   consumer protection) in which a national bank  
22                                   may provide insurance within the State pursu-  
23                                   ant to section 5136 or 5136B of this chapter or  
24                                   section 13 of the Federal Reserve Act; and

1           “(B) the manner in which a national bank  
2           may provide annuity contracts within the State  
3           pursuant to section 5136 through, and limited  
4           to, consumer disclosure requirements or licens-  
5           ing requirements, procedures, and qualifica-  
6           tions.

7           “(2) STANDARD FOR STATE MANNER REGULA-  
8           TION.—Notwithstanding paragraph (1)—

9           “(A) BARNETT STANDARD FOR PROVIDING  
10           INSURANCE AS AGENT OR BROKER.—No State  
11           may impose any insurance regulatory require-  
12           ment relating to providing insurance or annuity  
13           contracts, as agent or broker, that prevents or  
14           significantly interferes with a national bank’s  
15           exercise of its powers under section 5136, any  
16           other section of this title, or section 13 of the  
17           Federal Reserve Act.

18           “(B) STANDARD FOR PROVIDING INSUR-  
19           ANCE AS PRINCIPAL.—No State may impose on  
20           a national bank any insurance regulatory re-  
21           quirement relating to providing insurance as  
22           principal that treats or has the effect of treat-  
23           ing the national bank more restrictively than  
24           any other depository institution (as defined in

1 section 3(e)(1) of the Federal Deposit Insur-  
2 ance Act) operating in the State.

3 “(3) STATE VIEWS.—In a determination by the  
4 Comptroller of the Currency whether for purposes of  
5 this subsection any product is insurance or an annu-  
6 ity contract, the Comptroller of the Currency, and  
7 any court reviewing the determination of the Comp-  
8 troller of the Currency, must consider—

9 “(A) any views of the insurance regulatory  
10 authority of the State in which the product is  
11 provided or to be provided as to whether the  
12 product should be treated as insurance or an  
13 annuity contract, including the insurance regu-  
14 latory authority’s views as to the nature of the  
15 product and the history of its regulation; and

16 “(B) any other information relevant as to  
17 whether the product should be treated as insur-  
18 ance.

19 “(b) NATIONAL BANK AUTHORITY.—A national bank  
20 may not provide insurance or annuity contracts as a prin-  
21 cipal, agent, or broker except as provided in this section,  
22 the paragraph designated as the ‘Seventh’ of section  
23 5136(a) of this chapter, 5136B of this chapter, or section  
24 13 of the Federal Reserve Act.”.

1 (b) PRODUCT REGULATION.—Section 5136 of the  
2 Revised Statutes of the United States (12 U.S.C. 24) is  
3 amended—

4 (1) by striking “Upon duly making and filing  
5 articles of association” and inserting “(a) IN GEN-  
6 ERAL.—Upon duly making and filing articles of as-  
7 sociation”; and

8 (2) by adding at the end of the following new  
9 subsection:

10 “(b) SCOPE.—

11 “(1) PRINCIPAL ACTIVITIES.—

12 “(A) IN GENERAL.—Subject to subpara-  
13 graph (B), a national bank or a subsidiary  
14 thereof may not provide a product in a State as  
15 principal pursuant to subsection (a) if, as of  
16 January 1, 1996, the product was regulated as  
17 insurance, in accordance with the relevant State  
18 insurance law, by the appropriate insurance  
19 regulatory authority of the State in which the  
20 product is to be provided.

21 “(B) EXCEPTION.—Except for title insur-  
22 ance and annuity contracts as described in  
23 paragraph (4)(A), subparagraph (A) shall not  
24 apply to a product that national banks or sub-  
25 sidiaries thereof had authority to provide as

1 principal pursuant to subsection (a) as of Janu-  
2 ary 1, 1996, or to a product that was regulated  
3 as insurance as of January 1, 1996, by the ap-  
4 propriate insurance regulatory authority of the  
5 State in which the product is to be provided but  
6 ceases to be so regulated after the date of en-  
7 actment of the Financial Services Competitive-  
8 ness Act of 1997.

9 “(2) AGENCY AND BROKERAGE ACTIVITIES.—

10 “(A) IN GENERAL.—Subject to subpara-  
11 graph (B), a national bank may not provide a  
12 product in a State as agent or broker pursuant  
13 to subsection (a) if, as of January 1, 1996, the  
14 product was regulated as insurance, in accord-  
15 ance with the relevant State insurance law, by  
16 the appropriate insurance regulatory authority  
17 of the State in which the product is to be pro-  
18 vided.

19 “(B) EXCEPTION.—Subparagraph (A)  
20 shall not apply to a product that national banks  
21 had authority to provide as agent or broker  
22 pursuant to subsection (a) as of January 1,  
23 1996, or to a product that was regulated as in-  
24 surance as of January 1, 1996, by the appro-  
25 priate insurance regulatory authority of the

1 State in which the product is to be provided but  
2 ceases to be so regulated after the date of en-  
3 actment of the Financial Services Competitive-  
4 ness Act of 1996.

5 “(3) OTHER PRODUCTS.—In a determination by  
6 the Comptroller of the Currency whether a national  
7 bank may provide, as a part of or incidental to the  
8 business of banking pursuant to the paragraph des-  
9 ignated the ‘Seventh’ of subsection (a), a product  
10 that was not regulated, as of January 1, 1996, as  
11 insurance by the appropriate insurance regulatory  
12 authorities of any States in which the product is  
13 provided or to be provided, but that any such regu-  
14 latory authority regulates, or through formal State  
15 regulatory action asserts should be regulated, as in-  
16 surance after that date, the Comptroller of the Cur-  
17 rency and any court reviewing the determination of  
18 the Comptroller of the Currency, must consider—

19 “(A) views of insurance regulatory authori-  
20 ties of any States in which the product is pro-  
21 vided or to be provided as to whether the prod-  
22 uct should be treated as insurance, including  
23 the insurance regulatory authorities’ views as to  
24 the nature of the product and the history of its  
25 regulation; and

1           “(B) any other information relevant as to  
2           whether the product should be treated as insur-  
3           ance.

4           “(4) DEFINITIONS.—For purposes of this sub-  
5           section—

6           “(A) INSURANCE.—The term ‘insurance’  
7           shall include any annuity contract the income  
8           on which is tax deferred under section 72 of the  
9           Internal Revenue Code of 1986.

10           “(B) PRODUCT.—The term ‘product’ shall  
11           be defined as any product that existed as of  
12           January 1, 1996, and a new form of such prod-  
13           uct that is developed after January 1, 1996.

14           “(5) AUTHORITY.—

15           “(A) IN GENERAL.—For purposes of this  
16           subsection, national banks had authority to pro-  
17           vide a product in any State as of January 1,  
18           1996, if on or before such date—

19                   “(i) the Comptroller of the Currency  
20                   had determined, in writing, that national  
21                   banks may provide the product; or

22                   “(ii) national banks were providing  
23                   the product.

1           “(B) EXCEPTION.—Notwithstanding sub-  
2           paragraph (A), national banks did not have au-  
3           thority to provide a product in a State as of  
4           January 1, 1996, if on or before such date a  
5           court of relevant jurisdiction for such State  
6           had, by final judgment, overturned a determina-  
7           tion of the Comptroller of the Currency that na-  
8           tional banks may provide such product.”.

9           (c) FINANCIAL SERVICES HOLDING COMPANY AC-  
10          TIVITIES.—Section 4(c)(8) of the Financial Services Hold-  
11          ing Company Act of 1997 (12 U.S.C. 1843(c)(8)) is  
12          amended by striking “approval by the Board prior to Jan-  
13          uary 1, 1971.” and inserting the following: “approval by  
14          the Board prior to January 1, 1971; (H) effective 90 days  
15          after enactment it shall be financial in nature to provide  
16          insurance as principal, agent, or broker in any State, in  
17          full compliance with the laws and regulations of such State  
18          that apply uniformly to each type of insurance license or  
19          authorization in that State, except that in no event shall  
20          the company or the financial services holding company, or  
21          any affiliate of the company or the financial services hold-  
22          ing company, be subject to any State law or regulation  
23          that restricts a bank from having an affiliate, agent, or  
24          employee in that State licensed to provide insurance as

1 principal, agent, or broker. The Board shall prescribe reg-  
2 ulations concerning insurance affiliations that provide  
3 equivalent treatment for all stock and mutual insurance  
4 companies that control or are affiliated with a bank, and  
5 fully accommodate and are consistent with State law.”.

6 (d) TECHNICAL AND CONFORMING AMENDMENTS.—

7 (1) The eleventh undesignated paragraph of  
8 section 13 of the Federal Reserve Act (12 U.S.C.  
9 92) is amended by inserting”, and subject to section  
10 5136A of the Revised Statutes of the United States,  
11 “after” the laws of the United States”.

12 (2) The paragraph designated the “Seventh” of  
13 section 5136 of the Revised Statutes of the United  
14 States (12 U.S.C. 24) is amended by striking “sub-  
15 ject to law,” and inserting “subject to subsection  
16 (b), section 5136A, and any other provision of law,”.

17 (3) Section 1306 of title 18, United States  
18 Code, is amended by striking “5136A” and inserting  
19 “5136C”.

20 (e) CLERICAL AMENDMENT.—The table of sections  
21 for chapter 1 of title LXII of the Revised Statutes of the  
22 United States is amended—

23 (1) by redesignating the item relating to section  
24 5136A as section 5136C; and

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

“5136A. State supervision of insurance.”.

3           (f) PRESERVATION OF FINANCIAL SERVICES HOLD-  
4           ING COMPANY INSURANCE AUTHORITY.—Except for sub-  
5           section (c), no provision of this section, and no amendment  
6           made by this section to any other provision of law, may  
7           be construed as affecting the authority of a financial serv-  
8           ices holding company to engage in insurance agency activ-  
9           ity pursuant to section 4 of the Financial Services Holding  
10          Company Act of 1997.

11          (g) PRESERVATION OF STATE BANK INSURANCE AC-  
12          TIVITIES.—

13           (1) IN GENERAL.—Notwithstanding section 4  
14          or 7 of the Financial Services Holding Company Act  
15          of 1997, no State law, rule, regulation, or order that  
16          is adopted after the effective date of this Act and  
17          that restricts or impedes a bank from having an af-  
18          filiate, agent, or employee in that State licensed to  
19          provide insurance as principal, agent, or broker, on  
20          the basis of an affiliation between a bank, agent, or  
21          employee and an insurance company, shall apply to  
22          any insured State bank, or any subsidiary of an in-  
23          sured State bank, that was—

1 (A) licensed to provide insurance as prin-  
2 cipal, agent, or broker within such State on  
3 April 24, 1996; and

4 (B) providing such insurance under the  
5 terms of section 24 of the Federal Deposit In-  
6 surance Act.

7 (2) RULE OF CONSTRUCTION.—No provision of  
8 paragraph (1) shall be construed as preventing a  
9 State from repealing or revising the authority for all  
10 banks or bank subsidiaries chartered by such State  
11 to provide insurance as principal, agent, or broker.

12 (h) INSURANCE AFFILIATIONS IN NONRESTRICTIVE  
13 STATES.—In the case of an insurance affiliation that is  
14 otherwise permitted in a State in accordance with section  
15 4(c)(8)(H) of the Financial Services Holding Company  
16 Act of 1997, no State law, provision of this section, or  
17 amendment to any other provision of law may be con-  
18 strued as affecting the authority of a national bank to pro-  
19 vide as agent or broker insurance products provided as  
20 principal by the bank's affiliate.

21 **SEC. 302. NATIONAL BANK COMMUNITY DEVELOPMENT IN-**  
22 **SURANCE ACTIVITIES.**

23 (a) IN GENERAL.—Chapter 1 of title LXII of the Re-  
24 vised Statutes of the United States (12 U.S.C. 21 et seq.)

1 is amended by inserting after section 5136A (as added by  
2 section 301(a)(2) of the Act) the following new section:

3 **“§ 5136B. Insurance sales in empowerment zones**

4       “(a) AUTHORITY TO SELL INSURANCE AS AGENT  
5 FROM EMPOWERMENT ZONES.—The Comptroller of the  
6 Currency may approve an application by a national bank  
7 maintaining a main office or full-service branch in an  
8 empowerment zone to act as an agent or broker from such  
9 office or branch for any fire, life, or other insurance com-  
10 pany authorized to do business in the State in which the  
11 customer is located if—

12               “(1) the bank provides sufficient evidence that  
13 the availability of competitively priced insurance in  
14 the empowerment zone is inadequate; and

15               “(2) the insurance is sold only in the  
16 empowerment zone.

17       “(b) APPLICATION OF STATE LAW.—State laws  
18 which regulate conducting the business of insurance shall  
19 apply to national banks and their employees that sell in-  
20 surance as agent or broker under this section to the same  
21 extent as such laws apply to other entities and persons  
22 not affiliated with depository institutions except—

23               “(1) in any case in which the Comptroller of  
24 the Currency determines, after notice to and com-  
25 ment by the appropriate State insurance officials,

1 that the application of a State law would have an  
2 unreasonably discriminatory effect upon the sale of  
3 insurance by national banks or their employees in  
4 comparison with the effect the application of the  
5 State law would have with respect to sale of insur-  
6 ance by other entities; or

7 “(2) when State law by its own terms does not  
8 apply to national banks or employees of such banks.

9 “(c) AUTHORITY OF COMPTROLLER OF THE CUR-  
10 RENCY.—

11 “(1) IN GENERAL.—The Comptroller of the  
12 Currency may prescribe regulations governing sales  
13 of insurance by national banks pursuant to this sec-  
14 tion.

15 “(2) ENFORCEMENT OF STATE LAW.—The pro-  
16 visions of any State law to which a national bank is  
17 subject under this section shall be enforced with re-  
18 spect to such bank by the Comptroller of the Cur-  
19 rency.

20 “(d) DEFINITIONS.—

21 “(1) EMPOWERMENT ZONE.—The term  
22 ‘empowerment zone’ means an area that meets the  
23 standards for designation as an empowerment zone  
24 or enterprise community under section 1392 of the

1 Internal Revenue Code of 1986 or an Indian res-  
2 ervation.

3 “(2) FULL-SERVICE BRANCH.—The term ‘full-  
4 service branch’ means a staffed facility which has  
5 been approved as a branch and offers loan and de-  
6 posit services.

7 “(3) INDIAN RESERVATION.—The term ‘Indian  
8 reservation’ has the meaning given such term by sec-  
9 tion 168(j)(6) of the Internal Revenue Code of  
10 1986.”.

11 (b) CLERICAL AMENDMENT.—The table of sections  
12 for chapter 1 of title LXII of the Revised Statutes of the  
13 United States is amended by inserting after the item relat-  
14 ing to section 5136(A) (as added by section 301(e) of this  
15 title) the following new item:

“5136B. Insurance sales in empowerment zones.”.

16 **SEC. 303. REDOMESTICATION OF MUTUAL LIFE INSURERS.**

17 (a) REDOMESTICATION.—A mutual life insurer orga-  
18 nized under the laws of any State may transfer its domi-  
19 cile to a transferee domicile as a step in a reorganization  
20 in which, pursuant to the laws of the transferee domicile,  
21 the mutual life insurer becomes a stock life insurer, wheth-  
22 er as a direct or indirect subsidiary of a mutual holding  
23 company or otherwise. Upon compliance with the applica-  
24 ble law of the transferee domicile governing transfers of

1 domicile and completion of a transfer pursuant to this sec-  
2 tion, the mutual life insurer shall cease to be a domestic  
3 insurer in the transferor domicile and, as a continuation  
4 of its corporate existence, shall be a domestic insurer of  
5 the transferee domicile.

6 (b) LICENSES, ETC.—The certificate of authority,  
7 agents' appointments and licenses, rates, approvals and  
8 other items which a licensed State allows and that are in  
9 existence immediately prior to the time a redomesticating  
10 insurer transfers its domicile pursuant to this section shall  
11 continue in full force and effect upon transfer if the in-  
12 surer remains duly qualified to transact the business of  
13 insurance in such licensed State. All outstanding insur-  
14 ance policies and annuity contracts of a redomesticating  
15 insurer shall remain in full force and effect and need not  
16 be endorsed as to the new domicile of the insurer unless  
17 so ordered by the State insurance regulator of a licensed  
18 State, and the only as to those outstanding policies whose  
19 owners reside in such licensed State. Applicable State law  
20 may require a redomesticating insurer to file new policy  
21 forms with the State insurance regulator of a licensed  
22 State on or before the effective date of the transfer, but  
23 a redomesticating insurer may use existing policy forms  
24 with appropriate endorsements to reflect the new domicile  
25 of the redomesticating insurer until the new policy forms

1 are approved for use by the State insurance regulator of  
2 such licensed State. A redomesticating insurer shall give  
3 notice of the proposed transfer to the State insurance reg-  
4 ulator of each licensed State and shall file promptly any  
5 resulting amendments to corporate documents required to  
6 be filed by a foreign licensed mutual life insurer with the  
7 insurance regulator of each such licensed State.

8 (c) PREEMPTION OF STATE LAWS RESTRICTING RE-  
9 DOMESTICATION.—

10 (1) Any State law conflicting with the provi-  
11 sions of this section is hereby preempted. Without  
12 limiting the generality of the preceding sentence, the  
13 following State laws purporting to regulate redomes-  
14 ticated or redomesticating insurers shall be pre-  
15 empted with respect to such insurers:

16 (A) Any provision impeding or intended to  
17 impede the activities of, taking any action  
18 against, or applying any provision of law or reg-  
19 ulation to, any insurer or affiliate of such in-  
20 surer because that insurer or any affiliate plans  
21 to redomesticate or has redomesticated pursu-  
22 ant to this section.

23 (B) Any provision impeding the activities  
24 of, taking any action against, or applying any  
25 provision of law or regulation to, any insured or

1 any insurance licensee or other intermediary be-  
2 cause such insured or such insurance licensee  
3 or other intermediary has procured insurance  
4 from or placed insurance with any insurer or  
5 any affiliate of such insurer that plans to re-  
6 domesticate or has redomesticated pursuant to  
7 this section.

8 (C) any provision purporting to terminate,  
9 by reason of the redomestication of a mutual  
10 life insurer pursuant to this section, any certifi-  
11 cate of authority, agent appointment or license,  
12 rate approval or other approval of any State in-  
13 surance regulator or other State authority in  
14 existence immediately prior to the redomestica-  
15 tion in any State other than the transferee  
16 domicile.

17 Where a State applies any State law to a redomes-  
18 ticating or redomesticated insurer or insurers (as  
19 well as affiliates of such insurer or insurers) in a  
20 different manner than the State has applied such  
21 law to insurers that are not redomesticating or re-  
22 domesticated insurers, such application of such law  
23 or regulation to the redomesticating or redomes-  
24 ticated insurer or insurers shall be preempted.

1           (2) If any licensed State fails to issue, delays  
2           the issuance of, or seeks to revoke an original or re-  
3           newal certificate of authority of a redomesticated in-  
4           surer immediately following redomestication, except  
5           on grounds and in a manner consistent with its past  
6           practices regarding the issuance of certificates of au-  
7           thority to foreign insurers that are not redomesticat-  
8           ing, then the redomesticating insurer shall be ex-  
9           empt from any State law of the licensed State to the  
10          extent that such State law or the operation of such  
11          State law would make unlawful, or regulate, directly  
12          or indirectly, the operation of the redomesticated in-  
13          surer, except that such licensed State may require  
14          the redomesticated insurer to—

15                   (A) comply with the unfair claim settle-  
16                   ment practices of law of the licensed State;

17                   (B) pay, on a nondiscriminatory basis, ap-  
18                   plicable premium and other taxes which are lev-  
19                   ied on licensed insurers or policyholders under  
20                   the laws of the licensed State;

21                   (C) register with and designate the State  
22                   insurance regulator as its agent solely for the  
23                   purpose of receiving service of legal documents  
24                   or process;

1           (D) submit to an examination by the State  
2 insurance regulatory in any licensed State in  
3 which the redomesticated insurer is doing busi-  
4 ness to determine the insurer's financial condi-  
5 tion, if (A) the State insurance regulator of the  
6 transferee domicile has not begun and has re-  
7 fused to initiate an examination of the redomes-  
8 ticated insurer, and (B) any such examination  
9 is coordinated to avoid unjustified duplication  
10 and repetition;

11           (E) comply with a lawful order issued in  
12 (A) a delinquency proceeding commenced by the  
13 State insurance regulator of any licensed State  
14 if there has been a judicial finding of financial  
15 impairment under paragraph (g) below, or (B)  
16 a voluntary dissolution proceeding;

17           (F) comply with any State law regarding  
18 deceptive, false or fraudulent acts or practices,  
19 except that if the licensed State seeks an in-  
20 junction regarding the conduct described in this  
21 paragraph, such injunction must be obtained  
22 from a court of competent jurisdiction as pro-  
23 vided in subsection (d).

24           (G) comply with an injunction issued by a  
25 court of competent jurisdiction, upon a petition

1 by the State insurance regulator alleging that  
2 the redomesticated insurer is in hazardous fi-  
3 nancial condition or is financially impaired;

4 (H) participate in any insurance insolvency  
5 guaranty association on the same basis as any  
6 other insurer licensed in the licensed State; and

7 (I) require a person acting, or offering to  
8 act, as an insurance licensee for a redomes-  
9 ticated insurer in the licensed State to obtain a  
10 license from that State, except that such State  
11 may not impose any qualification or require-  
12 ment which discriminates against a nonresident  
13 insurance licensee.

14 (d) JUDICIAL REVIEW.—The appropriate United  
15 States District Court shall have exclusive jurisdiction over  
16 litigation arising under this section involving any redomes-  
17 ticating or redomesticated company.

18 (e) SEPARABILITY.—If any provision of this section,  
19 or the application thereof to any person or circumstances,  
20 is held invalid, the remainder of the Act, and the applica-  
21 tion of such provision to other persons or circumstances,  
22 shall not be affected thereby.

23 (f) DEFINITION.—As used in this Act, unless the con-  
24 text otherwise requires—

1           (1) the term “affiliate” means a person that  
2 controls, is controlled by, or is under common con-  
3 trol with, another person;

4           (2) the term “control”, including the terms  
5 “controlling”, “controlled by” and “under common  
6 control with”, means the possession, directly or indi-  
7 rectly, of the power to direct or cause the direction  
8 of the management and policies of an institution,  
9 whether through the ownership of voting securities,  
10 by contract or otherwise;

11           (3) the term “court of competent jurisdiction”  
12 means a court authorized pursuant to subsection (d)  
13 to adjudicate litigation arising under this section;

14           (4) the term “domicile” means the State in  
15 which an insurer is incorporated, chartered or orga-  
16 nized;

17           (5) the term “insurance licensee” means any  
18 person who or which holds a license under State law  
19 to act as insurance agent, sub-agent, broker or con-  
20 sultant;

21           (6) the term “institution” means a corporation,  
22 joint stock company, limited liability company, lim-  
23 ited liability partnership, association, trust, partner-  
24 ship or any similar entity;

1           (7) the term “licensed State” means any State,  
2           Puerto Rico or the U.S. Virgin Islands in which the  
3           redomesticating insurer has a certificate of authority  
4           in effect immediately prior to the redomestication;

5           (8) the term “mutual life insurer” means a mu-  
6           tual life insurer organized under the laws of any  
7           State;

8           (9) the term “person” means an individual, in-  
9           stitution, government or governmental agency, State  
10          or political subdivision of a State, public corporation,  
11          board, association, estate, trustee, or fiduciary, or  
12          any similar entity;

13          (10) the term “redomesticated insurer” means  
14          a mutual life insurer that has redomesticated pursu-  
15          ant to this section;

16          (11) the term “redomesticating insurer” means  
17          a mutual life insurer that is redomesticating pursu-  
18          ant to this section;

19          (12) the term “redomestication” or “transfer”  
20          means the transfer of the domicile of an mutual life  
21          insurer from one State to another State pursuant to  
22          this section;

23          (13) the term “State” means any State or the  
24          District of Columbia;

1           (14) the term “State insurance regulatory”  
2 means the principal insurance regulatory authority  
3 of a State of Puerto Rico or the U.S. Virgin Islands;

4           (15) the term “State law” means the statutes  
5 of any State or of Puerto Rico or the U.S. Virgin  
6 Islands and any regulation, rule, order or require-  
7 ment promulgated pursuant thereto;

8           (16) the term “transferee domicile” means the  
9 State to which a mutual life insurer is redomesticat-  
10 ing pursuant to the provisions of this section;

11           (17) the term “transferor domicile” means the  
12 State from which a mutual life insurer is redomes-  
13 ticating pursuant to the provisions of this section;  
14 and

15           (18) the term “voting securities” means securi-  
16 ties of any class or any ownership interest having  
17 voting power for the election of the board of direc-  
18 tors of a person, other than securities having voting  
19 power only because of the occurrence of a contin-  
20 gency.

1       **TITLE IV—THRIFT CHARTER**  
2                   **CONVERSION**  
3       **Subtitle A—Status of Banks and**  
4                   **Savings Associations**

5       **SEC. 400. SHORT TITLE.**

6           This title may be cited as the “Thrift Charter Con-  
7 version Act of 1997.”

8       **SEC. 401. TERMINATION OF FEDERAL SAVINGS ASSOCIA-**  
9                   **TIONS; TREATMENT OF STATE SAVINGS ASSO-**  
10                   **CIATIONS AS BANKS FOR PURPOSES OF FED-**  
11                   **ERAL BANKING LAW.**

12       (a) **TERMINATION OF FEDERAL SAVINGS ASSOCIA-**  
13 **TION CHARTERS.—**

14           (1) **IN GENERAL.—**Each Federal savings asso-  
15 ciation shall—

16                   (A) convert to a national bank charter;

17                   (B) convert to a State depository institu-  
18 tion charter; or

19                   (C) surrender the charter of such savings  
20 association and liquidate the institution.

21       (2) **CONVERSION TO NATIONAL BANK BY OPER-**  
22 **ATION OF LAW.—**If any Federal savings association  
23 has not taken any action required under paragraph  
24 (1) as of January 1, 1998, the savings association  
25 shall—

1 (A) become a national bank on such date  
2 by operation of law;

3 (B) immediately file articles of association  
4 and an organizational certificate with the  
5 Comptroller of the Currency in accordance with  
6 sections 5133, 5134, and 5135 of the Revised  
7 Statutes of the United States; and

8 (C) cease to exist as a Federal savings as-  
9 sociation as of such date.

10 (3) PROHIBITION ON NEW CHARTERS OF FED-  
11 ERAL SAVINGS ASSOCIATIONS.—The Director of the  
12 Office of Thrift Supervision may not grant any char-  
13 ter for a Federal savings association for which an  
14 application was received after the date of the enact-  
15 ment of this Act.

16 (b) TREATMENT OF STATE SAVINGS ASSOCIATIONS  
17 AS BANKS FOR PURPOSES OF FEDERAL BANKING LAW.—

18 (1) AMENDMENTS TO FEDERAL DEPOSIT IN-  
19 SURANCE ACT.—Section 3 of the Federal Deposit  
20 Insurance Act (12 U.S.C. 1813) is amended—

21 (A) by striking paragraph (2) of subsection  
22 (a) and inserting the following new paragraph:  
23 “(2) STATE BANK.—

24 “(A) IN GENERAL.—The term ‘State bank’  
25 means any bank, banking association, trust

1 company, savings bank, industrial bank (or  
2 similar depository institution which the Board  
3 of Directors finds to be operating substantially  
4 in the same manner as an industrial bank),  
5 building and loan association, savings and loan  
6 association, homestead association, cooperative  
7 bank, or other banking institution—

8 “(i) which is engaged in the business  
9 of receiving deposits, other than trust  
10 funds (as defined in this section); and

11 “(ii) which—

12 “(I) is incorporated under the  
13 laws of any State;

14 “(II) is organized and operating  
15 according to the laws of the State in  
16 which such institution is chartered or  
17 organized; or

18 “(III) is operating under the  
19 Code of Law for the District of Co-  
20 lumbia (except a national bank).

21 “(B) CERTAIN INSURED BANKS IN-  
22 CLUDED.—The term ‘State bank’ includes any  
23 cooperative bank or other unincorporated bank

1 the deposits of which were insured by the Cor-  
2 poration on the day before the date of the en-  
3 actment of the Financial Institutions Reform,  
4 Recovery, and Enforcement Act of 1989.

5 “(C) CERTAIN UNINSURED BANKS EX-  
6 CLUDED.—The term ‘State bank’ does not in-  
7 clude any cooperative bank or other unincor-  
8 porated bank the deposits of which were not in-  
9 sured by the Corporation on the day before the  
10 date of the enactment of the Financial Institu-  
11 tions Reform, Recover, and Enforcement Act of  
12 1989.”; and

13 (B) in subsection (q)—

14 (i) by inserting “and” after the semi-  
15 colon at the end of paragraph (2);

16 (ii) by striking “; and” at the end of  
17 paragraph (3) and inserting a period; and

18 (iii) by striking paragraph (4).

19 (2) AMENDMENTS TO THE BANK HOLDING  
20 COMPANY ACT OF 1956.—Section 2 of the Bank  
21 Holding Company Act of 1956 (12 U.S.C. 1841) is  
22 amended—

23 (A) by striking subparagraph (E) of sub-  
24 section (a)(5); and

1 (B) by striking subparagraphs (B) and (J)  
2 of subsection (c)(2).

3 (3) AMENDMENTS TO THE FEDERAL RESERVE  
4 ACT.—The second and third paragraphs of the first  
5 section of the Federal Reserve Act (12 U.S.C. 221)  
6 are each amended by inserting “(as defined in sec-  
7 tion 3(a)(2) of the Federal Deposit Insurance Act)”  
8 after “State bank”.

9 (c) COMPARABILITY OF REGULATION FOR STATE-  
10 CHARTERED DEPOSITORY INSTITUTIONS.—

11 (1) REVIEW OF STATE SUPERVISION.—The  
12 Corporation shall maintain procedures for reviewing,  
13 under standards the Board of Directors shall pre-  
14 scribe in regulations, the manner in which State de-  
15 pository institutions are regulated by a State for the  
16 purpose of ensuring that State savings associations  
17 are no less rigorously regulated by a State than  
18 State banks.

19 (2) INADEQUATE STATE REGULATION.—If, in  
20 connection with a review of State regulation of State  
21 depository institutions pursuant to paragraph (1),  
22 the Corporation determines that a State regulates  
23 savings associations chartered by such State less rig-  
24 orously than the State regulates banks chartered by  
25 such State, the Corporation may take such action

1 under section 8(a) of the Federal Deposit Insurance  
2 Act as the Corporation determines to be appropriate  
3 with respect to savings associations chartered by  
4 such State which shall be effective no later than the  
5 end of the 1-year period beginning on the date of  
6 such determination.

7 (3) DEFINITIONS.—The following definitions  
8 shall apply for purposes of this subsection:

9 (A) STATE BANK.—The term “State  
10 bank” has the same meaning as in section  
11 3(a)(2) of the Federal Deposit Insurance Act  
12 (as in effect on the date of the enactment of the  
13 Thrift Charter Conversion Act of 1997).

14 (B) STATE SAVINGS ASSOCIATION.—The  
15 term “State savings association” has the same  
16 meaning as in section 3(b)(2) of the Federal  
17 Deposit Insurance Act (as in effect on the date  
18 of the enactment of the Thrift Charter Conver-  
19 sion Act of 1997).

20 (C) STATE DEPOSITORY INSTITUTION.—  
21 The term “State depository institution” has the  
22 same meaning as in section 3(e)(5) of the Fed-  
23 eral Deposit Insurance Act.

1 **SEC. 402. TREATMENT OF CERTAIN ACTIVITIES AND AFFILI-**  
2 **ATIONS OF BANK HOLDING COMPANIES RE-**  
3 **SULTING FROM THIS ACT.**

4 Section 4 of the Bank Holding Company Act of  
5 1956(12 U.S.C. 1843) is amended by adding at the end  
6 the following new subsection:

7 “(m) TREATMENT OF COMPANIES RESULTING FROM  
8 SAVINGS AND LOAN HOLDING COMPANIES.—

9 “(1) IN GENERAL.—Notwithstanding any other  
10 provision of this section (other than paragraph (5))  
11 or any other provision of Federal law including sec-  
12 tions 20 and 32 of the Banking Act of 1933, a  
13 qualified bank holding company may, after such  
14 company becomes a bank holding company—

15 “(A) maintain or enter into any non-  
16 banking affiliation which such company was au-  
17 thorized to maintain or enter into as of Janu-  
18 ary 1, 1997, or was authorized to maintain fol-  
19 lowing a merger of insured depository institu-  
20 tion subsidiaries pursuant to an application  
21 filed no later than such date; and

22 “(B) engage, directly or through any affili-  
23 ate described in subparagraph (A) which is not  
24 a bank, in any activity in which such company  
25 or any affiliate described in subparagraph (A)  
26 was authorized to engage as of January 1,

1           1997, or in which such company was authorized  
2           to engage following a merger of insured deposi-  
3           tory institution subsidiaries pursuant to an ap-  
4           plication filed no later than such date, if the re-  
5           quirements of paragraph (4) are met.

6           “(2) QUALIFIED BANK HOLDING COMPANY DE-  
7           FINED.—For purposes of this subsection, the term  
8           ‘qualified bank holding company’ means—

9                   “(A) any company—

10                           “(i) which—

11                                   “(I) as of January 1, 1997, is a  
12                                   savings and loan holding company; or

13                                   “(II) as of January 1, 1997, has  
14                                   filed an application to charter a de  
15                                   novo Federal savings association and  
16                                   thereafter becomes a savings and loan  
17                                   holding company by virtue of the es-  
18                                   tablishment of such savings associa-  
19                                   tion; and

20                                   “(ii) which as of the date referred to  
21                                   in subclause (I) or (II), as the case may  
22                                   be, is not a bank holding company and be-  
23                                   comes a bank holding company after such  
24                                   date, or any subsidiary of such company;  
25                                   and

1           “(B) any bank holding company which as  
2           of January 1, 1997—

3           “(i) is a savings and loan holding  
4           company; and

5           “(ii) is exempt from this section pur-  
6           suant to an order issued by the Board  
7           under subsection (d).

8           “(3) NO LOSS OF SUBSECTION (d) EXEMP-  
9           TION.—No qualified bank holding company de-  
10          scribed in paragraph (2)(B) shall lose the grounds  
11          for the exemption under subsection (d) because a  
12          savings association which such company controlled,  
13          directly or indirectly, as of January 1, 1997, be-  
14          comes a bank after such date so long as such bank  
15          continues to meet the requirements of subpara-  
16          graphs (A) and (B) of paragraph (4).

17          “(4) PREREQUISITES FOR CONTINUATION OF  
18          GRANDFATHERED ACTIVITIES AND AFFILIATIONS.—  
19          This subsection shall cease to apply with respect to  
20          a qualified bank holding company if, at any time  
21          after such company first meets the definition of a  
22          qualified bank holding company—

23          “(A) any insured depository institution  
24          controlled by such company which, as of the

1 day before the company first meets the defini-  
2 tion of a qualified bank holding company—

3 “(i) was subject to the requirements  
4 contained in section 10(m) of the Home  
5 Owners’ Loan Act, as in effect on such  
6 date, (and regulations in effect on such  
7 date under such section) for treatment as  
8 a qualified thrift lender under such section;  
9 and

10 “(ii) was not a savings association de-  
11 scribed in section 10(m)(3)(F) of such Act,  
12 as in effect on such date fails to meet any  
13 requirement of such section;

14 “(B) any insured depository institution  
15 controlled by such company fails to comply with  
16 any limitation or restriction on the type or  
17 amounts of loans or investments of the institu-  
18 tion to which such institution was subject as of  
19 the date of the enactment of the Thrift Charter  
20 Conversion Act of 1997, other than any limita-  
21 tion relating to qualified thrift investments  
22 under section 10(m) of the Home Owners’ Loan  
23 Act, as in effect on such date; or

24 “(C) the company or any subsidiary of the  
25 company acquires more than 5 percent of the

1 shares or assets of any bank or any savings as-  
2 sociation (as such term is defined in section 3  
3 of the Federal Deposit Insurance Act as in ef-  
4 fect on the date of the enactment of the Thrift  
5 Charter Conversion Act of 1997) after January  
6 1, 1997, unless the assets of such bank or sav-  
7 ings association is merged with any insured de-  
8 pository institution which was controlled by  
9 such company before January 1, 1997.

10 “(5) NONTRANSFERABLE.—This subsection  
11 shall not apply with respect to any qualified bank  
12 holding company if, after January 1, 1997—

13 “(A) any person not under common control  
14 with such company acquires, directly or indi-  
15 rectly, control of the company; or

16 “(B) the company is the subject of any  
17 merger, consolidation, or other similar trans-  
18 action as a result of which a person not under  
19 common control with such company acquires,  
20 directly or indirectly, control of such company.

21 “(6) ENFORCEMENT.—In addition to any other  
22 power of the Board, the Board may enforce compli-  
23 ance with the provisions of this subsection with re-  
24 spect to any qualified bank holding company and

1 any bank controlled by such company under section  
2 8 of the Federal Deposit Insurance Act.”.

3 **SEC. 403. TRANSITION PROVISIONS FOR ACTIVITIES OF**  
4 **SAVINGS ASSOCIATIONS WHICH CONVERT**  
5 **INTO OR BECOME TREATED AS BANKS.**

6 (a) IN GENERAL.—Notwithstanding any other provi-  
7 sion of Federal law, any insured depository institution  
8 which, as of January 1, 1997, is a savings association (as  
9 defined in section 3(b) of the Federal Deposit Insurance  
10 Act (as in effect on such date)) and after such date con-  
11 verts to a national or State bank charter or becomes treat-  
12 ed as a State bank pursuant to the amendment made by  
13 section 401(b) may continue to engage, directly or indi-  
14 rectly, in any activity in which such institution was law-  
15 fully engaged as of such date during the 2-year period be-  
16 ginning on the effective date of such conversion or the ef-  
17 fective date of such amendments, as the case may be.

18 (b) TWO 1-YEAR EXTENSIONS AUTHORIZED.—The  
19 2-year period described in subsection (a) with respect to  
20 any insured depository institution may be extended for  
21 such institution not to exceed two additional times for not  
22 more than 1 year each time if the appropriate Federal  
23 banking agency determines that such extension is nec-  
24 essary to avert substantial loss to the institution and is

1 otherwise consistent with the safety and soundness of the  
2 institution.

3 **SEC. 404. REGISTRATION OF BANK HOLDING COMPANIES**  
4 **RESULTING FROM CONVERSIONS OF SAV-**  
5 **INGS ASSOCIATIONS TO BANKS OR TREAT-**  
6 **MENT OF SAVINGS ASSOCIATIONS AS BANKS.**

7 Section 3 of the Bank Holding Company Act of 1956  
8 (12 U.S.C. 1842) is amended by adding at the end of the  
9 following new subsections:

10 “(h) REGISTRATION OF CERTAIN BANK HOLDING  
11 COMPANIES.—A company which, as of January 1, 1997,  
12 is a savings and loan holding company (as defined in sec-  
13 tion 10(a)(1)(D) of Home Owners’ Loan Act (as in effect  
14 on such date) and is not a bank holding company shall  
15 not be required to obtain the approval of the Board under  
16 subsection (a) to become a bank holding company after  
17 January 1, 1997, as a result of the conversion of any in-  
18 sured depository institution subsidiary of such company  
19 into a bank or by virtue of the treatment of any insured  
20 depository institution subsidiary of such company as a  
21 bank pursuant to the amendments made by the Thrift  
22 Charter Conversion Act of 1997, if such company—

23 “(1) registers as a bank holding company with  
24 the Board in accordance with section 5(a); and

1           “(2) does not acquire, directly or indirectly,  
2           ownership or control of any additional insured de-  
3           pository institution or other company in connection  
4           with such conversion or treatment.”.

5 **SEC. 405. ADDITIONAL TRANSITION PROVISIONS AND SPE-**  
6 **CIAL RULES.**

7           (a) **MUTUAL NATIONAL BANKS AUTHORIZED; CON-**  
8 **VERSION OF MUTUAL SAVINGS ASSOCIATIONS INTO NA-**  
9 **TIONAL BANKS.—**

10           (1) **IN GENERAL.—**Chapter one of title LXII of  
11           the Revised Statutes of the United States (12  
12           U.S.C. 21 et seq.) is amended by inserting after sec-  
13           tion 5133 the following new section:

14 **“§ 5133A. Mutual national banks**

15           “(a) **IN GENERAL.—**Notwithstanding the paragraph  
16           designated the “Third” of section 5134, the Comptroller  
17           of the Currency may charter national banks organized in  
18           the mutual form either de novo or through a conversion  
19           of any stock national or State bank (as defined in section  
20           3 of the Federal Deposit Insurance Act) or any State mu-  
21           tual bank or credit union, subject to regulations prescribed  
22           by the Comptroller of the Currency in accordance with this  
23           section.

24           “(b) **REGULATIONS.—**

1           “(1) TRANSITION RULES.—National banks or-  
2           ganized in the mutual form shall be subject to the  
3           regulations of the Director of the Office of Thrift  
4           Supervision governing corporate organization, gov-  
5           ernance, and conversion of mutual institutions, as in  
6           effect on January 1, 1997, including parts 543, 544,  
7           546, 563b, and 563c of chapter V of title 12 of the  
8           Code of Federal Regulations (as in effect on such  
9           date), during the 3-year period beginning on the  
10          date of the enactment of the Thrift Charter Conver-  
11          sion Act of 1997.

12          “(2) REGULATIONS OF THE COMPTROLLER.—  
13          The Comptroller of the Currency shall prescribe ap-  
14          propriate regulations for national banks organized in  
15          the mutual form, effective as of the end of the 3-  
16          year period referred to in paragraph (1).

17          “(3) APPLICABILITY OF CAPITAL STOCK RE-  
18          QUIREMENTS.—The Comptroller of the Currency  
19          shall prescribe regulations regarding the manner in  
20          which requirements of title LXII of the Revised  
21          Statutes of the United States with respect to capital  
22          stock, and limitations imposed on national banks  
23          under such title based on capital stock, shall apply  
24          to national banks organized in mutual form pursu-  
25          ant to subsection(a).

1 “(c) CONVERSIONS.—

2 “(1) CONVERSION TO STOCK NATIONAL  
3 BANK.—Subject to such regulations as the Comp-  
4 troller of the Currency may prescribe for the protec-  
5 tion of depositors’ rights and for any other purpose  
6 the Comptroller of the Currency may consider ap-  
7 propriate, any national bank which is organized in  
8 mutual form pursuant to paragraph (1) may reorga-  
9 nize as a stock national bank.

10 “(2) CONVERSIONS TO STATE BANKS.—Any na-  
11 tional mutual bank may convert to a State bank  
12 charter in accordance with regulations prescribed by  
13 the Comptroller of the Currency and applicable  
14 State law.”.

15 (2) MUTUAL BANK HOLDING COMPANIES.—  
16 Subsection (g) of section 3 of the Bank Holding  
17 Company Act of 1956 (12 U.S.C. 1842(g)) is  
18 amended to read as follows:

19 “(g) MUTUAL BANK HOLDING COMPANIES.—

20 “(1) IN GENERAL.—A national mutual bank  
21 may reorganize so as to become a holding company  
22 by—

23 “(A) chartering an interim national bank,  
24 the stock of which is to be wholly owned, except

1 as otherwise provided in this section, by the na-  
2 tional mutual bank; and

3 “(B) transferring the substantial part of  
4 the national mutual bank’s assets and liabil-  
5 ities, including all of the bank’s insured liabil-  
6 ities, to the interim national bank.

7 “(2) DIRECTORS AND CERTAIN ACCOUNT HOLD-  
8 ERS’ APPROVAL OF PLAN REQUIRED.—A reorganiza-  
9 tion is not authorized under this subsection unless—

10 “(A) a plan providing for such reorganiza-  
11 tion has been approved by a majority of the  
12 board of directors of the national mutual bank;  
13 and

14 “(B) in the case of a national mutual bank  
15 in which holders of accounts and obligors exer-  
16 cise voting rights, such plan has been submitted  
17 to and approved by a majority of such individ-  
18 uals at a meeting held at the call of the direc-  
19 tors in accordance with the procedures pre-  
20 scribed by the bank’s charter and bylaws.

21 “(3) NOTICE TO THE BOARD; DISAPPROVAL PE-  
22 RIOD.—

23 “(A) NOTICE REQUIRED.—

1           “(i) IN GENERAL.—At least 60 days  
2           before taking any action described in para-  
3           graph (1), a national mutual bank seeking  
4           to establish a mutual holding company  
5           shall provide written notice to the Board.

6           “(ii) CONTENTS OF NOTICE.—The no-  
7           tice shall contain such relevant information  
8           as the Board shall require by regulation or  
9           by specific request in connection with any  
10          particular notice.

11          “(B) TRANSACTION ALLOWED IF NOT DIS-  
12          APPROVED.—Unless the Board within such 60-  
13          day notice period disapproves the proposed  
14          holding company formation, or extends for an-  
15          other 30 days the period during which such dis-  
16          approval may be issued, the national mutual  
17          bank providing such notice may proceed with  
18          the transaction, if the requirements of para-  
19          graph (2) have been met.

20          “(C) GROUNDS FOR DISAPPROVAL.—The  
21          Board may disapprove any proposed holding  
22          company formation only if—

23                 “(i) such disapproval is necessary to  
24                 prevent unsafe or unsound practices.

1           “(ii) the financial or management re-  
2           sources of the national mutual bank in-  
3           volved warrant disapproval;

4           “(iii) the national mutual bank fails  
5           to furnish the information required under  
6           subparagraph (A); or

7           “(iv) the national mutual bank fails to  
8           comply with the requirement of paragraph  
9           (2).

10          “(D) RETENTION OF CAPITAL ASSETS.—In  
11          connection with the transaction described in  
12          paragraph (1), a national mutual bank, subject  
13          to the approval of the Board, retain capital as-  
14          sets at the holding company level to the extent  
15          that the capital retained at the holding com-  
16          pany is in excess of the amount of capital re-  
17          quired in order for the interim national bank to  
18          meet all relevant capital standards established  
19          by the Comptroller of the Currency for national  
20          banks.

21          “(4) OWNERSHIP.—

22          “(A) IN GENERAL.—Persons having own-  
23          ership rights in the national mutual bank under  
24          section 5133A of the Revised Statutes of the  
25          United States (including paragraph 575.5 of

1 chapter V of title 12 of the Code of Federal  
2 Regulations, as in effect on January 1, 1997,  
3 and applicable to national mutual banks pursu-  
4 ant to such section) or State law shall have the  
5 same ownership rights with respect to the mu-  
6 tual holding company.

7 “(B) HOLDERS OF CERTAIN ACCOUNTS.—  
8 Holders of savings, demand, or other accounts  
9 of—

10 “(i) a national bank chartered as part  
11 of a transaction described in paragraph  
12 (1); or

13 “(ii) a mutual bank acquired pursuant  
14 to paragraph (5)(B), shall have the same  
15 ownership rights with respect to the mu-  
16 tual holding company as persons described  
17 in subparagraph (A) of this paragraph.

18 “(5) PERMITTED ACTIVITIES.—A mutual hold-  
19 ing company may engage only in the following activi-  
20 ties:

21 “(A) Investing in the stock of a national or  
22 State bank.

23 “(B) Acquiring a mutual bank through the  
24 merger of such bank into a national bank sub-  
25 sidiary of such holding company or an interim

1 national bank subsidiary of such holding com-  
2 pany.

3 “(C) Subject to paragraph (6), merging  
4 with or acquiring another holding company, one  
5 of whose subsidiaries is a national mutual bank.

6 “(D) Investing in a corporation the capital  
7 stock of which is available for purchase by a na-  
8 tional mutual bank under Federal law or under  
9 the law of any State where the home office of  
10 any subsidiary bank is located.

11 “(E) Engaging in the activities permitted  
12 under section 4(c).

13 “(6) LIMITATIONS ON CERTAIN ACTIVITIES OF  
14 ACQUIRED HOLDING COMPANIES.—

15 “(A) NEW ACTIVITIES.—If a mutual hold-  
16 ing company acquires or merges with another  
17 holding company under paragraph (5)(C), the  
18 holding company acquired or the holding com-  
19 pany resulting from such merger or acquisition  
20 may only invest in assets and engage in activi-  
21 ties which are authorized under paragraph (5).

22 “(B) GRACE PERIOD FOR DIVESTING PRO-  
23 HIBITED ASSETS OR DISCONTINUING PROHIB-  
24 ITED ACTIVITIES.—Not later than 2 years fol-  
25 lowing a merger or acquisition described in

1 paragraph (5)(C), the acquired holding com-  
2 pany or the holding company resulting from  
3 such merger or acquisition shall—

4 “(i) dispose of any asset which is an  
5 asset in which a mutual holding company  
6 may not invest under paragraph (5); and

7 “(ii) cease any activity which is an ac-  
8 tivity in which a mutual holding company  
9 may not engage under paragraph (5).

10 “(7) CHARTERING AND OTHER REQUIRE-  
11 MENTS.—

12 “(A) IN GENERAL.—A mutual holding  
13 company shall be chartered by the Board and  
14 shall be subject to such regulations as the  
15 Board may prescribe.

16 “(B) OTHER REQUIREMENTS.—Unless the  
17 context otherwise requires, a mutual holding  
18 company shall be subject to the other require-  
19 ments of this Act regarding regulation of hold-  
20 ing companies.

21 “(8) CAPITAL IMPROVEMENT.—

22 “(A) PLEDGE OF STOCK OF SAVINGS ASSO-  
23 CIATION SUBSIDIARY.—This section shall not  
24 prohibit a mutual holding company from pledg-  
25 ing all or a portion of the stock of a national

1 bank chartered as part of a transaction de-  
2 scribed in paragraph (1) to raise capital for  
3 such bank.

4 “(B) ISSUANCE OF NONVOTING SHARES.—  
5 No provision of this Act shall be construed as  
6 prohibiting a national bank chartered as part of  
7 a transaction described in paragraph (1) from  
8 issuing any nonvoting shares or less than 50  
9 percent of the voting shares of such bank to  
10 any person other than the mutual holding com-  
11 pany.

12 “(9) INSOLVENCY AND LIQUIDATION.—

13 “(A) IN GENERAL.—Notwithstanding any  
14 provision of law, upon—

15 “(i) the default of any national  
16 bank—

17 “(I) the stock of which is owned  
18 by any mutual holding company; and

19 “(II) which was chartered in a  
20 transaction described in paragraph  
21 (1);

22 “(ii) the default of a mutual holding  
23 company; or

1           “(iii) a foreclosure on a pledge by a  
2           mutual holding company described in para-  
3           graph (8)(A), a trustee shall be appointed  
4           receiver of such mutual holding company  
5           and such trustee shall have the authority  
6           to liquidate the assets of, and satisfy the  
7           liabilities of, such mutual holding company  
8           pursuant to title 11, United States Code.

9           “(B) DISTRIBUTION OF NET PROCEEDS.—

10          Except as provided in subparagraph (C), the  
11          net proceeds of any liquidation of any mutual  
12          holding company pursuant to subparagraph (A)  
13          shall be transferred to persons who hold owner-  
14          ship interests in such mutual holding company.

15          “(C) RECOVERY BY CORPORATION.—If the  
16          Corporation incurs a loss as a result of the de-  
17          fault of any depository institution subsidiary of  
18          a mutual holding company which is liquidated  
19          pursuant to subparagraph (A), the Corporation  
20          shall succeed to the ownership interests of the  
21          depositors of such depository institution in the  
22          mutual holding company, to the extent of the  
23          Corporation’s loss.

24          “(10) STATE MUTUAL BANK HOLDING COM-  
25          PANY.—

1           “(A) IN GENERAL.—Notwithstanding any  
2 provision of Federal law, a State bank operat-  
3 ing in mutual form may reorganize so as to  
4 form a holding company under State law.

5           “(B) REGULATION OF STATE MUTUAL  
6 HOLDING COMPANY.—A corporation organized  
7 as a holding company in accordance with sub-  
8 paragraph (A) shall be regulated on the same  
9 terms and be subject to the same limitations as  
10 any other holding company which controls a  
11 bank.

12           “(11) REGULATIONS.—

13           “(A) TRANSITION RULES.—Mutual bank  
14 holding companies organized under this sub-  
15 section shall be subject to the regulations of the  
16 Director of the Office of Thrift Supervision gov-  
17 erning corporate organization, governance, and  
18 conversion of mutual institutions, as in effect  
19 on January 1, 1997, including part 575 of  
20 chapter V of title 12 of the Code of Federal  
21 Regulations (as in effect on such date), during  
22 the 3-year period beginning on the date of the  
23 enactment of the Thrift Charter Conversion Act  
24 of 1997.

1           “(B) REGULATIONS OF THE BOARD.—The  
2           Board shall prescribe appropriate regulations  
3           for mutual holding companies, effective at the  
4           end of the 3-year period referred to in subpara-  
5           graph (A).

6           “(12) NO CHANGE OF CONTROL.—Any second  
7           stage conversion of a mutual holding company to full  
8           stock form shall not be deemed to be a change of  
9           control if, in connection with such conversion, no  
10          company, directly or indirectly, acquires control of  
11          such mutual holding company or any successor to  
12          such company.

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

15                 “(A) MUTUAL HOLDING COMPANY.—The  
16                 term ‘mutual holding company’ means a cor-  
17                 poration organized as a holding company under  
18                 this subsection.

19                 “(B) DEFAULT.—The term ‘default’  
20                 means an adjudication or other official deter-  
21                 mination of a court of competent jurisdiction or  
22                 other public authority pursuant to which a con-  
23                 servator, receiver, or other legal custodian is  
24                 appointed.

1           “(C) NATIONAL MUTUAL BANK.—The term  
2           ‘national mutual bank’ means a national bank  
3           organized in mutual form under section 5133A  
4           of the Revised Statutes of the United States.”.

5           (3) LIMITATION ON FEDERAL REGULATION OF  
6           STATE BANKS.—Except as otherwise provided in  
7           Federal law, the Comptroller of the Currency, Board  
8           of Governors of the Federal Reserve System, and  
9           Federal Deposit Insurance Corporation may not  
10          adopt or enforce any regulation which contravenes  
11          the corporate governance rules prescribed by State  
12          law or regulation for State banks unless the Comp-  
13          troller, Board, or Corporation finds that such Fed-  
14          eral regulation is necessary to assure the safety and  
15          soundness of such State banks.

16          (4) CONVERSIONS OF MUTUAL SAVINGS ASSO-  
17          CIATIONS TO MUTUAL NATIONAL BANKS BY OPER-  
18          ATION OF LAW.—Notwithstanding any other provi-  
19          sion of Federal or State law, any savings association  
20          (as defined in section 3 of the Federal Deposit In-  
21          surance Act (as in effect on January 1, 1997))  
22          which is organized in mutual form as of the date of  
23          the enactment of this Act may become a national  
24          mutual bank by operation of law if the association—

1 (A) files the articles of association and or-  
2 ganization certificate with the Comptroller of  
3 the Currency before January 1, 1998, in ac-  
4 cordance with chapter one of title LXII of the  
5 Revised Statutes of the United States; and

6 (B) provides such other document or infor-  
7 mation as the Comptroller of the Currency may  
8 prescribe in regulations consistent with this sec-  
9 tion and section 5133A of the Revised Statutes  
10 of the United States (as added by paragraph  
11 (1) of this subsection).

12 (b) MEMBERSHIP IN FEDERAL HOME LOAN  
13 BANKS.—Any insured depository institution which—

14 (1) as of the date of the enactment of this Act,  
15 is a Federal savings association which, pursuant to  
16 section 6(e) of the Federal Home Loan Bank Act,  
17 may not voluntarily withdraw from membership in a  
18 Federal home loan bank; and

19 (2) after such date converts from a Federal  
20 savings association to a national bank,  
21 shall continue to be subject to the prohibition under such  
22 section on voluntary withdrawal from such membership as  
23 though such bank were still a Federal savings association  
24 until the bank ceases to be a national bank.

25 (c) BRANCHES.—

1           (1) IN GENERAL.—Notwithstanding any provi-  
2           sion of the Federal Deposit Insurance Act, the Bank  
3           Holding Company Act of 1956, or any other Federal  
4           or State law, any depository institution which—

5                   (A) as of the date of the enactment of this  
6           Act, is a savings association; and

7                   (B) becomes a bank before January 1,  
8           1998, or, pursuant to the amendments made by  
9           this subsection, is treated as a bank as of such  
10          date under the Federal Deposit Insurance Act,  
11          and any depository institution or bank holding  
12          company which acquires such depository institu-  
13          tion, may continue, after the depository institu-  
14          tion becomes or commences to be treated as a  
15          bank, to operate any branch or agency which  
16          the savings association was operating as a  
17          branch or agency or was in the process of es-  
18          tablishing as a branch or agency on January 1,  
19          1997.

20          (2) NO ADDITIONAL BRANCHES.—Paragraph  
21          (1) shall not be construed as authorizing the estab-  
22          lishment, acquisition, or operation of any additional  
23          branch of a depository institution, or the conversion  
24          of any agency to a branch, in any State by virtue  
25          of the operation by such institution of a branch or

1 agency in such State pursuant to such paragraph ex-  
2 cept to the extent such establishment, acquisition,  
3 operation, or conversion is permitted under the Fed-  
4 eral Deposit Insurance Act, Bank Holding Company  
5 Act of 1956, and any other applicable Federal or  
6 State law.

7 (3) ESTABLISHING A BRANCH OR AGENCY.—

8 For purposes of paragraph (1), a savings association  
9 shall be treated as having been in the process of es-  
10 tablishing a branch or agency as of January 1,  
11 1997, if, as of such date, the savings association—

12 (A) had received approval from the Direc-  
13 tor of the Office of Thrift Supervision to estab-  
14 lish such branch or agency;

15 (B) had pending with the Director of the  
16 Office of Thrift Supervision an application or  
17 notice to establish such branch or agency;

18 (C) had a legal and contractual obligation  
19 to establish such branch or agency;

20 (D) had received authority from the appro-  
21 priate Federal banking agency to establish such  
22 branch in connection with the assumption of li-  
23 abilities or an acquisition of an insured deposi-  
24 tory institution pursuant to subsection (f) or

1 (k) of section 13 of the Federal Deposit Insur-  
2 ance Act or section 408(m) of the National  
3 Housing Act (as in effect before the date of the  
4 enactment of the Financial Institutions Reform,  
5 Recovery, and Enforcement Act of 1989); or

6 (E) in the case of a well capitalized deposi-  
7 tory institution, is able to demonstrate to the  
8 appropriate Federal banking agency that the  
9 savings association—

10 (i) had made a significant financial  
11 commitment; and

12 (ii) had taken legally binding action or  
13 incurred a contractual obligation, in fur-  
14 therance of the establishment of such  
15 branch or agency.

16 (d) TRANSITION PROVISION RELATING TO LIMITA-  
17 TIONS ON LOANS TO ONE BORROWER.—Section 5200 of  
18 the Revised Statutes of the United States (12 U.S.C. 84)  
19 is amended by adding at the end the following new sub-  
20 section:

21 “(e) TRANSITION PROVISION FOR SAVINGS ASSOCIA-  
22 TIONS CONVERTING TO NATIONAL BANKS.—In the case  
23 of any depository institution which, as of January 1, 1997,  
24 is a savings association (as defined in section 3(b) of the  
25 Federal Deposit Insurance Act (as in effect on such date))

1 and becomes a national bank on or before January 1,  
2 1998, any loan, or legally binding commitment to make  
3 a loan, made or entered into by such institution which is  
4 outstanding on the date the institution becomes a national  
5 bank may continue to be held without regard to any limi-  
6 tation contained in this section during the 3-year period  
7 beginning on such date.”.

8 (e) RIGHTS AND AUTHORITY OF BANKS RESULTING  
9 FROM CONVERSIONS OF SAVINGS ASSOCIATIONS.—

10 (1) IN GENERAL.—Upon conversion of a sav-  
11 ings association to a national or State bank in ac-  
12 cordance with this Act and the amendments made  
13 by this title or other provisions of law—

14 (A) the national or State bank shall suc-  
15 ceed to all rights, benefits, privileges, powers  
16 and franchises, and be subject to all the obliga-  
17 tions, duties, restrictions, and disabilities, of  
18 such savings association under any contract,  
19 agreement, document, or instrument in effect at  
20 the time of such conversion to which such sav-  
21 ings association was a party; and

22 (B) any reference to the savings associa-  
23 tion in any such contract, agreement, docu-  
24 ment, or instrument shall be deemed to be a  
25 reference to such national or State bank.

1           (2) TREATMENT OF BANK OR SAVINGS ASSOCIA-  
2           TION.—If the application of paragraph (1) with re-  
3           spect to any national or State bank referred to in  
4           such paragraph would—

5                   (A) be inconsistent or in conflict with any  
6                   contract, agreement, document, or instrument  
7                   described in such paragraph;

8                   (B) constitute a default under the con-  
9                   tract, agreement, document, or instrument;

10                  (C) cause such national or State bank to  
11                  be in default or breach under any provision of  
12                  the contract, agreement, document, or instru-  
13                  ment, the national or State bank shall be  
14                  deemed to be, and treated as, a savings associa-  
15                  tion for purposes of the contract, agreement,  
16                  document, or instrument.

17           (f) TRANSFER AND GRANDFATHER OF MUTUAL  
18           HOLDING COMPANIES.—

19                   (1) SUPERVISION AND REGULATION OF MUTUAL  
20                   HOLDING COMPANIES.—

21                           (A) IN GENERAL.—The supervision and  
22                           regulation of any mutual holding company in  
23                           existence as of the date of the enactment of this  
24                           Act is hereby transferred to the Board of Gov-  
25                           ernors of the Federal Reserve System.

1           (B) TRANSITION RULES.—Mutual bank  
2 holding companies described in subparagraph  
3 (A) shall be subject to the regulations of the  
4 Director of the Office of Thrift Supervision, as  
5 in effect on January 1, 1997, including part  
6 575 of chapter V of title 12 of the Code of Fed-  
7 eral Regulations (as in effect on such date),  
8 during the 3-year period beginning on the date  
9 of the enactment of the Thrift Charter Conver-  
10 sion Act of 1997.

11           (2) GRANDFATHER OF EXISTING FEDERAL MU-  
12 TUAL HOLDING COMPANIES.—

13           (A) IN GENERAL.—Any Federal mutual  
14 holding company in existence as of the date of  
15 the enactment of this Act shall be subject to  
16 section 4(m) of the Bank Holding Company Act  
17 of 1956 (as added by section 402 of this title).

18           (B) TREATMENT UNDER 4(m).—Any  
19 treatment of a Federal mutual holding company  
20 under section 4(m) shall not be construed as a  
21 change in control unless, as a result of the  
22 transaction, the holding company no longer con-  
23 trols the entity.

1 **SEC. 406. TECHNICAL AND CONFORMING AMENDMENTS.**

2 (a) AMENDMENTS TO THE FEDERAL DEPOSIT IN-  
3 SURANCE ACT.—

4 (1) Section 3(z) of the Federal Deposit Insur-  
5 ance Act (12 U.S.C. 1813(z)) is amended by strik-  
6 ing “, the Director of the Office of Thrift Super-  
7 vision,”.

8 (2) Section 8(b) of the Federal Deposit Insur-  
9 ance Act (12 U.S.C. 1818(b)) is amended by strik-  
10 ing paragraph (9).

11 (3) Section 13 of the Federal Deposit Insurance  
12 Act (12 U.S.C. 1823) is amended by striking sub-  
13 section (k).

14 (4) Subsections (c)(2) and (i)(2) of section 18  
15 of the Federal Deposit Insurance Act (12 U.S.C.  
16 1828) are each amended—

17 (A) in subparagraph (B), by inserting  
18 “and” after the semicolon;

19 (B) in subparagraph (C), by striking “;  
20 and” and inserting a period; and

21 (C) by striking subparagraph (D).

22 (5) Section 18 of the Federal Deposit Insurance  
23 Act (12 U.S.C. 1828) is amended by striking sub-  
24 section (m).

1           (6) The Federal Deposit Insurance Act (12  
2           U.S.C. 1811 et seq.) is amended by striking section  
3           28.

4           (b) AMENDMENTS TO THE BANK HOLDING COMPANY  
5           ACT OF 1956.—

6           (1) Section 2 of the Bank Holding Company  
7           Act of 1956 (12 U.S.C. 1841) is amended by strik-  
8           ing subsections (i) and (j).

9           (2) Section 4(c)(8) of the Bank Holding Com-  
10          pany Act of 1956 (12 U.S.C. 1843(c)(8)) is amend-  
11          ed by striking the sentence preceding the penul-  
12          timate sentence.

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

15                 (A) in paragraph (2)(A)(i), by striking “or  
16                 an insured institution” and all that follows  
17                 through “of this subsection”;

18                 (B) in paragraph (2)(A)(ii)—

19                         (i) by striking “or a savings associa-  
20                         tion” where such term appears in the por-  
21                         tion of such paragraph which precedes sub-  
22                         clause (I));

23                         (ii) by inserting “and” at the end of  
24                         subclause (VI);

1 (iii) by striking subclauses (VIII),  
2 (IX), and (X); and

3 (iv) by striking “(V), and (VIII)”,  
4 where such term appears in the portion of  
5 such paragraph which appears after the  
6 end of subclause (VII), and inserting “and  
7 (V)”; and

8 (C) by striking paragraphs (10), (11),  
9 (12), and (13).

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

12 (A) by striking paragraphs (1) and (2);  
13 and

14 (B) in paragraph (3)(A), by striking “any  
15 Federal savings association” and all that fol-  
16 lows through the period at the end of such  
17 paragraph and inserting “such association was  
18 authorized to engage under this section as of  
19 September 15, 1995.”.

20 (c) OTHER TECHNICAL AND CONFORMING AMEND-  
21 MENTS.—

22 (1) Section 804(a) of the Alternative Mortgage  
23 Transaction Parity Act of 1982 (12 U.S.C. 3803) is  
24 amended—

1 (A) in the portion of such subsection which  
2 precedes paragraph (1)—

3 (i) by striking “, and other nonfeder-  
4 ally chartered housing creditors,”; and

5 (ii) by inserting “and in order to per-  
6 mit other nonfederally chartered housing  
7 creditors to make, purchase, and enforce  
8 alternative mortgage transactions,” after  
9 “enforcing alternative mortgage trans-  
10 actions,”; and

11 (B) in paragraph (1), by inserting “(as  
12 such term is defined in section 3(a) of the Fed-  
13 eral Deposit Insurance Act)” after “with re-  
14 spect to banks”.

15 (2) Section 205 of the Depository Institution  
16 Management Interlocks Act (12 U.S.C. 3204) is  
17 amended—

18 (A) in the portion of paragraph (8)(A)  
19 which precedes clause (i), by striking “diversi-  
20 fied savings” and all that follows through “with  
21 respect to” and inserting “depository institution  
22 holding company which, as of January 1, 1997,  
23 and at all times thereafter, satisfies the consoli-  
24 dated net worth and consolidated net earnings  
25 requirements for a diversified savings and loan

1 holding company (as set forth in section  
2 10(1)(F) of Home Owners' Loan Act, as such  
3 section is in effect on such date, and in regula-  
4 tions in effect on such date, which shall be ap-  
5 plicable for purposes of this paragraph without  
6 regard to the fact that a depository institution  
7 subsidiary of such holding company has ceased  
8 to be a savings association after January 1,  
9 1997) with respect to"; and

10 (B) by striking paragraph (9).

11 (3) Section 19(b)(1)(A) of the Federal Reserve  
12 Act (12 U.S.C. 461(b)(1)(A)) is amended—

13 (A) by inserting “and” after the semicolon  
14 at the end of clause (v); and

15 (B) by striking clause (vi).

16 (4) Subparagraphs (A), (B), and (C) of section  
17 10(e)(5) of the Federal Home Loan Bank Act (12  
18 U.S.C. 1430(e)(5)) are each amended by inserting  
19 before the period at the end “(as such section is in  
20 effect on January 1, 1997)”.

21 **SEC. 407. REFERENCES TO SAVINGS ASSOCIATIONS AND**  
22 **STATE BANKS IN FEDERAL LAW.**

23 Effective January 1, 1998, any reference in any Fed-  
24 eral banking law to—

1           (1) the term “savings association” shall be  
2           deemed to be a reference to a bank as defined in  
3           section 3(a) of the Federal Deposit Insurance Act;  
4           and

5           (2) the term “State bank” shall be deemed to  
6           include any depository institution included in the  
7           definition of such term in section 3(a)(2) of such  
8           Act.

9           **SEC. 408. REPEAL OF HOME OWNERS’ LOAN ACT.**

10          Effective January 1, 1998, the Home Owners’ Loan  
11          Act (12 U.S.C. 1461 et seq.) is hereby repealed.

12          **SEC. 409. EFFECTIVE DATE; DEFINITIONS.**

13          (a) **EFFECTIVE DATE.**—The amendments made by  
14          this subtitle shall take effect on January 1, 1998.

15          (b) **DEFINITIONS.**—For purposes of this title, the  
16          terms “appropriate Federal banking agency”, “bank hold-  
17          ing company”, “depository institution”, “Federal savings  
18          association”, “insured depository institution”, “savings  
19          association”, and “State bank” have the same meanings  
20          as in section 3 of the Federal Deposit Insurance Act (as  
21          in effect on the date of the enactment of this Act).

1    **Subtitle B—Transfer of Functions,**  
2            **Personnel, and Property**

3    **SEC. 421. REORGANIZATION OF OTS INTO OCC.**

4            Effective on the date of enactment, section 321(e) of  
5 title 31, United States Code, is amended to read as fol-  
6 lows:

7            “(e) OTS ABOLISHED.—No later than 30 days after  
8 the enactment of the Thrift Charter Conversion Act of  
9 1997, the Secretary of the Treasury shall merge the Office  
10 of Thrift Supervision with the Office of the Comptroller  
11 of the Currency.”

12    **SEC. 422. SAVINGS PROVISIONS.**

13            (a) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS  
14 NOT AFFECTED.—No provision of this title shall be con-  
15 strued as affecting the validity of any right, duty, or obli-  
16 gation of the United States, the Director of the Office of  
17 Thrift Supervision, or any person, which existed on the  
18 day before the date upon which the position of Director  
19 of the Office of Thrift Supervision and the Office of Thrift  
20 Supervision are abolished.

21            (b) CONTINUATION OF SUITS.—No action or other  
22 proceeding commenced by or against the Director of the  
23 Office of Thrift Supervision shall abate by reason of enact-  
24 ment of this title, except that, effective January 1, 1998,

1 the Comptroller of the Currency, the Federal Deposit In-  
2 surance Corporation, or the Board of Governors of the  
3 Federal Reserve System, as the case may be, shall be sub-  
4 stituted as a party to any such action or proceeding.

5 (c) CONTINUATION OF ADMINISTRATIVE RULES.—

6 All orders, resolutions, determinations, regulations, inter-  
7 pretative rules, other interpretations, guidelines, proce-  
8 dures, supervisory and enforcement actions, and other ad-  
9 visory material (other than any regulation implementing  
10 or prescribed pursuant to section 3(f) of the Home Own-  
11 ers' Loan Act (as in effect on January 1, 1997)) which—

12 (1) have been issued, made, prescribed, or per-  
13 mitted to become effective by the Office of Thrift  
14 Supervision, and

15 (2) are in effect on December 31, 1997, (or be-  
16 come effective after such date pursuant to the terms  
17 of the order, resolution, determination, rule, other  
18 interpretation, guideline, procedure, supervisory or  
19 enforcement action, and other advisory material, as  
20 in effect on such date), shall—

1 (A) continue in effect according to the  
2 terms of such orders, resolutions, determina-  
3 tions, regulations, interpretative rules, other in-  
4 terpretations, guidelines, procedures, super-  
5 visory or enforcement actions, or other advisory  
6 material;

7 (B) be administered by the Comptroller of  
8 the Currency, the Federal Deposit Insurance  
9 Corporation, or the Board of Governors of the  
10 Federal Reserve System; and

11 (C) be enforceable by or against the Comp-  
12 troller of the Currency, the Federal Deposit In-  
13 surance Corporation, or the Board of Governors  
14 of the Federal Reserve System until modified,  
15 terminated, set aside, or superseded in accord-  
16 ance with applicable law by the Comptroller,  
17 Corporation, or Board, by any court of com-  
18 petent jurisdiction, or by operation of law.

19 (d) TREATMENT OF REFERENCES IN ADJUSTABLE  
20 RATE MORTGAGES ISSUED BEFORE FIRREA.—

21 (1) REFERENCES IN PRIOR LAW.—For purposes  
22 of section 402(e) of Financial Institutions Reform,  
23 Recovery, and Enforcement Act of 1989 (12 U.S.C.  
24 1437 note), any reference in such section to—

1 (A) the Director of the Office of Thrift Su-  
2 pervision shall be deemed to be a reference to  
3 the Secretary of the Treasury; and

4 (B) a Savings Association Insurance Fund  
5 member shall be deemed to be a reference to an  
6 insured depository institution (as defined in sec-  
7 tion 3 of the Federal Deposit Insurance Act).

8 (e) TREATMENT OF REFERENCES IN ADJUSTABLE  
9 RATE MORTGAGE INSTRUMENTS ISSUED AFTER  
10 FIRREA.—

11 (1) IN GENERAL.—For purposes of adjustable  
12 rate mortgage instruments that are in effect as of  
13 the date of enactment of this Act, any reference in  
14 the instrument to the Director of the Office of  
15 Thrift Supervision or Savings Association Insurance  
16 Fund members shall be treated as a reference to the  
17 Secretary of the Treasury or insured depository in-  
18 stitutions (as defined in section 3 of the Federal De-  
19 posit Insurance Act), as appropriate.

20 (2) SUBSTITUTION FOR INDEXES.—If any index  
21 used to calculate the applicable interest rate on any  
22 adjustable rate mortgage instrument is no longer  
23 calculated and made available as a direct or indirect  
24 result of the enactment of this title, any index—

1           (A) made available by the Secretary of the  
2           Treasury; or

3           (B) determined by the Secretary of the  
4           Treasury, pursuant to paragraph (4), to be sub-  
5           stantially similar to the index which is no  
6           longer calculated or made available,  
7           may be substituted by the holder of any such adjust-  
8           able rate mortgage instrument upon notice to the  
9           borrower.

10           (3) AGENCY ACTION REQUIRED TO PROVIDE  
11           CONTINUED AVAILABILITY OF INDEXES.—Promptly  
12           after the enactment of this subsection, the Secretary  
13           of the Treasury, the Chairperson of the Federal De-  
14           posit Insurance Corporation, and the Comptroller of  
15           the Currency shall take such action as may be nec-  
16           essary to assure that the indexes prepared by the  
17           Director of the Office of Thrift Supervision imme-  
18           diately before the enactment of this subsection and  
19           used to calculate the interest rate on adjustable rate  
20           mortgage instruments continue to be available.

21           (4) REQUIREMENTS RELATING TO SUBSTITUTE  
22           INDEXES.—If any agency can no longer make avail-  
23           able an index pursuant to paragraph (3), an index  
24           that is substantially similar to such index may be  
25           substituted for such index for purposes of paragraph

1 (2) if the Secretary of the Treasury determines,  
2 after notice and opportunity for comment, that—

3 (A) the new index is based upon data sub-  
4 stantially similar to that of the original index;  
5 and

6 (B) the substitution of the new index will  
7 result in an interest rate substantially similar to  
8 the rate in effect at the time the original index  
9 became unavailable.

10 **SEC. 423. COST OF FUNDS INDEXES.**

11 (a) **COST OF FUNDS INDEX DEFINED.**—The term  
12 “cost of funds index” means any index that is published  
13 by a Federal home loan bank and is based, in whole or  
14 in part, upon the cost of funds of such bank’s members.

15 (b) **CALCULATIONS BASED ON TYPE OF CHARTER  
16 AND INSURANCE FUND MEMBERSHIP OF MEMBERS.**—If  
17 any cost of funds index includes data based on charter  
18 type, insurance fund membership, or other similar charac-  
19 teristics of members of a Federal home loan bank, such  
20 index shall be calculated after the date of the enactment  
21 of this Act using data only from insured depository insti-  
22 tutions which were bank members and whose data was in-  
23 cluded in such index on or before such date of enactment.

24 (c) **ACQUISITION OF DATA.**—

1           (1) IN GENERAL.—Each insured depository in-  
2           stitution the data from which is required to compile  
3           a cost of funds index in accordance with subsection  
4           (b) shall provide the Federal home loan bank which  
5           maintains the index such information as may be nec-  
6           essary, and in such form as may be appropriate, for  
7           the bank to calculate and publish the index.

8           (2) ENFORCEMENT BY BANKING AGENCIES.—  
9           Each appropriate Federal banking agency shall take  
10          such action as may be necessary to ensure that in-  
11          sured depository institutions which are required to  
12          provide information to any Federal home loan bank  
13          under paragraph (1) furnish such information on a  
14          timely basis and in the form required by the bank.

15          (3) TREATMENT OF INSTITUTIONS.—Notwith-  
16          standing any other provision of law, and insured de-  
17          pository institution which furnishes information to a  
18          Federal home loan bank pursuant to this section for  
19          use in compiling a cost of funds index shall not be  
20          deemed to control, directly or indirectly, such index.

21          (d) CERTAIN DATA EXCLUDED.—Notwithstanding  
22          subsections (b) and (c), no cost of funds index shall in-  
23          clude any data from any insured depository institution  
24          which results from the merger, consolidation, or other

1 combination of a member of a Federal home loan bank  
2 with a nonmember of any such bank if—

3 (1) the total assets of the nonmember exceed  
4 the total assets of the bank member at the time of  
5 such merger, consolidation, or other combination; or

6 (2) in the case of a merger, consolidation, or  
7 other merger in which a member of a Federal home  
8 loan bank is the resulting insured depository institu-  
9 tion, the combined ratio of the average amount of  
10 single-family loan balances to average total assets of  
11 all insured depository institutions involved in such  
12 merger, consolidation, or other combination for the  
13 12-month period ending on the date of such trans-  
14 action is less than 70 percent.

15 (e) OTHER DEFINITIONS.—For purposes of this sec-  
16 tion, the terms “appropriate Federal banking agency” and  
17 “insured depository institution” shall have the same  
18 meanings as in section 3 of the Federal Deposit Insurance  
19 Act.

20 **SEC. 424. REFERENCES IN FEDERAL LAW TO DIRECTOR OF**  
21 **THE OFFICE OF THRIFT SUPERVISION.**

22 Effective January 1, 1998, any reference in any Fed-  
23 eral law to the Director of the Office of Thrift Supervision  
24 or the Office of Thrift Supervision shall be deemed to be  
25 a reference to the appropriate Federal banking agency (as

1 defined in section 3(q) of the Federal Deposit Insurance  
2 Act).

3 **SEC. 425. RECONFIGURATION OF FDIC BOARD OF DIREC-**  
4 **TORS AS A RESULT OF REMOVAL OF DIREC-**  
5 **TOR OF THE OFFICE OF THRIFT SUPER-**  
6 **VISION.**

7 (a) IN GENERAL.—Section 2(a)(1) of the Federal  
8 Deposit Insurance Act (12 U.S.C. 1812(a)(1)) is amended  
9 to read as follows:

10 “(1) IN GENERAL.—The management of the  
11 Corporation shall be vested in a Board of Directors  
12 consisting of 5 members—

13 “(A) 1 of whom shall be the Comptroller of  
14 the Currency; and

15 “(B) 4 of whom shall be appointed by the  
16 President, by and with the advice and consent  
17 of the Senate, from among individuals who are  
18 citizens of the United States, 1 of whom shall  
19 have State bank supervisory experience.”.

20 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

21 (1) Section 2(d)(2) of the Federal Deposit Insurance Act  
22 (12 U.S.C. 1812(d)(2)) is amended—

23 (A) by striking “or the office of Director of the  
24 Office of Thrift Supervision”;

25 (B) by striking “or such Director”;

1 (C) by striking “or the acting Director of the  
2 Office of Thrift Supervision, as the case may be”;  
3 and

4 (D) by striking “or Director”.

5 (2) Section 2(f)(2) of the Federal Deposit Insurance  
6 Act (12 U.S.C. 1812(f)(2)) is amended by striking “or of  
7 the Office of Thrift Supervision”.

8 (c) EFFECTIVE DATE.—The amendments made by  
9 subsections (a) and (b) shall take effect on January 1,  
10 1998.

## 11 **Subtitle C—Merger of Deposit** 12 **Insurance Funds**

### 13 **SEC. 431. MERGER OF THE BIF AND SAIF.**

14 Section 2704(c) of the Omnibus Consolidation Appro-  
15 priations Act, 1997 is amended to read as follows:

16 “(c) EFFECTIVE DATE.—This section and the  
17 amendments made by this section shall become effective  
18 on January 1, 1999, if the FDIC determines that—

19 (1) the merger of the Bank Insurance Fund  
20 and Savings Association Insurance Fund is in the  
21 public interest;

22 (2) the reserve ratios of both funds are equal to  
23 or greater than their designated reserve ratios; and

24 (3) a significant number of savings associations  
25 have converted to state or national bank charters.”

1                   **TITLE V—TECHNICAL**  
2                   **CORRECTIONS**

3 **SEC. 501. FOREIGN BANK RESIDENCY REQUIREMENTS.**

4           Section 5146 of the Revised Statutes is amended in  
5 the first sentence by inserting “and, in the case of an asso-  
6 ciation which is a subsidiary or affiliate of a foreign bank,  
7 the Comptroller may in his discretion waive the require-  
8 ment of citizenship in the case of not more than a minority  
9 of the total number of directors” before the period.

10 **SEC. 502. INTERSTATE BRANCHING.**

11           Subsection 24(j) of the Federal Deposit Insurance  
12 Act is hereby amended to read as follows:

13           “(j) **ACTIVITIES OF BRANCHES OF OUT-OF-STATE**  
14 **BANKS.—**

15                   “(1) **APPLICATION OF HOST STATE LAW.—**The  
16 laws of a host state, including laws regarding com-  
17 munity reinvestment, consumer protection, fair lend-  
18 ing, and establishment of intrastate branches, shall  
19 apply to any branch in the host State of an out-of-  
20 State State bank to the same extent as such State  
21 laws apply to a branch in the host State of an out-  
22 of-State national bank.

23                   “(2) **ACTIVITIES OF BRANCHES.—**An insured  
24 State bank that establishes a branch in a host State

1       may conduct any activity at such branch that is per-  
2       missible under the laws of the home State of such  
3       bank, if such activity is permissible either for a bank  
4       chartered by the host State (subject to the restric-  
5       tions in this section) or for a branch in the host  
6       State of an out-of-State national bank.

7               “(3) DEFINITIONS.—The terms ‘host State’,  
8       ‘home State’, and ‘out-of-State bank’ have the same  
9       meanings as in section 44(f).”.

○