**Calendar No. 588**

105TH CONGRESS
2D SESSION

# H. R. 10

**[Report No. 105–336]**

# 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.

SEPTEMBER 18, 1998

Reported with an amendment

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

# Calendar No. 588

105TH CONGRESS
2D SESSION

# H. R. 10

**[Report No. 105–336]**

---

IN THE SENATE OF THE UNITED STATES

MAY 14, 1998

Received; read twice and referred to the Committee on Banking, Housing, and Urban Affairs

SEPTEMBER 18, 1998

Reported by Mr. D'AMATO, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

---

# AN ACT

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

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

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

~~(a) SHORT TITLE.—This Act may be cited as the "Financial Services Act of 1998".~~

~~(b) PURPOSES.—The purposes of this Act are as follows:~~

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

~~(2) To ensure the continued safety and soundness of depository institutions.~~

~~(3) To provide necessary and appropriate protections for investors and ensure fair and honest markets in the delivery of financial services.~~

~~(4) To provide for appropriate functional regulation of insurance activities.~~

~~(5) To reduce and, to the maximum extent practicable, to eliminate the legal barriers preventing affiliation among depository institutions, securities firms, insurance companies, and other financial service providers and to provide a prudential framework for achieving that result.~~

~~(6) To enhance the availability of financial services to citizens of all economic circumstances and in all geographic areas.~~

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

~~(8) To ensure compliance by depository institutions with the provisions of the Community Rein-~~

~~vestment Act of 1977 and enhance the ability of depository institutions to meet the capital and credit needs of all citizens and communities, including underserved communities and populations.~~

~~(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:~~

~~Sec. 1. Short title; purposes; table of contents.~~

~~TITLE I—FACILITATING AFFILIATION AMONG SECURITIES FIRMS, INSURANCE COMPANIES, AND DEPOSITORY INSTITUTIONS~~

~~Subtitle A—Affiliations~~

~~Sec. 101. Glass-Steagall Act reformed.~~
~~Sec. 102. Activity restrictions applicable to bank holding companies which are not financial holding companies.~~
~~Sec. 103. Financial holding companies.~~
~~Sec. 104. Certain State laws preempted.~~
~~Sec. 105. Mutual bank holding companies authorized.~~
~~Sec. 106. Prohibition on deposit production offices.~~
~~Sec. 107. Clarification of branch closure requirements.~~
~~Sec. 108. Amendments relating to limited purpose banks.~~
~~Sec. 109. Responsiveness to community needs for financial services.~~
~~Sec. 110. Reports on ongoing FTC study of consumer privacy issues.~~
~~Sec. 110A. GAO study of economic impact on community banks and other small financial institutions.~~

~~Subtitle B—Streamlining Supervision of Financial Holding Companies~~

~~Sec. 111. Streamlining financial holding company supervision.~~
~~Sec. 112. Elimination of application requirement for financial holding companies.~~
~~Sec. 113. Authority of State insurance regulator and Securities and Exchange Commission.~~
~~Sec. 114. Prudential safeguards.~~
~~Sec. 115. Examination of investment companies.~~
~~Sec. 116. Limitation on rulemaking, prudential, supervisory, and enforcement authority of the Board.~~
~~Sec. 117. Interagency consultation.~~

~~Subtitle C—Subsidiaries of National Banks~~

~~Sec. 121. Permissible activities for subsidiaries of national banks.~~
~~Sec. 122. Misrepresentations regarding depository institution liability for obligations of affiliates.~~
~~Sec. 123. Repeal of stock loan limit in Federal Reserve Act.~~

~~Subtitle D—Wholesale Financial Holding Companies; Wholesale Financial Institutions~~

~~CHAPTER 1—WHOLESALE FINANCIAL HOLDING COMPANIES~~

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

~~CHAPTER 2—WHOLESALE FINANCIAL INSTITUTIONS~~

~~Sec. 136. Wholesale financial institutions.~~

~~Subtitle E—Preservation of FTC Authority~~

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

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

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

~~Subtitle G—Federal Home Loan Bank System~~

~~Sec. 161. Federal home loan banks—~~
~~Sec. 162. Membership and collateral.~~
~~Sec. 163. The Office of Finance.~~
~~Sec. 164. Management of banks.~~
~~Sec. 165. Advances to nonmember borrowers.~~
~~Sec. 166. Powers and duties of banks.~~
~~Sec. 167. Mergers and consolidations of Federal home loan banks.~~
~~Sec. 168. Technical amendments.~~
~~Sec. 169. Definitions.~~
~~Sec. 170. Resolution funding corporation~~
~~Sec. 171. Capital structure of the Federal home loan banks.~~
~~Sec. 172. Investments.~~
~~Sec. 173. Federal Housing Finance Board.~~

~~Subtitle H—Direct Activities of Banks~~

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

~~Subtitle I—Deposit Insurance Funds~~

~~Sec. 186. Study of safety and soundness of funds.~~

~~Subtitle J—Effective Date of Title~~

~~Sec. 191. Effective date.~~

~~TITLE II—FUNCTIONAL REGULATION~~

~~Subtitle A—Brokers and Dealers~~

~~Sec. 201. Definition of broker.~~
~~Sec. 202. Definition of dealer.~~
~~Sec. 203. Registration for sales of private securities offerings.~~
~~Sec. 204. Sales practices and complaint procedures.~~
~~Sec. 205. Information sharing.~~
~~Sec. 206. Definition and treatment of banking products.~~
~~Sec. 207. Derivative instrument and qualified investor defined.~~
~~Sec. 208. Government securities defined.~~
~~Sec. 209. Effective date.~~
~~Sec. 210. Rule of construction.~~

~~Subtitle B—Bank Investment Company Activities~~

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

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

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

~~Subtitle D—Study~~

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

~~Subtitle E—Disclosure of Customer Costs of Acquiring Financial Products~~

~~Sec. 251. Improved and consistent disclosure.~~

~~TITLE III—INSURANCE~~

~~Subtitle A—State Regulation of Insurance~~

~~Sec. 301. State regulation of the business of insurance.~~
~~Sec. 302. Mandatory insurance licensing requirements.~~
~~Sec. 303. Functional regulation of insurance.~~
~~Sec. 304. Insurance underwriting in national banks.~~

~~Sec. 305. New bank agency activities only through acquisition of existing licensed agents.~~
~~Sec. 306. Title insurance activities of national banks and their affiliates.~~
~~Sec. 307. Expedited and equalized dispute resolution for financial regulators.~~
~~Sec. 308. Consumer protection regulations.~~
~~Sec. 309. Certain State affiliation laws preempted for insurance companies and affiliates.~~

~~Subtitle B—Redomestication of Mutual Insurers~~

~~Sec. 311. General application.~~
~~Sec. 312. Redomestication of mutual insurers.~~
~~Sec. 313. Effect on State laws restricting redomestication.~~
~~Sec. 314. Other provisions.~~
~~Sec. 315. Definitions.~~
~~Sec. 316. Effective date.~~

~~Subtitle C—National Association of Registered Agents and Brokers~~

~~Sec. 321. State flexibility in multistate licensing reforms.~~
~~Sec. 322. National Association of Registered Agents and Brokers.~~
~~Sec. 323. Purpose.~~
~~Sec. 324. Relationship to the Federal Government.~~
~~Sec. 325. Membership.~~
~~Sec. 326. Board of directors.~~
~~Sec. 327. Officers.~~
~~Sec. 328. Bylaws, rules, and disciplinary action.~~
~~Sec. 329. Assessments.~~
~~Sec. 330. Functions of the NAIC.~~
~~Sec. 331. Liability of the Association and the directors, officers, and employees of the Association.~~
~~Sec. 332. Elimination of NAIC oversight.~~
~~Sec. 333. Relationship to State law.~~
~~Sec. 334. Coordination with other regulators.~~
~~Sec. 335. Judicial review.~~
~~Sec. 336. Definitions.~~

~~TITLE IV—UNITARY SAVINGS AND LOAN HOLDING COMPANIES~~

~~Sec. 401. Termination of expanded powers for new unitary S&L holding companies.~~
~~Sec. 402. Retention of "Federal" in name of converted Federal savings association.~~

# TITLE I—FACILITATING AFFILIATION AMONG SECURITIES FIRMS, INSURANCE COMPANIES, AND DEPOSITORY INSTITUTIONS

## Subtitle A—Affiliations

### SEC. 101. GLASS-STEAGALL ACT REFORMED.

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

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

### SEC. 102. ACTIVITY RESTRICTIONS APPLICABLE TO BANK HOLDING COMPANIES WHICH ARE NOT FINANCIAL HOLDING COMPANIES.

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

''(8) shares of any company the activities of which had been determined by the Board by regulation under this paragraph as of the day before the date of the enactment of the Financial Services Act of 1998, to be so closely related to banking as to be a proper incident thereto (subject to such terms and

~~conditions contained in such regulation, unless modified by the Board);''.~~

~~(b) CONFORMING CHANGES TO OTHER STATUTES.—~~

~~(1) AMENDMENT TO THE BANK HOLDING COMPANY ACT AMENDMENTS OF 1970.—Section 105 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1850) is amended by striking '', to engage directly or indirectly in a nonbanking activity pursuant to section 4 of such Act,''.~~

~~(2) AMENDMENT TO THE BANK SERVICE COMPANY ACT.—Section 4(f) of the Bank Service Company Act (12 U.S.C. 1864(f)) is amended by striking the period and adding at the end the following: ''as of the day before the date of enactment of the Financial Services Act of 1998.''.~~

**~~SEC. 103. FINANCIAL HOLDING COMPANIES.~~**

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

**~~''SEC. 6. FINANCIAL HOLDING COMPANIES.~~**

~~''(a) FINANCIAL HOLDING COMPANY DEFINED.—For purposes of this section, the term 'financial holding company' means a bank holding company which meets the requirements of subsection (b).~~

~~"(b) ELIGIBILITY REQUIREMENTS FOR FINANCIAL HOLDING COMPANIES.—~~

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

~~"(A) All of the subsidiary depository institutions of the bank holding company are well capitalized.~~

~~"(B) All of the subsidiary depository institutions of the bank holding company are well managed.~~

~~"(C) All of the subsidiary depository institutions of the bank holding company have achieved a rating of 'satisfactory record of meeting community credit needs', or better, at the most recent examination of each such institution under the Community Reinvestment Act of 1977.~~

~~"(D) All of the subsidiary insured depository institutions of the bank holding company (other than any such depository institution which does not, in the ordinary course of the business of the depository institution, offer con-~~

~~sumer transaction accounts to the general public) offer and maintain low-cost basic banking accounts.~~

~~"(E) The company has filed with the Board a declaration that the company elects to be a financial holding company and certifying that the company meets the requirements of subparagraphs (A) through (D).~~

~~"(2) FOREIGN BANKS AND COMPANIES.—For purposes of paragraph (1), the Board shall establish and apply comparable capital standards to a foreign bank that operates a branch or agency or owns or controls a bank or commercial lending company in the United States, and any company that owns or controls such foreign bank, giving due regard to the principle of national treatment and equality of competitive opportunity.~~

~~"(3) LIMITED EXCLUSIONS FROM COMMUNITY NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DEPOSITORY INSTITUTIONS.—~~

~~"(A) IN GENERAL.—If the requirements of subparagraph (B) are met, any depository institution acquired by a bank holding company during the 24-month period preceding the submission of a declaration under paragraph~~

~~(1)(E) and any depository institution acquired after the submission of such declaration may be excluded for purposes of paragraph (1)(C) until the later of—~~

~~"(i) the end of the 24-month period beginning on the date the acquisition of the depository institution by such company is consummated; or~~

~~"(ii) the date of completion of the first examination of such depository institution under the Community Reinvestment Act of 1977 which is conducted after the date of the acquisition of the depository institution.~~

~~"(B) REQUIREMENTS.—The requirements of this subparagraph are met with respect to any bank holding company referred to in subparagraph (A) if—~~

~~"(i) the bank holding company has submitted an affirmative plan to the appropriate Federal banking agency to take such action as may be necessary in order for such institution to achieve a rating of 'satisfactory record of meeting community credit needs', or better, at the next exam-~~

~~ination of the institution under the Community Reinvestment Act of 1977; and~~

~~"(ii) the plan has been approved by such agency.~~

~~"(c) ENGAGING IN ACTIVITIES FINANCIAL IN NATURE.—~~

~~"(1) IN GENERAL.—Notwithstanding section 4(a), a financial holding company and a wholesale financial holding company may engage in any activity, and acquire and retain the shares of any company engaged in any activity, which the Board has determined (by regulation or order) to be financial in nature or incidental to such financial activities.~~

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

~~"(A) the purposes of this Act and the Financial Services Act of 1998;~~

~~"(B) changes or reasonably expected changes in the marketplace in which bank holding companies compete;~~

~~"(C) changes or reasonably expected changes in the technology for delivering financial services; and~~

~~"(D) whether such activity is necessary or appropriate to allow a bank holding company and the affiliates of a bank holding company to—~~

~~"(i) compete effectively with any company seeking to provide financial services in the United States;~~

~~"(ii) use any available or emerging technological means, including any application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions, in providing financial services; and~~

~~"(iii) offer customers any available or emerging technological means for using financial services.~~

~~"(3) ACTIVITIES THAT ARE FINANCIAL IN NATURE.—The following activities shall be considered to be financial in nature:~~

~~"(A) Lending, exchanging, transferring, investing for others, or safeguarding money or securities.~~

~~"(B) Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annu-~~

~~ities, and acting as principal, agent, or broker for purposes of the foregoing.~~

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

~~"(D) Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly.~~

~~"(E) Underwriting, dealing in, or making a market in securities.~~

~~"(F) Engaging in any activity that the Board has determined, by order or regulation that is in effect on the date of enactment of the Financial Services Act of 1998, to be so closely related to banking or managing or controlling banks as to be a proper incident thereto (subject to the same terms and conditions contained in such order or regulation, unless modified by the Board).~~

~~"(G) Engaging, in the United States, in any activity that—~~

~~"(i) a bank holding company may engage in outside the United States; and~~

~~"(ii) the Board has determined, under regulations issued pursuant to section 4(c)(13) of this Act (as in effect on the day before the date of enactment of the Financial Services Act of 1998) to be usual in connection with the transaction of banking or other financial operations abroad.~~

~~"(H) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution or subsidiary of a depository institution, that the bank holding company controls) or otherwise, shares, assets, or ownership interests (including without limitation debt or equity securities, partnership interests, trust certificates or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if—~~

~~"(i) the shares, assets, or ownership interests are not acquired or held by a depository institution or subsidiary of a depository institution;~~

~~"(ii) such shares, assets, or ownership interests are acquired and held by a securities affiliate or an affiliate thereof as part of a bona fide underwriting or merchant banking activity, including investment activities engaged in for the purpose of appreciation and ultimate resale or disposition of the investment;~~

~~"(iii) such shares, assets, or ownership interests, are held only for such a period of time as will permit the sale or disposition thereof on a reasonable basis consistent with the nature of the activities described in clause (ii); and~~

~~"(iv) during the period such shares, assets, or ownership interests are held, the bank holding company does not actively participate in the day to day management or operation of such company or entity, except insofar as necessary to achieve the objectives of clause (ii).~~

~~"(I) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution or subsidiary of a deposi-~~

~~tory institution, that the bank holding company controls) or otherwise, shares, assets, or ownership interests (including without limitation debt or equity securities, partnership interests, trust certificates or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if—~~

~~"(i) the shares, assets, or ownership interests are not acquired or held by a depository institution or a subsidiary of a depository institution;~~

~~"(ii) such shares, assets, or ownership interests are acquired and held by an insurance company that is predominantly engaged in underwriting life, accident and health, or property and casualty insurance (other than credit-related insurance);~~

~~"(iii) such shares, assets, or ownership interests represent an investment made in the ordinary course of business of such insurance company in accordance with relevant State law governing such investments; and~~

~~"(iv) during the period such shares, assets, or ownership interests are held, the bank holding company does not directly or indirectly participate in the day-to-day management or operation of the company or entity except insofar as necessary to achieve the objectives of clauses (ii) and (iii).~~

~~"(4) ACTIONS REQUIRED.—The Board shall, by regulation or order, define, consistent with the purposes of this Act, the following activities as, and the extent to which such activities are, financial in nature or incidental to activities which are financial in nature:~~

~~"(A) Lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities.~~

~~"(B) Providing any device or other instrumentality for transferring money or other financial assets;~~

~~"(C) Arranging, effecting, or facilitating financial transactions for the account of third parties.~~

~~"(5) POST CONSUMMATION NOTIFICATION.—~~

~~"(A) IN GENERAL.—A financial holding company and a wholesale financial holding company that acquires any company, or commences any activity, pursuant to this subsection shall provide written notice to the Board describing the activity commenced or conducted by the company acquired no later than 30 calendar days after commencing the activity or consummating the acquisition.~~

~~"(B) APPROVAL NOT REQUIRED FOR CERTAIN FINANCIAL ACTIVITIES.—Except as provided in section 4(j) with regard to the acquisition of a savings association, a financial holding company and a wholesale financial holding company may commence any activity, or acquire any company, pursuant to paragraph (3) or any regulation prescribed or order issued under paragraph (4), without prior approval of the Board.~~

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

~~"(1) IN GENERAL.—If the Board finds that a financial holding company is not in compliance with the requirements of subparagraph (A), (B), (C), or~~

~~(D) of subsection (b)(1), the Board shall give notice of such finding to the company.~~

~~"(2) AGREEMENT TO CORRECT CONDITIONS REQUIRED.—Within 45 days of receipt by a financial holding company of a notice given under paragraph (1) (or such additional period as the Board may permit), the company shall execute an agreement acceptable to the Board to comply with the requirements applicable to a financial holding company.~~

~~"(3) BOARD MAY IMPOSE LIMITATIONS.—Until the conditions described in a notice to a financial holding company under paragraph (1) are corrected, the Board may impose such limitations on the conduct or activities of the company or any affiliate of the company as the Board determines to be appropriate under the circumstances.~~

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

~~"(A) execute and implement an agreement in accordance with paragraph (2);~~

~~"(B) comply with any limitations imposed under paragraph (3);~~

~~"(C) in the case of a notice of failure to comply with subsection (b)(1)(A), restore each~~

~~depository institution subsidiary to well capitalized status before the end of the 180-day period beginning on the date such notice is received by the company (or such other period permitted by the Board); or~~

~~"(D) in the case of a notice of failure to comply with subparagraph (B), (C), or (D) of subsection (b)(1), restore compliance with any such subparagraph by the date the next examination of the depository institution subsidiary is completed or by the end of such other period as the Board determines to be appropriate,~~

~~the Board may require such company, under such terms and conditions as may be imposed by the Board and subject to such extension of time as may be granted in the Board's discretion, to divest control of any depository institution subsidiary or, at the election of the financial holding company, instead to cease to engage in any activity conducted by such company or its subsidiaries pursuant to this section.~~

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

1 ~~"(e) SAFEGUARDS FOR BANK SUBSIDIARIES.—A fi-~~
2 ~~nancial holding company shall assure that—~~
3 ~~"(1) the procedures of the holding company for~~
4 ~~identifying and managing financial and operational~~
5 ~~risks within the company, and the subsidiaries of~~
6 ~~such company, adequately protect the subsidiaries of~~
7 ~~such company which are insured depository institu-~~
8 ~~tions from such risks;~~
9 ~~"(2) the holding company has reasonable poli-~~
10 ~~cies and procedures to preserve the separate cor-~~
11 ~~porate identity and limited liability of such company~~
12 ~~and the subsidiaries of such company, for the pro-~~
13 ~~tection of the company's subsidiary insured deposi-~~
14 ~~tory institutions; and~~
15 ~~"(3) the holding company complies with this~~
16 ~~section.~~
17 ~~"(f) AUTHORITY TO RETAIN LIMITED NON-~~
18 ~~FINANCIAL ACTIVITIES AND AFFILIATIONS.—~~
19 ~~"(1) IN GENERAL.—Notwithstanding section~~
20 ~~4(a), a company that is not a bank holding company~~
21 ~~or a foreign bank (as defined in section 1(b)(7) of~~
22 ~~the International Banking Act of 1978) and becomes~~
23 ~~a financial holding company after the date of the en-~~
24 ~~actment of the Financial Services Act of 1998 may~~
25 ~~continue to engage in any activity and retain direct~~

or indirect ownership or control of shares of a company engaged in any activity if—

"(A) the holding company lawfully was engaged in the activity or held the shares of such company on September 30, 1997;

"(B) the holding company is predominantly engaged in financial activities as defined in paragraph (2); and

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

"(2) PREDOMINANTLY FINANCIAL.—For purposes of this subsection, a company is predominantly engaged in financial activities if the annual gross revenues derived by the holding company and all subsidiaries of the holding company (excluding revenues derived from subsidiary depository institutions), on a consolidated basis, from engaging in activities that are financial in nature or are incidental to activities that are financial in nature under subsection (c) represent at least 85 percent of the consolidated annual gross revenues of the company.

~~"(3) NO EXPANSION OF GRANDFATHERED COMMERCIAL ACTIVITIES THROUGH MERGER OR CONSOLIDATION.—A financial holding company that engages in activities or holds shares pursuant to this subsection, or a subsidiary of such financial holding company, may not acquire, in any merger, consolidation, or other type of business combination, assets of any other company which is engaged in any activity which the Board has not determined to be financial in nature or incidental to activities that are financial in nature under subsection (c).~~

~~"(4) CONTINUING REVENUE LIMITATION ON GRANDFATHERED COMMERCIAL ACTIVITIES.—Notwithstanding any other provision of this subsection, a financial holding company may continue to engage in activities or hold shares in companies pursuant to this subsection only to the extent that the aggregate annual gross revenues derived from all such activities and all such companies does not exceed 15 percent of the consolidated annual gross revenues of the financial holding company (excluding revenues derived from subsidiary depository institutions).~~

~~"(5) CROSS MARKETING RESTRICTIONS APPLICABLE TO COMMERCIAL ACTIVITIES.—A depository~~

~~institution controlled by a financial holding company shall not—~~

~~"(A) offer or market, directly or through any arrangement, any product or service of a company whose activities are conducted or whose shares are owned or controlled by the financial holding company pursuant to this subsection or subparagraph (H) or (I) of subsection (c)(3); or~~

~~"(B) permit any of its products or services to be offered or marketed, directly or through any arrangement, by or through any company described in subparagraph (A).~~

~~"(6) TRANSACTIONS WITH NONFINANCIAL AFFILIATES.—An insured depository institution controlled by a financial holding company may not engage in a covered transaction (as defined by section 23A(b)(7) of the Federal Reserve Act) with any affiliate controlled by the company pursuant to this subsection or subparagraph (H) or (I) of subsection (c)(3).~~

~~"(7) SUNSET OF GRANDFATHER.—A financial holding company engaged in any activity, or retaining direct or indirect ownership or control of shares of a company, pursuant to this subsection, shall ter-~~

~~minate such activity and divest ownership or control of the shares of such company before the end of the 10-year period beginning on the date of the enactment of the Financial Services Act of 1998. The Board may, upon application by a financial holding company, extend such 10-year period by not to exceed an additional 5 years if such extension would not be detrimental to the public interest.~~

~~"(g) DEVELOPING ACTIVITIES.—A financial holding company and a wholesale financial holding company may engage directly or indirectly, or acquire shares of any company engaged, in any activity that the Board has not determined to be financial in nature or incidental to financial activities under subsection (c) if—~~

~~"(1) the holding company reasonably concludes that the activity is financial in nature or incidental to financial activities;~~

~~"(2) the gross revenues from all activities conducted under this subsection represent less than 5 percent of the consolidated gross revenues of the holding company;~~

~~"(3) the aggregate total assets of all companies the shares of which are held under this subsection do not exceed 5 percent of the holding company's consolidated total assets;~~

~~"(4) the total capital invested in activities conducted under this subsection represents less than 5 percent of the consolidated total capital of the holding company;~~

~~"(5) the Board has not determined that the activity is not financial in nature or incidental to financial activities under subsection (c); and~~

~~"(6) the holding company provides written notification to the Board describing the activity commenced or conducted by the company acquired no later than 10 business days after commencing the activity or consummating the acquisition.".~~

**~~SEC. 104. CERTAIN STATE LAWS PREEMPTED.~~**

~~(a) AFFILIATIONS.—No State may by statute, regulation, order, interpretation, or otherwise, prevent or significantly interfere with the ability of an insured depository institution or a wholesale financial institution to be affiliated with an entity (including an entity engaged in insurance activities) as authorized by this Act or any other provision of Federal law.~~

~~(b) ACTIVITIES.—~~

~~(1) Except as provided in paragraphs (2), (3), and (4), no State may by statute, regulation, order, interpretation, or otherwise, prevent or significantly interfere with the ability of an insured depository in-~~

~~stitution or a wholesale financial institution to engage, directly or indirectly or in conjunction with an affiliate, in any activity authorized under this Act or any other provision of Federal law.~~

~~(2) In accordance with the decision of the Supreme Court of the United States in Barnett Bank of Marion County, N.A. v. Nelson, 116 S.Ct. 1103 (1996), no State may, by statute, regulation, order, interpretation, or otherwise, prevent or significantly interfere with the ability of an insured depository institution or wholesale financial institution to engage, directly or indirectly, or in conjunction with an affiliate, in any insurance sales or solicitation activity, except that—~~

~~(A) State statutes and regulations governing insurance sales and solicitations which are no more restrictive than provisions in the Illinois "Act Authorizing and Regulating the Sale of Insurance by Financial Institutions, Public Act 90–41" (215 ILCS 5/1400–1416), as in effect on October 1, 1997, shall not be deemed to prevent or significantly interfere with the ability of an insured depository institution or wholesale financial institution to engage, directly or indi-~~

~~rectly, or in conjunction with an affiliate, in any insurance sales or solicitation activity; and~~

~~(B) subparagraph (A) shall not create any inference regarding State statutes and regulations governing insurance sales and solicitations other than State statutes and regulations described in subparagraph (A).~~

~~(3) State statutes, regulations, orders, and interpretations or otherwise shall not be preempted under paragraph (1) if they—~~

~~(A) relate to, or are enacted or issued for the purpose of regulating, the business of insurance in accordance with the McCarran-Ferguson Act;~~

~~(B) apply only to entities that are not insured depository institutions or wholesale financial institutions but which are engaged in the business of insurance;~~

~~(C) do not relate to, and are not enacted or issued for the purpose of regulating—~~

~~(i) cross-marketing; or~~

~~(ii) activities, including cross-marketing, which are subject to paragraph (2);~~

~~(D) are applicable to and are applied in the same manner with respect to an affiliate of~~

~~an insured depository institution or a wholesale financial institution as they are applicable to and are applied to those entities that are not affiliated with an insured depository institution or a wholesale financial institution; and~~

~~(E) do not prevent or significantly interfere with the ability of an insured depository institution or wholesale financial institution to engage in activities authorized for such institution under this Act or any other provision of Federal law.~~

~~(4) Paragraphs (1) and (2) shall not be construed as affecting the jurisdiction of the securities commission (or any agency or office performing like functions) of any State, under the laws of such State, to investigate and bring enforcement actions, consistent with section 18(c) of the Securities Act of 1933, with respect to fraud or deceit or unlawful conduct by any person, in connection with securities or securities transactions.~~

**~~SEC. 105. MUTUAL BANK HOLDING COMPANIES AUTHORIZED.~~**

~~(a) IN GENERAL.—Section 3(g)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(g)(2)) is amended to read as follows:~~

~~"(2) REGULATIONS.—A bank holding company organized as a mutual holding company shall be regulated on terms, and shall be subject to limitations, comparable to those applicable to any other bank holding company.".~~

**~~SEC. 106. PROHIBITION ON DEPOSIT PRODUCTION OFFICES.~~**

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

~~(1) by inserting ", the Financial Services Act of 1998," after "pursuant to this title"; and~~

~~(2) by inserting "or such Act" after "made by this title".~~

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

**~~SEC. 107. CLARIFICATION OF BRANCH CLOSURE REQUIREMENTS.~~**

~~Section 42(d)(4)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1831r–1(d)(4)(A)) is amended by inserting~~

~~"and any bank controlled by an out-of-State bank holding company (as defined in section 2(o)(7) of the Bank Holding Company Act of 1956)" before the period.~~

**~~SEC. 108. AMENDMENTS RELATING TO LIMITED PURPOSE BANKS.~~**

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

~~(1) in paragraph (2)(A)(ii)—~~

~~(A) by striking "and" at the end of subclause (IX);~~

~~(B) by inserting "and" after the semicolon at the end of subclause (X); and~~

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

~~"(XI) assets that are derived from, or are incidental to, activities in which institutions described in section 2(c)(2)(F) are permitted to engage,";~~

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

~~"(B) any bank subsidiary of such company engages in any activity in which the bank was not lawfully engaged as of March 5, 1987, unless the bank is well managed and well capitalized;~~

~~"(C) any bank subsidiary of such company both—~~

~~"(i) accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties; and~~

~~"(ii) engages in the business of making commercial loans (and, for purposes of this clause, loans made in the ordinary course of a credit card operation shall not be treated as commercial loans); or~~

~~"(D) after the date of the enactment of the Competitive Equality Amendments of 1987, any bank subsidiary of such company permits any overdraft (including any intraday overdraft), or incurs any such overdraft in such bank's account at a Federal reserve bank, on behalf of an affiliate, other than an overdraft described in paragraph (3)."; and~~

~~(3) by striking paragraphs (3) and (4) and inserting the following new paragraphs:~~

~~"(3) PERMISSIBLE OVERDRAFTS DESCRIBED.—For purposes of paragraph (2)(D), an overdraft is described in this paragraph if—~~

~~"(A) such overdraft results from an inadvertent computer or accounting error that is beyond the control of both the bank and the affiliate; or~~

~~"(B) such overdraft—~~

~~"(i) is permitted or incurred on behalf of an affiliate which is monitored by, reports to, and is recognized as a primary dealer by the Federal Reserve Bank of New York; and~~

~~"(ii) is fully secured, as required by the Board, by bonds, notes, or other obligations which are direct obligations of the United States or on which the principal and interest are fully guaranteed by the United States or by securities and obligations eligible for settlement on the Federal Reserve book entry system.~~

~~"(4) DIVESTITURE IN CASE OF LOSS OF EXEMPTION.—If any company described in paragraph (1) fails to qualify for the exemption provided under such paragraph by operation of paragraph (2), such exemption shall cease to apply to such company and such company shall divest control of each bank it controls before the end of the 180-day period begin-~~

~~ning on the date that the company receives notice from the Board that the company has failed to continue to qualify for such exemption, unless before the end of such 180-day period, the company has—~~

~~"(A) corrected the condition or ceased the activity that caused the company to fail to continue to qualify for the exemption; and~~

~~"(B) implemented procedures that are reasonably adapted to avoid the reoccurrence of such condition or activity.".~~

**~~SEC. 109. RESPONSIVENESS TO COMMUNITY NEEDS FOR FINANCIAL SERVICES.~~**

~~(a) STUDY.—The Secretary of the Treasury, in consultation with the Federal banking agencies (as defined in section 3(z) of the Federal Deposit Insurance Act) and the Securities and Exchange Commission, shall conduct a study of the extent to which adequate services are being provided as intended by the Community Reinvestment Act of 1977, including services in low- and moderate-income neighborhoods and for persons of modest means, as a result of the enactment of this Act.~~

~~(b) REPORT.—Before the end of the 2-year period beginning on the date of the enactment of this Act, the Secretary of the Treasury, in consultation with the Federal banking agencies and the Securities and Exchange Com-~~

~~mission, shall submit a report to the Congress on the study conducted pursuant to subsection (a) and shall include such recommendations as the Secretary determines to be appropriate for administrative and legislative action with respect to institutions covered under the Community Reinvestment Act of 1977.~~

**~~SEC. 110. REPORTS ON ONGOING FTC STUDY OF CONSUMER PRIVACY ISSUES.~~**

~~With respect to the ongoing multistage study being conducted by the Federal Trade Commission on consumer privacy issues, the Commission shall submit to the Congress an interim report on the findings and conclusions of the Commission, together with such recommendations for legislative and administrative action as the Commission determines to be appropriate, at the conclusion of each stage of such study and a final report at the conclusion of the study.~~

**~~SEC. 110A. GAO STUDY OF ECONOMIC IMPACT ON COMMUNITY BANKS AND OTHER SMALL FINANCIAL INSTITUTIONS.~~**

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

~~(b) REPORT TO THE CONGRESS.—The Comptroller General of the United States shall submit a report to the Congress before the end of the 6-month period beginning on the date of the date of the enactment of this Act containing the findings and conclusions of the Comptroller General with regard to the study required under subsection (a) and such recommendations for legislative or administrative action as the Comptroller General may determine to be appropriate.~~

## ~~Subtitle B—Streamlining Supervision of Financial Holding Companies~~

### ~~SEC. 111. STREAMLINING FINANCIAL HOLDING COMPANY SUPERVISION.~~

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

~~"(c) REPORTS AND EXAMINATIONS.—~~

~~"(1) REPORTS.—~~

~~"(A) IN GENERAL.—The Board from time to time may require any bank holding company and any subsidiary of such company to submit reports under oath to keep the Board informed as to—~~

~~"(i) its financial condition, systems for monitoring and controlling financial~~

~~and operating risks, and transactions with depository institution subsidiaries of the holding company; and~~

~~"(ii) compliance by the company or subsidiary with applicable provisions of this Act.~~

~~"(B) USE OF EXISTING REPORTS.—~~

~~"(i) IN GENERAL.—The Board shall, to the fullest extent possible, accept reports in fulfillment of the Board's reporting requirements under this paragraph that a bank holding company or any subsidiary of such company has provided or been required to provide to other Federal and State supervisors or to appropriate self-regulatory organizations.~~

~~"(ii) AVAILABILITY.—A bank holding company or a subsidiary of such company shall provide to the Board, at the request of the Board, a report referred to in clause (i).~~

~~"(iii) REQUIRED USE OF PUBLICLY REPORTED INFORMATION.—The Board shall, to the fullest extent possible, accept in fulfillment of any reporting or record-~~

~~keeping requirements under this Act information that is otherwise required to be reported publicly and externally audited financial statements.~~

~~"(iv) REPORTS FILED WITH OTHER AGENCIES.—In the event the Board requires a report from a functionally regulated nondepository institution subsidiary of a bank holding company of a kind that is not required by another Federal or State regulator or appropriate self-regulatory organization, the Board shall request that the appropriate regulator or self-regulatory organization obtain such report. If the report is not made available to the Board, and the report is necessary to assess a material risk to the bank holding company or its subsidiary depository institution or compliance with this Act, the Board may require such subsidiary to provide such a report to the Board.~~

~~"(C) DEFINITION.—For purposes of this subsection, the term 'functionally regulated nondepository institution' means—~~

~~"(i) a broker or dealer registered under the Securities Exchange Act of 1934;~~

~~"(ii) an investment adviser registered under the Investment Advisers Act of 1940, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities;~~

~~"(iii) an insurance company subject to supervision by a State insurance commission, agency, or similar authority; and~~

~~"(iv) an entity subject to regulation by the Commodity Futures Trading Commission, with respect to the commodities activities of such entity and activities incidental to such commodities activities.~~

~~"(2) EXAMINATIONS.—~~

~~"(A) EXAMINATION AUTHORITY.—~~

~~"(i) IN GENERAL.—The Board may make examinations of each bank holding company and each subsidiary of a bank holding company.~~

~~"(ii) FUNCTIONALLY REGULATED NONDEPOSITORY INSTITUTION SUBSIDI-~~

~~ARIES.—Notwithstanding clause (i), the Board may make examinations of a functionally regulated nondepository institution subsidiary of a bank holding company only if—~~

~~"(I) the Board has reasonable cause to believe that such subsidiary is engaged in activities that pose a material risk to an affiliated depository institution, or~~

~~"(II) based on reports and other available information, the Board has reasonable cause to believe that a subsidiary is not in compliance with this Act or with provisions relating to transactions with an affiliated depository institution and the Board cannot make such determination through examination of the affiliated depository institution or bank holding company.~~

~~"(B) LIMITATIONS ON EXAMINATION AUTHORITY FOR BANK HOLDING COMPANIES AND SUBSIDIARIES.—Subject to subparagraph (A)(ii), the Board may make examinations under subparagraph (A)(i) of each bank holding~~

~~company and each subsidiary of such holding company in order to—~~

~~"(i) inform the Board of the nature of the operations and financial condition of the holding company and such subsidiaries;~~

~~"(ii) inform the Board of—~~

~~"(I) the financial and operational risks within the holding company system that may pose a threat to the safety and soundness of any subsidiary depository institution of such holding company; and~~

~~"(II) the systems for monitoring and controlling such risks; and~~

~~"(iii) monitor compliance with the provisions of this Act and those governing transactions and relationships between any subsidiary depository institution and its affiliates.~~

~~"(C) RESTRICTED FOCUS OF EXAMINATIONS.—The Board shall, to the fullest extent possible, limit the focus and scope of any examination of a bank holding company to—~~

~~"(i) the bank holding company; and~~

~~"(ii) any subsidiary of the holding company that, because of—~~

~~"(I) the size, condition, or activities of the subsidiary;~~

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

~~"(III) the centralization of functions within the holding company system,~~

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

~~"(D) DEFERENCE TO BANK EXAMINATIONS.—The Board shall, to the fullest extent possible, use, for the purposes of this paragraph, the reports of examinations of depository institutions made by the appropriate Federal and State depository institution supervisory authority.~~

~~"(E) DEFERENCE TO OTHER EXAMINATIONS.—The Board shall, to the fullest extent possible, address the circumstances which might~~

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

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

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

"(iii) any other subsidiary that the Board finds to be comprehensively supervised by a Federal or State authority.

"(3) CAPITAL.—

"(A) IN GENERAL.—The Board shall not, by regulation, guideline, order or otherwise, prescribe or impose any capital or capital adequacy rules, guidelines, standards, or requirements on any subsidiary of a financial holding company that is not a depository institution and—

"(i) is in compliance with applicable capital requirements of another Federal regulatory authority (including the Securi-

~~ties and Exchange Commission) or State insurance authority; or~~

~~"(ii) is registered as an investment adviser under the Investment Advisers Act of 1940.~~

~~"(B) RULE OF CONSTRUCTION.—Subparagraph (A) shall not be construed as preventing the Board from imposing capital or capital adequacy rules, guidelines, standards, or requirements with respect to activities of a registered investment adviser other than investment advisory activities or activities incidental to investment advisory activities.~~

~~"(4) TRANSFER OF BOARD AUTHORITY TO APPROPRIATE FEDERAL BANKING AGENCY.—~~

~~"(A) IN GENERAL.—In the case of any bank holding company which is not significantly engaged in nonbanking activities, the Board, in consultation with the appropriate Federal banking agency, may designate the appropriate Federal banking agency of the lead insured depository institution subsidiary of such holding company as the appropriate Federal banking agency for the bank holding company.~~

~~"(B) AUTHORITY TRANSFERRED.—An agency designated by the Board under subparagraph (A) shall have the same authority as the Board under this Act to—~~

~~"(i) examine and require reports from the bank holding company and any affiliate of such company (other than a depository institution) under section 5;~~

~~"(ii) approve or disapprove applications or transactions under section 3;~~

~~"(iii) take actions and impose penalties under subsections (c) and (f) of section 5 and section 8; and~~

~~"(iv) take actions regarding the holding company, any affiliate of the holding company (other than a depository institution), or any institution-affiliated party of such company or affiliate under the Federal Deposit Insurance Act and any other statute which the Board may designate.~~

~~"(C) AGENCY ORDERS.—Section 9 (of this Act) and section 105 of the Bank Holding Company Act Amendments of 1970 shall apply to orders issued by an agency designated under~~

~~subparagraph (A) in the same manner such sections apply to orders issued by the Board.~~

~~"(5) FUNCTIONAL REGULATION OF SECURITIES AND INSURANCE ACTIVITIES.—The Board shall defer to—~~

~~"(A) the Securities and Exchange Commission with regard to all interpretations of, and the enforcement of, applicable Federal securities laws relating to the activities, conduct, and operations of registered brokers, dealers, investment advisers, and investment companies; and~~

~~"(B) the relevant State insurance authorities with regard to all interpretations of, and the enforcement of, applicable State insurance laws relating to the activities, conduct, and operations of insurance companies and insurance agents.".~~

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

~~(a) PREVENTION OF DUPLICATIVE FILINGS.—Section 5(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(a)) is amended by adding the following new sentence at the end: "A declaration filed in accordance with section 6(b)(1)(E) shall satisfy the requirements of this subsection with regard to the registration of a bank~~

~~holding company but not any requirement to file an application to acquire a bank pursuant to section 3.''.~~

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

~~(1) by striking ''Financial Institutions Supervisory Act of 1966, order'' and inserting ''Financial Institutions Supervisory Act of 1966, at the election of the bank holding company—~~

~~''(A) order''; and~~

~~(2) by striking ''shareholders of the bank holding company. Such distribution'' and inserting ''shareholders of the bank holding company; or~~

~~''(B) order the bank holding company, after due notice and opportunity for hearing, and after consultation with the bank's primary supervisor, which shall be the Comptroller of the Currency in the case of a national bank, and the Federal Deposit Insurance Corporation and the appropriate State supervisor in the case of an insured nonmember bank, to terminate (within 120 days or such longer period as the Board may direct) the ownership or control of any such bank by such company.~~

~~''The distribution referred to in subparagraph (A)''.~~

**~~SEC. 113. AUTHORITY OF STATE INSURANCE REGULATOR AND SECURITIES AND EXCHANGE COMMISSION.~~**

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

~~"(g) AUTHORITY OF STATE INSURANCE REGULATOR AND THE SECURITIES AND EXCHANGE COMMISSION.—~~

~~"(1) IN GENERAL.—Notwithstanding any other provision of law, any regulation, order, or other action of the Board which requires a bank holding company to provide funds or other assets to a subsidiary insured depository institution shall not be effective nor enforceable if—~~

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

~~"(i) a bank holding company that is an insurance company or is a broker or dealer registered under the Securities Exchange Act of 1934; or~~

~~"(ii) an affiliate of the depository institution which is an insurance company or a broker or dealer registered under such Act; and~~

~~"(B) the State insurance authority for the insurance company or the Securities and Ex-~~

~~change Commission for the registered broker or dealer, as the case may be, determines in writing sent to the holding company and the Board that the holding company shall not provide such funds or assets because such action would have a material adverse effect on the financial condition of the insurance company or the broker or dealer, as the case may be.~~

~~"(2) NOTICE TO STATE INSURANCE AUTHORITY OR SEC REQUIRED.—If the Board requires a bank holding company, or an affiliate of a bank holding company, which is an insurance company or a broker or dealer described in paragraph (1)(A) to provide funds or assets to an insured depository institution subsidiary of the holding company pursuant to any regulation, order, or other action of the Board referred to in paragraph (1), the Board shall promptly notify the State insurance authority for the insurance company or the Securities and Exchange Commission, as the case may be, of such requirement.~~

~~"(3) DIVESTITURE IN LIEU OF OTHER ACTION.—If the Board receives a notice described in paragraph (1)(B) from a State insurance authority or the Securities and Exchange Commission with re-~~

~~gard to a bank holding company or affiliate referred to in such paragraph, the Board may order the bank holding company to divest the insured depository institution within 180 days of receiving notice or such longer period as the Board determines consistent with the safe and sound operation of the insured depository institution.~~

~~"(4) CONDITIONS BEFORE DIVESTITURE.—During the period beginning on the date an order to divest is issued by the Board under paragraph (3) to a bank holding company and ending on the date the divestiture is completed, the Board may impose any conditions or restrictions on the holding company's ownership or operation of the insured depository institution, including restricting or prohibiting transactions between the insured depository institution and any affiliate of the institution, as are appropriate under the circumstances.".~~

**~~SEC. 114. PRUDENTIAL SAFEGUARDS.~~**

~~Section 5 of the Bank Holding Company Act of 1956 (12 U.S.C. 1844) is amended by inserting after subsection (g) (as added by section 113 of this subtitle) the following new subsection:~~

~~"(h) PRUDENTIAL SAFEGUARDS.—~~

~~"(1) IN GENERAL.—The Board may, by regulation or order, impose restrictions or requirements on relationships or transactions between a depository institution subsidiary of a bank holding company and any affiliate of such depository institution (other than a subsidiary of such institution) which the Board finds is consistent with the public interest, the purposes of this Act, the Financial Services Act of 1998, the Federal Reserve Act, and other Federal law applicable to depository institution subsidiaries of bank holding companies and the standards in paragraph (2).~~

~~"(2) STANDARDS.—The Board may exercise authority under paragraph (1) if the Board finds that such action will have any of the following effects:~~

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

~~"(B) Enhance the financial stability of bank holding companies.~~

~~"(C) Avoid conflicts of interest or other abuses.~~

~~"(D) Enhance the privacy of customers of depository institutions.~~

~~"(E) Promote the application of national treatment and equality of competitive opportunity between nonbank affiliates owned or controlled by domestic bank holding companies and nonbank affiliates owned or controlled by foreign banks operating in the United States.~~

~~"(3) REVIEW.—The Board shall regularly—~~

~~"(A) review all restrictions or requirements established pursuant to paragraph (1) to determine whether there is a continuing need for any such restriction or requirement to carry out the purposes of the Act, including any purpose described in paragraph (2); and~~

~~"(B) modify or eliminate any restriction or requirement the Board finds is no longer required for such purposes.".~~

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

~~(a) EXCLUSIVE COMMISSION AUTHORITY.—~~

~~(1) IN GENERAL.—The Commission shall be the sole Federal agency with authority to inspect and examine any registered investment company that is not a bank holding company.~~

~~(2) PROHIBITION ON BANKING AGENCIES.—A Federal banking agency may not inspect or examine~~

~~any registered investment company that is not a bank holding company.~~

~~(b) EXAMINATION RESULTS AND OTHER INFORMATION.—The Commission shall provide to any Federal banking agency, upon request, the results of any examination, reports, records, or other information with respect to any registered investment company to the extent necessary for the agency to carry out its statutory responsibilities.~~

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

~~(1) BANK HOLDING COMPANY.—The term "bank holding company" has the meaning given to such term in section 2 of the Bank Holding Company Act of 1956.~~

~~(2) COMMISSION.—The term "Commission" means the Securities and Exchange Commission.~~

~~(3) FEDERAL BANKING AGENCY.—The term "Federal banking agency" has the meaning given to such term in section 3(z) of the Federal Deposit Insurance Act.~~

~~(4) REGISTERED INVESTMENT COMPANY.—The term "registered investment company" means an investment company which is registered with the Commission under the Investment Company Act of 1940.~~

**~~SEC. 116. LIMITATION ON RULEMAKING, PRUDENTIAL, SUPERVISORY, AND ENFORCEMENT AUTHORITY OF THE BOARD.~~**

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

**~~"SEC. 10A. LIMITATION ON RULEMAKING, PRUDENTIAL, SUPERVISORY, AND ENFORCEMENT AUTHORITY OF THE BOARD.~~**

~~"(a) LIMITATION ON DIRECT ACTION.—~~

~~"(1) IN GENERAL.—The Board may not prescribe regulations, issue or seek entry of orders, impose restraints, restrictions, guidelines, requirements, safeguards, or standards, or otherwise take any action under or pursuant to any provision of this Act or section 8 of the Federal Deposit Insurance Act against or with respect to a regulated subsidiary of a bank holding company unless the action is necessary to prevent or redress an unsafe or unsound practice or breach of fiduciary duty by such subsidiary that poses a material risk to—~~

~~"(A) the financial safety, soundness, or stability of an affiliated depository institution; or~~

~~"(B) the domestic or international payment system.~~

~~"(2) CRITERIA FOR BOARD ACTION.—The Board shall not take action otherwise permitted under paragraph (1) unless the Board finds that it is not reasonably possible to effectively protect against the material risk at issue through action directed at or against the affiliated depository institution or against depository institutions generally.~~

~~"(b) LIMITATION ON INDIRECT ACTION.—The Board may not prescribe regulations, issue or seek entry of orders, impose restraints, restrictions, guidelines, requirements, safeguards, or standards, or otherwise take any action under or pursuant to any provision of this Act or section 8 of the Federal Deposit Insurance Act against or with respect to a financial holding company or a wholesale financial holding company where the purpose or effect of doing so would be to take action indirectly against or with respect to a regulated subsidiary that may not be taken directly against or with respect to such subsidiary in accordance with subsection (a).~~

~~"(c) ACTIONS SPECIFICALLY AUTHORIZED.—Notwithstanding subsection (a), the Board may take action under this Act or section 8 of the Federal Deposit Insurance Act to enforce compliance by a regulated subsidiary with Federal law that the Board has specific jurisdiction to enforce against such subsidiary.~~

1 ~~"(d) REGULATED SUBSIDIARY DEFINED.—For pur-~~
2 ~~poses of this section, the term 'regulated subsidiary'~~
3 ~~means any company that is not a bank holding company~~
4 ~~and is—~~
5 ~~"(1) a broker or dealer registered under the Se-~~
6 ~~curities Exchange Act of 1934;~~
7 ~~"(2) an investment adviser registered under the~~
8 ~~Investment Advisers Act of 1940, with respect to the~~
9 ~~investment advisory activities of such investment ad-~~
10 ~~viser and activities incidental to such investment ad-~~
11 ~~visory activities;~~
12 ~~"(3) an investment company registered under~~
13 ~~the Investment Company Act of 1940;~~
14 ~~"(4) an insurance company or an insurance~~
15 ~~agency subject to supervision by a State insurance~~
16 ~~commission, agency, or similar authority; or~~
17 ~~"(5) an entity subject to regulation by the Com-~~
18 ~~modity Futures Trading Commission, with respect~~
19 ~~to the commodities activities of such entity and ac-~~
20 ~~tivities incidental to such commodities activities.".~~
21 **~~SEC. 117. INTERAGENCY CONSULTATION.~~**
22 ~~(a) PURPOSE.—It is the intention of Congress that~~
23 ~~the Board of Governors of the Federal Reserve System,~~
24 ~~as the umbrella supervisor for financial holding compa-~~
25 ~~nies, and the State insurance regulators, as the functional~~

~~regulators of companies engaged in insurance activities, coordinate efforts to supervise companies that control both a depository institution and a company engaged in insurance activities regulated under State law. In particular, Congress believes that the Board and the State insurance regulators should share, on a confidential basis, information relevant to the supervision of companies that control both a depository institution and a company engaged in insurance activities, including information regarding the financial health of the consolidated organization and information regarding transactions and relationships between insurance companies and affiliated depository institutions. The appropriate Federal banking agencies for depository institutions should also share, on a confidential basis, information with the relevant State insurance regulators regarding transactions and relationships between depository institutions and affiliated companies engaged in insurance activities. The purpose of this section is to encourage this coordination and confidential sharing of information, and to thereby improve both the efficiency and the quality of the supervision of financial holding companies and their affiliated depository institutions and companies engaged in insurance activities.~~

~~(b) EXAMINATION RESULTS AND OTHER INFORMATION.—~~

~~(1) INFORMATION OF THE BOARD.—Upon the request of the appropriate insurance regulator of any State, the Board may provide any information of the Board regarding the financial condition, risk management policies, and operations of any financial holding company that controls a company that is engaged in insurance activities and is regulated by such State insurance regulator, and regarding any transaction or relationship between such an insurance company and any affiliated depository institution. The Board may provide any other information to the appropriate State insurance regulator that the Board believes is necessary or appropriate to permit the State insurance regulator to administer and enforce applicable State insurance laws.~~

~~(2) BANKING AGENCY INFORMATION.—Upon the request of the appropriate insurance regulator of any State, the appropriate Federal banking agency may provide any information of the agency regarding any transaction or relationship between a depository institution supervised by such Federal banking agency and any affiliated company that is engaged in insurance activities regulated by such State insurance regulator. The appropriate Federal banking agency may provide any other information to the ap-~~

~~propriate State insurance regulator that the agency believes is necessary or appropriate to permit the State insurance regulator to administer and enforce applicable State insurance laws.~~

~~(3) STATE INSURANCE REGULATOR INFORMATION.—Upon the request of the Board or the appropriate Federal banking agency, a State insurance regulator may provide any examination or other reports, records, or other information to which such insurance regulator may have access with respect to a company which—~~

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

~~(B) is an affiliate of an insured depository institution, wholesale financial institution, or financial holding company.~~

~~(c) CONSULTATION.—Before making any determination relating to the initial affiliation of, or the continuing affiliation of, an insured depository institution, wholesale financial institution, or financial holding company with a company engaged in insurance activities, the appropriate Federal banking agency shall consult with the appropriate State insurance regulator of such company and take the views of such insurance regulator into account in making such determination.~~

~~(d) EFFECT ON OTHER AUTHORITY.—Nothing in this section shall limit in any respect the authority of the appropriate Federal banking agency with respect to an insured depository institution, wholesale financial institution, or bank holding company or any affiliate thereof under any provision of law.~~

~~(e) CONFIDENTIALITY AND PRIVILEGE.—~~

~~(1) CONFIDENTIALITY.—The appropriate Federal banking agency shall not provide any information or material that is entitled to confidential treatment under applicable Federal banking agency regulations, or other applicable law, to a State insurance regulator unless such regulator agrees to maintain the information or material in confidence and to take all reasonable steps to oppose any effort to secure disclosure of the information or material by the regulator. The appropriate Federal banking agency shall treat as confidential any information or material obtained from a State insurance regulator that is entitled to confidential treatment under applicable State regulations, or other applicable law, and take all reasonable steps to oppose any effort to secure disclosure of the information or material by the Federal banking agency.~~

~~(2) PRIVILEGE.—The provision pursuant to this section of information or material by a Federal banking agency or State insurance regulator shall not constitute a waiver of, or otherwise affect, any privilege to which the information or material is otherwise subject.~~

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

~~(1) APPROPRIATE FEDERAL BANKING AGENCY; INSURED DEPOSITORY INSTITUTION.—The terms "appropriate Federal banking agency" and "insured depository institution" shall have the same meanings as in section 3 of the Federal Deposit Insurance Act.~~

~~(2) BOARD; FINANCIAL HOLDING COMPANY; AND WHOLESALE FINANCIAL INSTITUTION.—The terms "Board", "financial holding company", and "wholesale financial institution" shall have the same meanings as in section 2 of the Bank Holding Company Act of 1956.~~

# Subtitle C—Subsidiaries of National Banks

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

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

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

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

**"SEC. 5136A. SUBSIDIARIES OF NATIONAL BANKS.**

"(a) SUBSIDIARIES OF NATIONAL BANKS AUTHORIZED TO ENGAGE IN FINANCIAL ACTIVITIES.—

"(1) EXCLUSIVE AUTHORITY.—No provision of section 5136 or any other provision of this title LXII of the Revised Statutes shall be construed as authorizing a subsidiary of a national bank to engage in, or own any share of or any other interest in any company engaged in, any activity that—

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

"(B) is conducted under terms or conditions other than those that would govern the conduct of such activity by a national bank,

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

~~"(2) SPECIFIC AUTHORIZATION TO CONDUCT AGENCY ACTIVITIES WHICH ARE FINANCIAL IN NATURE.—A national bank may control a company that engages in agency activities that have been determined to be financial in nature or incidental to such financial activities pursuant to and in accordance with section 6(c) of the Bank Holding Company Act of 1956 if—~~

~~"(A) the company engages in such activities solely as agent and not directly or indirectly as principal;~~

~~"(B) the national bank is well capitalized and well managed, and has achieved a rating of satisfactory or better at the most recent examination of the bank under the Community Reinvestment Act of 1977;~~

~~"(C) all depository institution affiliates of the national bank are well capitalized and well managed, and have achieved a rating of satis-~~

~~factory or better at the most recent examination of each such depository institution under the Community Reinvestment Act of 1977; and~~

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

~~"(3) DEFINITIONS.—~~

~~"(A) COMPANY; CONTROL; SUBSIDIARY.—The terms 'company', 'control', and 'subsidiary' have the meanings given to such terms in section 2 of the Bank Holding Company Act of 1956.~~

~~"(B) WELL CAPITALIZED.—The term 'well capitalized' has the same meaning as in section 38 of the Federal Deposit Insurance Act and, for purposes of this section, the Comptroller shall have exclusive jurisdiction to determine whether a national bank is well capitalized.~~

~~"(C) WELL MANAGED.—The term 'well managed' means—~~

~~"(i) in the case of a bank that has been examined, unless otherwise determined in writing by the Comptroller—~~

~~"(I) the achievement of a composite rating of 1 or 2 under the Uniform Financial Institutions Rating~~

~~System (or an equivalent rating under an equivalent rating system) in connection with the most recent examination or subsequent review of the bank; and~~

~~"(II) at least a rating of 2 for management, if that rating is given; or~~

~~"(ii) in the case of any national bank that has not been examined, the existence and use of managerial resources that the Comptroller determines are satisfactory.~~

~~"(b) LIMITED EXCLUSIONS FROM COMMUNITY NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DEPOSITORY INSTITUTIONS.—Any depository institution which becomes affiliated with a national bank during the 24-month period preceding the submission of an application to acquire a subsidiary under subsection (a)(2), and any depository institution which becomes so affiliated after the approval of such application, may be excluded for purposes of subsection (a)(2)(B) during the 24-month period beginning on the date of such acquisition if—~~

~~"(1) the depository institution has submitted an affirmative plan to the appropriate Federal banking agency (as defined in section 3 of the Federal De-~~

~~posit Insurance Act) to take such action as may be necessary in order for such institution to achieve a 'satisfactory record of meeting community credit needs', or better, at the next examination of the institution under the Community Reinvestment Act of 1977; and~~

~~"(2) the plan has been approved by the appropriate Federal banking agency.".~~

~~(b) LIMITATION ON CERTAIN ACTIVITIES IN SUBSIDIARIES.—Section 21(a)(1) of the Banking Act of 1933 (12 U.S.C. 378(a)(1)) is amended—~~

~~(1) by inserting ", or to be a subsidiary of any person, firm, corporation, association, business trust, or similar organization engaged (unless such subsidiary (A) was engaged in such securities activities as of September 15, 1997, or (B) is a nondepository subsidiary of a foreign bank and is not also a subsidiary of a domestic depository institution)," after "to engage at the same time"; and~~

~~(2) by inserting "or any subsidiary of such bank, company, or institution" after "or private bankers".~~

~~(c) TECHINICAL AND CONFORMING AMENDMENTS.—~~

~~(1) ANTITYING.—Section 106(a) of the Bank Holding Company Act Amendments of 1970 is~~

~~amended by adding at the end the following new sentence: "For purposes of this section, a subsidiary of a national bank which engages in activities as an agent pursuant to section 5136A(a)(2) shall be deemed to be a subsidiary of a bank holding company, and not a subsidiary of a bank.".~~

~~(2) SECTION 23B.—Section 23B(a) of the Federal Reserve Act (12 U.S.C. 371c–1(a)) is amended by adding at the end the following new paragraph:~~

~~"(4) SUBSIDIARY OF NATIONAL BANK.—For purposes of this section, a subsidiary of a national bank which engages in activities as an agent pursuant to section 5136A(a)(2) shall be deemed to be an affiliate of the national bank and not a subsidiary of the bank.".~~

~~(d) CLERICAL AMENDMENT.—The table of sections for chapter one of title LXII of the Revised Statutes of the United States is amended—~~

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

~~(2) by inserting after the item relating to section 5136 the following new item:~~

~~"5136A. Financial subsidiaries of national banks.".~~

**~~SEC. 122. MISREPRESENTATIONS REGARDING DEPOSITORY INSTITUTION LIABILITY FOR OBLIGATIONS OF AFFILIATES.~~**

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

**~~"§ 1008. Misrepresentations regarding financial institution liability for obligations of affiliates~~**

~~"(a) IN GENERAL.—No institution-affiliated party of an insured depository institution or institution-affiliated party of a subsidiary or affiliate of an insured depository institution shall fraudulently represent that the institution is or will be liable for any obligation of a subsidiary or other affiliate of the institution.~~

~~"(b) CRIMINAL PENALTY.—Whoever violates subsection (a) shall be fined under this title, imprisoned for not more than 1 year, or both.~~

~~"(c) INSTITUTION-AFFILIATED PARTY DEFINED.—For purposes of this section, the term 'institution-affiliated party' with respect to a subsidiary or affiliate has the same meaning as in section 3 except references to an insured depository institution shall be deemed to be references to a subsidiary or affiliate of an insured depository institution.~~

~~"(d) OTHER DEFINITIONS.—For purposes of this section, the terms 'affiliate', 'insured depository institu-~~

~~tion', and 'subsidiary' have same meanings as in section 3 of the Federal Deposit Insurance Act.''.~~

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

~~''1008. Misrepresentations regarding financial institution liability for obligations of affiliates.''.~~

**~~SEC. 123. REPEAL OF STOCK LOAN LIMIT IN FEDERAL RESERVE ACT.~~**

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

# ~~Subtitle D—Wholesale Financial Holding Companies; Wholesale Financial Institutions~~

## ~~CHAPTER 1—WHOLESALE FINANCIAL HOLDING COMPANIES~~

**~~SEC. 131. WHOLESALE FINANCIAL HOLDING COMPANIES ESTABLISHED.~~**

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

**~~''SEC. 10. WHOLESALE FINANCIAL HOLDING COMPANIES.~~**

~~''(a) COMPANIES THAT CONTROL WHOLESALE FINANCIAL INSTITUTIONS.—~~

~~"(1) WHOLESALE FINANCIAL HOLDING COMPANY DEFINED.—The term 'wholesale financial holding company' means any company that—~~

~~"(A) is registered as a bank holding company;~~

~~"(B) is predominantly engaged in financial activities as defined in section 6(g)(2);~~

~~"(C) controls 1 or more wholesale financial institutions;~~

~~"(D) does not control—~~

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

~~"(ii) an insured bank other than an institution permitted under subparagraph (D), (F), or (G) of section 2(c)(2); or~~

~~"(iii) a savings association; and~~

~~"(E) is not a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978).~~

~~"(2) SAVINGS ASSOCIATION TRANSITION PERIOD.—Notwithstanding paragraph (1)(C)(iii), the Board may permit a company that controls a savings association and that otherwise meets the requirements of paragraph (1) to become supervised under paragraph (1), if the company divests control~~

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

~~"(b) SUPERVISION BY THE BOARD.—~~

~~"(1) IN GENERAL.—The provisions of this section shall govern the reporting, examination, and capital requirements of wholesale financial holding companies.~~

~~"(2) REPORTS.—~~

~~"(A) IN GENERAL.—The Board from time to time may require any wholesale financial holding company and any subsidiary of such company to submit reports under oath to keep the Board informed as to—~~

~~"(i) the company's or subsidiary's activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and transactions with depository institution subsidiaries of the holding company; and~~

~~"(ii) the extent to which the company or subsidiary has complied with the provisions of this Act and regulations prescribed and orders issued under this Act.~~

~~"(B) USE OF EXISTING REPORTS.—~~

~~"(i) IN GENERAL.—The Board shall, to the fullest extent possible, accept reports in fulfillment of the Board's reporting requirements under this paragraph that the wholesale financial holding company or any subsidiary of such company has provided or been required to provide to other Federal and State supervisors or to appropriate self-regulatory organizations.~~

~~"(ii) AVAILABILITY.—A wholesale financial holding company or a subsidiary of such company shall provide to the Board, at the request of the Board, a report referred to in clause (i).~~

~~"(C) EXEMPTIONS FROM REPORTING REQUIREMENTS.—~~

~~"(i) IN GENERAL.—The Board may, by regulation or order, exempt any company or class of companies, under such terms and conditions and for such periods as the Board shall provide in such regulation or order, from the provisions of this paragraph and any regulation prescribed under this paragraph.~~

~~"(ii) CRITERIA FOR CONSIDERATION.—In making any determination under clause (i) with regard to any exemption under such clause, the Board shall consider, among such other factors as the Board may determine to be appropriate, the following factors:~~

~~"(I) Whether information of the type required under this paragraph is available from a supervisory agency (as defined in section 1101(7) of the Right to Financial Privacy Act of 1978) or a foreign regulatory authority of a similar type.~~

~~"(II) The primary business of the company.~~

~~"(III) The nature and extent of the domestic and foreign regulation of the activities of the company.~~

~~"(3) EXAMINATIONS.—~~

~~"(A) LIMITED USE OF EXAMINATION AUTHORITY.—The Board may make examinations of each wholesale financial holding company and each subsidiary of such company in order to—~~

~~"(i) inform the Board regarding the nature of the operations and financial condition of the wholesale financial holding company and its subsidiaries;~~

~~"(ii) inform the Board regarding—~~

~~"(I) the financial and operational risks within the wholesale financial holding company system that may affect any depository institution owned by such holding company; and~~

~~"(II) the systems of the holding company and its subsidiaries for monitoring and controlling those risks; and~~

~~"(iii) monitor compliance with the provisions of this Act and those governing transactions and relationships between any depository institution controlled by the wholesale financial holding company and any of the company's other subsidiaries.~~

~~"(B) RESTRICTED FOCUS OF EXAMINATIONS.—The Board shall, to the fullest extent possible, limit the focus and scope of any examination of a wholesale financial holding company under this paragraph to—~~

~~"(i) the holding company; and~~

~~"(ii) any subsidiary (other than an insured depository institution subsidiary) of the holding company that, because of the size, condition, or activities of the subsidiary, the nature or size of transactions between such subsidiary and any affiliated depository institution, or the centralization of functions within the holding company system, could have a materially adverse effect on the safety and soundness of any depository institution affiliate of the holding company.~~

~~"(C) DEFERENCE TO BANK EXAMINATIONS.—The Board shall, to the fullest extent possible, use the reports of examination of depository institutions made by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision or the appropriate State depository institution supervisory authority for the purposes of this section.~~

~~"(D) DEFERENCE TO OTHER EXAMINATIONS.—The Board shall, to the fullest extent possible, address the circumstances which might~~

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

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

"(ii) any licensed insurance company by or on behalf of any State government insurance agency responsible for the supervision of the insurance company.

"(E) CONFIDENTIALITY OF REPORTED INFORMATION.—

"(i) IN GENERAL.—Notwithstanding any other provision of law, the Board shall not be compelled to disclose any nonpublic information required to be reported under this paragraph, or any information supplied to the Board by any domestic or foreign regulatory agency, that relates to the financial or operational condition of any wholesale financial holding company or any subsidiary of such company.

"(ii) COMPLIANCE WITH REQUESTS FOR INFORMATION.—No provision of this

~~subparagraph shall be construed as authorizing the Board to withhold information from the Congress, or preventing the Board from complying with a request for information from any other Federal department or agency for purposes within the scope of such department's or agency's jurisdiction, or from complying with any order of a court of competent jurisdiction in an action brought by the United States or the Board.~~

~~"(iii) COORDINATION WITH OTHER LAW.—For purposes of section 552 of title 5, United States Code, this subparagraph shall be considered to be a statute described in subsection (b)(3)(B) of such section.~~

~~"(iv) DESIGNATION OF CONFIDENTIAL INFORMATION.—In prescribing regulations to carry out the requirements of this subsection, the Board shall designate information described in or obtained pursuant to this paragraph as confidential information.~~

~~"(F) COSTS.—The cost of any examination conducted by the Board under this section may~~

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

"(4) CAPITAL ADEQUACY GUIDELINES.—

"(A) CAPITAL ADEQUACY PROVISIONS.—Subject to the requirements of, and solely in accordance with, the terms of this paragraph, the Board may adopt capital adequacy rules or guidelines for wholesale financial holding companies.

"(B) METHOD OF CALCULATION.—In developing rules or guidelines under this paragraph, the following provisions shall apply:

"(i) FOCUS ON DOUBLE LEVERAGE.—The Board shall focus on the use by wholesale financial holding companies of debt and other liabilities to fund capital investments in subsidiaries.

"(ii) NO UNWEIGHTED CAPITAL RATIO.—The Board shall not, by regulation, guideline, order, or otherwise, impose under this section a capital ratio that is not based on appropriate risk-weighting considerations.

"(iii) NO CAPITAL REQUIREMENT ON REGULATED ENTITIES.—The Board shall

~~not, by regulation, guideline, order or otherwise, prescribe or impose any capital or capital adequacy rules, standards, guidelines, or requirements upon any subsidiary that—~~

~~"(I) is not a depository institution; and~~

~~"(II) is in compliance with applicable capital requirements of another Federal regulatory authority (including the Securities and Exchange Commission) or State insurance authority.~~

~~"(iv) LIMITATION.—The Board shall not, by regulation, guideline, order or otherwise, prescribe or impose any capital or capital adequacy rules, standards, guidelines, or requirements upon any subsidiary that is not a depository institution and that is registered as an investment adviser under the Investment Advisers Act of 1940, except that this clause shall not be construed as preventing the Board from imposing capital or capital adequacy rules, guidelines, standards, or requirements with respect to activities of a registered invest-~~

~~ment adviser other than investment advisory activities or activities incidental to investment advisory activities.~~

~~"(v) APPROPRIATE EXCLUSIONS.—The Board shall take full account of—~~

~~"(I) the capital requirements made applicable to any subsidiary that is not a depository institution by another Federal regulatory authority or State insurance authority; and~~

~~"(II) industry norms for capitalization of a company's unregulated subsidiaries and activities.~~

~~"(vi) INTERNAL RISK MANAGEMENT MODELS.—The Board may incorporate internal risk management models of wholesale financial holding companies into its capital adequacy guidelines or rules and may take account of the extent to which resources of a subsidiary depository institution may be used to service the debt or other liabilities of the wholesale financial holding company.~~

~~"(c) NONFINANCIAL ACTIVITIES AND INVESTMENTS.—~~

~~"(1) GRANDFATHERED ACTIVITIES.—~~

~~"(A) IN GENERAL.—Notwithstanding section 4(a), a company that becomes a wholesale financial holding company may continue to engage, directly or indirectly, in any activity and may retain ownership and control of shares of a company engaged in any activity if—~~

~~"(i) on the date of the enactment of the Financial Services Act of 1998, such wholesale financial holding company was lawfully engaged in that nonfinancial activity, held the shares of such company, or had entered into a contract to acquire shares of any company engaged in such activity; and~~

~~"(ii) the company engaged in such activity continues to engage only in the same activities that such company conducted on the date of the enactment of the Financial Services Act of 1998, and other activities permissible under this Act.~~

~~"(B) NO EXPANSION OF GRANDFATHERED COMMERCIAL ACTIVITIES THROUGH MERGER OR CONSOLIDATION.—A wholesale financial holding company that engages in activities or holds~~

~~shares pursuant to this paragraph, or a subsidiary of such wholesale financial holding company, may not acquire, in any merger, consolidation, or other type of business combination, assets of any other company which is engaged in any activity which the Board has not determined to be financial in nature or incidental to activities that are financial in nature under section 6(c).~~

~~"(C) LIMITATION TO SINGLE EXEMPTION.—No company that engages in any activity or controls any shares under subsection (f) of section 6 may engage in any activity or own any shares pursuant to this paragraph or paragraph (1).~~

~~"(2) COMMODITIES.—~~

~~"(A) IN GENERAL.—Notwithstanding section 4(a), a wholesale financial holding company which was predominately engaged as of January 1, 1997, in financial activities in the United States (or any successor to any such company) may engage in, or directly or indirectly own or control shares of a company engaged in, activities related to the trading, sale, or investment in commodities and underlying physical prop-~~

~~erties that were not permissible for bank holding companies to conduct in the United States as of January 1, 1997, if such wholesale financial holding company, or any subsidiary of such holding company, was engaged directly, indirectly, or through any such company in any of such activities as of January 1, 1997, in the United States.~~

~~"(B) LIMITATION.—The attributed aggregate consolidated assets of a wholesale financial holding company held under the authority granted under this paragraph and not otherwise permitted to be held by all wholesale financial holding companies under this section may not exceed 5 percent of the total consolidated assets of the wholesale financial holding company, except that the Board may increase such percentage of total consolidated assets by such amounts and under such circumstances as the Board considers appropriate, consistent with the purposes of this Act.~~

~~"(3) CROSS MARKETING RESTRICTIONS.—A wholesale financial holding company shall not permit—~~

~~"(A) any company whose shares it owns or controls pursuant to paragraph (1) or (2) to offer or market any product or service of an affiliated wholesale financial institution; or~~

~~"(B) any affiliated wholesale financial institution to offer or market any product or service of any company whose shares are owned or controlled by such wholesale financial holding company pursuant to such paragraphs.~~

~~"(d) QUALIFICATION OF FOREIGN BANK AS WHOLESALE FINANCIAL HOLDING COMPANY.—~~

~~"(1) IN GENERAL.—Any foreign bank, or any company that owns or controls a foreign bank, that—~~

~~"(A) operates a branch, agency, or commercial lending company in the United States, including a foreign bank or company that owns or controls a wholesale financial institution; and~~

~~"(B) owns, controls, or is affiliated with a security affiliate that engages in underwriting corporate equity securities,~~

~~may request a determination from the Board that such bank or company be treated as a wholesale financial holding company for purposes of subsection (c).~~

~~"(2) CONDITIONS FOR TREATMENT AS A WHOLESALE FINANCIAL HOLDING COMPANY.—A foreign bank and a company that owns or controls a foreign bank may not be treated as a wholesale financial holding company unless the bank and company meet and continue to meet the following criteria:~~

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

~~"(B) CAPITAL STANDARDS.—The foreign bank meets risk-based capital standards comparable to the capital standards required for a wholesale financial institution, giving due regard to the principle of national treatment and equality of competitive opportunity.~~

~~"(C) TRANSACTION WITH AFFILIATES.—Transactions between a branch, agency, or commercial lending company subsidiary of the foreign bank in the United States, and any securities affiliate or company in which the foreign bank (or any company that owns or controls~~

~~such foreign bank) has invested pursuant to subsection (d) comply with the provisions of sections 23A and 23B of the Federal Reserve Act in the same manner and to the same extent as such transactions would be required to comply with such sections if the bank were a member bank.~~

~~"(3) TREATMENT AS A WHOLESALE FINANCIAL INSTITUTION.—Any foreign bank which is, or is affiliated with a company which is, treated as a wholesale financial holding company under this subsection shall be treated as a wholesale financial institution for purposes of subsection (c)(4) of this section and subsections (c)(1)(C) and (c)(3) of section 9B of the Federal Reserve Act, and any such foreign bank or company shall be subject to paragraphs (3), (4), and (5) of section 9B(d) of the Federal Reserve Act, except that the Board may adopt such modifications, conditions, or exemptions as the Board deems appropriate, giving due regard to the principle of national treatment and equality of competitive opportunity.~~

~~"(4) NONAPPLICABILITY OF OTHER EXEMPTION.—Any foreign bank or company which is treated as a wholesale financial holding company under~~

~~this subsection shall not be eligible for any exception described in section 2(h).~~

~~"(5) SUPERVISION OF FOREIGN BANK WHICH MAINTAINS NO BANKING PRESENCE OTHER THAN CONTROL OF A WHOLESALE FINANCIAL INSTITUTION.—A foreign bank that owns or controls a wholesale financial institution but does not operate a branch, agency, or commercial lending company in the United States (and any company that owns or controls such foreign bank) may request a determination from the Board that such bank or company be treated as a wholesale financial holding company for purposes of subsection (c), except that such bank or company shall be subject to the restrictions of paragraphs (2)(A), (3), and (4) of this subsection.~~

~~"(6) NO EFFECT ON OTHER PROVISIONS.—This section shall not be construed as limiting the authority of the Board under the International Banking Act of 1978 with respect to the regulation, supervision, or examination of foreign banks and their offices and affiliates in the United States.~~

~~"(7) APPLICABILITY OF COMMUNITY REINVESTMENT ACT OF 1977.—The branches in the United States of a foreign bank that is, or is affiliated with~~

~~a company that is, treated as a wholesale financial holding company shall be subject to section 9B(b)(11) of the Federal Reserve Act as if the foreign bank were a wholesale financial institution under such section. The Board and the Comptroller of the Currency shall apply the provisions of sections 803(2), 804, and 807(1) of the Community Reinvestment Act of 1977 to branches of foreign banks which receive only such deposits as are permissible for receipt by a corporation organized under section 25A of the Federal Reserve Act, in the same manner and to the same extent such sections apply to such a corporation.''.~~

~~(b) UNINSURED STATE BANKS.—Section 9 of the Federal Reserve Act (U.S.C. 321 et seq.) is amended by adding at the end the following new paragraph:~~

~~''(24) ENFORCEMENT AUTHORITY OVER UNINSURED STATE MEMBER BANKS.—Section 3(u) of the Federal Deposit Insurance Act, subsections (j) and (k) of section 7 of such Act, and subsections (b) through (n), (s), (u), and (v) of section 8 of such Act shall apply to an uninsured State member bank in the same manner and to the same extent such provisions apply to an insured State member bank and any reference in any such provision to 'insured~~

~~depository institution' shall be deemed to be a reference to 'uninsured State member bank' for purposes of this paragraph.''.~~

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

~~(a) FEDERAL RESERVE ACT.—The last sentence of the eighth undesignated paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 326) is amended to read as follows: ''The Board of Governors of the Federal Reserve System, at its discretion, may furnish reports of examination or other confidential supervisory information concerning State member banks or any other entities examined under any other authority of the Board to any Federal or State authorities with supervisory or regulatory authority over the examined entity, to officers, directors, or receivers of the examined entity, and to any other person that the Board determines to be proper.''.~~

~~(b) COMMODITY FUTURES TRADING COMMISSION.—~~

~~(1) Section 1101(7) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401(7)) is amended—~~

~~(A) by redesignating subparagraphs (G) and (H) as subparagraphs (H) and (I), respectively; and~~

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

~~"(G) the Commodity Futures Trading Commission; or" and~~

~~(2) Section 1112(e) of the Right to Financial Privacy Act (12 U.S.C. 3412(e)) is amended by striking "and the Securities and Exchange Commission" and inserting ", the Securities and Exchange Commission, and the Commodity Futures Trading Commission".~~

**~~SEC. 133. CONFORMING AMENDMENTS.~~**

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

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

~~"(p) WHOLESALE FINANCIAL INSTITUTION.—The term 'wholesale financial institution' means a wholesale financial institution subject to section 9B of the Federal Reserve Act.~~

~~"(q) COMMISSION.—The term 'Commission' means the Securities and Exchange Commission.~~

~~"(r) DEPOSITORY INSTITUTION.—The term 'depository institution'—~~

~~"(1) has the meaning given to such term in section 3 of the Federal Deposit Insurance Act; and~~

~~"(2) includes a wholesale financial institution.".~~

~~(2) DEFINITION OF BANK INCLUDES WHOLESALE FINANCIAL INSTITUTION.—Section 2(c)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(1)) is amended by adding at the end the following new subparagraph:~~

~~"(C) A wholesale financial institution.".~~

~~(3) INCORPORATED DEFINITIONS.—Section 2(n) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(n)) is amended by inserting "'insured bank'," after "'in danger of default',".~~

~~(4) EXCEPTION TO DEPOSIT INSURANCE REQUIREMENT.—Section 3(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(c)) is amended by adding at the end the following: "This subsection shall not apply to a wholesale financial institution.".~~

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

~~"(A) any State member insured bank (except a District bank) and any wholesale financial institution as authorized pursuant to section 9B of the Federal Reserve Act;".~~

## ~~CHAPTER 2—WHOLESALE FINANCIAL INSTITUTIONS~~

**~~SEC. 136. WHOLESALE FINANCIAL INSTITUTIONS.~~**

~~(a) NATIONAL WHOLESALE FINANCIAL INSTITUTIONS.—~~

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

**~~"SEC. 5136B. NATIONAL WHOLESALE FINANCIAL INSTITUTIONS.~~**

~~"(a) AUTHORIZATION OF THE COMPTROLLER REQUIRED.—A national bank may apply to the Comptroller on such forms and in accordance with such regulations as the Comptroller may prescribe, for permission to operate as a national wholesale financial institution.~~

~~"(b) REGULATION.—A national wholesale financial institution may exercise, in accordance with such institution's articles of incorporation and regulations issued by the Comptroller, all the powers and privileges of a national bank formed in accordance with section 5133 of the Revised Statutes of the United States, subject to section 9B of the Federal Reserve Act and the limitations and restrictions contained therein.~~

1 ~~"(c) COMMUNITY REINVESTMENT ACT OF 1977.—A~~
2 ~~national wholesale financial institution shall be subject to~~
3 ~~the Community Reinvestment Act of 1977.~~
4 ~~"(d) EXAMINATION REPORTS.—The Comptroller of~~
5 ~~the Currency shall, to the fullest extent possible, use the~~
6 ~~report of examinations made by the Board of Governors~~
7 ~~of the Federal Reserve System of a wholesale financial in-~~
8 ~~stitution.".~~
9 ~~(2) CLERICAL AMENDMENT.—The table of sec-~~
10 ~~tions for chapter one of title LXII of the Revised~~
11 ~~Statutes of the United States is amended by insert-~~
12 ~~ing after the item relating to section 5136A (as~~
13 ~~added by section 121(d) of this title) the following~~
14 ~~new item:~~

~~"5136B. National wholesale financial institutions.".~~

15 ~~(b) STATE WHOLESALE FINANCIAL INSTITUTIONS.—~~
16 ~~The Federal Reserve Act (12 U.S.C. 221 et seq.) is~~
17 ~~amended by inserting after section 9A the following new~~
18 ~~section:~~
19 ~~**"SEC. 9B. WHOLESALE FINANCIAL INSTITUTIONS.**~~
20 ~~"(a) APPLICATION FOR MEMBERSHIP AS WHOLE-~~
21 ~~SALE FINANCIAL INSTITUTION.—~~
22 ~~"(1) APPLICATION REQUIRED.—~~
23 ~~"(A) IN GENERAL.—Any bank may apply~~
24 ~~to the Board of Governors of the Federal Re-~~
25 ~~serve System to become a wholesale financial~~

~~institution and, as a wholesale financial institution, to subscribe to the stock of the Federal reserve bank organized within the district where the applying bank is located.~~

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

~~"(2) INSURANCE TERMINATION.—No bank the deposits of which are insured under the Federal Deposit Insurance Act may become a wholesale financial institution unless it has met all requirements under that Act for voluntary termination of deposit insurance.~~

~~"(b) GENERAL REQUIREMENTS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—~~

~~"(1) FEDERAL RESERVE ACT.—Except as otherwise provided in this section, wholesale financial institutions shall be member banks and shall be subject to the provisions of this Act that apply to member banks to the same extent and in the same manner as State member insured banks, except that a wholesale financial institution may terminate membership under this Act only with the prior written approval of the Board and on terms and conditions~~

~~that the Board determines are appropriate to carry out the purposes of this Act.~~

~~"(2) PROMPT CORRECTIVE ACTION.—A wholesale financial institution shall be deemed to be an insured depository institution for purposes of section 38 of the Federal Deposit Insurance Act except that—~~

~~"(A) the relevant capital levels and capital measures for each capital category shall be the levels specified by the Board for wholesale financial institutions; and~~

~~"(B) all references to the appropriate Federal banking agency or to the Corporation in that section shall be deemed to be references to the Board.~~

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

~~"(4) CERTAIN OTHER STATUTES APPLICABLE.—A wholesale financial institution shall be deemed to be a banking institution, and the Board shall be the appropriate Federal banking agency for such bank and all such bank's affiliates, for purposes of the International Lending Supervision Act.~~

~~"(5) BANK MERGER ACT.—A wholesale financial institution shall be subject to sections 18(c) and 44 of the Federal Deposit Insurance Act in the same manner and to the same extent the wholesale financial institution would be subject to such sections if the institution were a State member insured bank.~~

~~"(6) BRANCHING.—Notwithstanding any other provision of law, a wholesale financial institution may establish and operate a branch at any location on such terms and conditions as established by the Board and, in the case of a State-chartered wholesale financial institution, with the approval of the Board, and, in the case of a national bank wholesale financial institution, with the approval of the Comptroller of the Currency.~~

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

~~"(A) GENERAL.—A State-chartered wholesale financial institution shall be deemed a~~

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

~~"(B) DEFINITIONS.—The following definitions shall apply solely for purposes of applying paragraph (1):~~

~~"(i) HOME STATE.—The term 'home State' means—~~

~~"(I) with respect to a national wholesale financial institution, the State in which the main office of the institution is located; and~~

~~"(II) with respect to a State-chartered wholesale financial institution, the State by which the institution is chartered.~~

~~"(ii) HOST STATE.—The term 'host State' means a State, other than the home State of the wholesale financial institution, in which the institution maintains, or seeks to establish and maintain, a branch.~~

~~"(iii) OUT-OF-STATE BANK.—The term 'out-of-State bank' means, with re-~~

~~spect to any State, a wholesale financial institution whose home State is another State.~~

~~"(8) DISCRIMINATION REGARDING INTEREST RATES.—Section 27 of the Federal Deposit Insurance Act shall apply to State-chartered wholesale financial institutions in the same manner and to the same extent as such provisions apply to State member insured banks and any reference in such section to a State-chartered insured depository institution shall be deemed to include a reference to a State-chartered wholesale financial institution.~~

~~"(9) PREEMPTION OF STATE LAWS REQUIRING DEPOSIT INSURANCE FOR WHOLESALE FINANCIAL INSTITUTIONS.—The appropriate State banking authority may grant a charter to a wholesale financial institution notwithstanding any State constitution or statute requiring that the institution obtain insurance of its deposits and any such State constitution or statute is hereby preempted solely for purposes of this paragraph.~~

~~"(10) PARITY FOR WHOLESALE FINANCIAL INSTITUTIONS.—A State bank that is a wholesale financial institution under this section shall have all of the rights, powers, privileges, and immunities (in-~~

~~cluding those derived from status as a federally chartered institution) of and as if it were a national bank, subject to such terms and conditions as established by the Board.~~

~~"(11) COMMUNITY REINVESTMENT ACT OF 1977.—A State wholesale financial institution shall be subject to the Community Reinvestment Act of 1977.~~

~~"(e) SPECIFIC REQUIREMENTS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—~~

~~"(1) LIMITATIONS ON DEPOSITS.—~~

~~"(A) MINIMUM AMOUNT.—~~

~~"(i) IN GENERAL.—No wholesale financial institution may receive initial deposits of $100,000 or less, other than on an incidental and occasional basis.~~

~~"(ii) LIMITATION ON DEPOSITS OF LESS THAN $100,000.—No wholesale financial institution may receive initial deposits of $100,000 or less if such deposits constitute more than 5 percent of the institution's total deposits.~~

~~"(B) NO DEPOSIT INSURANCE.—No deposits held by a wholesale financial institution shall~~

be insured deposits under the Federal Deposit Insurance Act.

"(C) ADVERTISING AND DISCLOSURE.—The Board shall prescribe regulations pertaining to advertising and disclosure by wholesale financial institutions to ensure that each depositor is notified that deposits at the wholesale financial institution are not federally insured or otherwise guaranteed by the United States Government.

"(2) MINIMUM CAPITAL LEVELS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—The Board shall, by regulation, adopt capital requirements for wholesale financial institutions—

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

"(B) to provide for the safe and sound operation of the wholesale financial institution without undue risk to creditors or other persons, including Federal reserve banks, engaged in transactions with the bank.

"(3) ADDITIONAL REQUIREMENTS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—In addi-

~~tion to any requirement otherwise applicable to State member insured banks or applicable, under this section, to wholesale financial institutions, the Board may impose, by regulation or order, upon wholesale financial institutions—~~

~~"(A) limitations on transactions, direct or indirect, with affiliates to prevent—~~

~~"(i) the transfer of risk to the deposit insurance funds; or~~

~~"(ii) an affiliate from gaining access to, or the benefits of, credit from a Federal reserve bank, including overdrafts at a Federal reserve bank;~~

~~"(B) special clearing balance requirements; and~~

~~"(C) any additional requirements that the Board determines to be appropriate or necessary to—~~

~~"(i) promote the safety and soundness of the wholesale financial institution or any insured depository institution affiliate of the wholesale financial institution;~~

~~"(ii) prevent the transfer of risk to the deposit insurance funds; or~~

~~"(iii) protect creditors and other persons, including Federal reserve banks, engaged in transactions with the wholesale financial institution.~~

~~"(4) EXEMPTIONS FOR WHOLESALE FINANCIAL INSTITUTIONS.—The Board may, by regulation or order, exempt any wholesale financial institution from any provision applicable to a member bank that is not a wholesale financial institution, if the Board finds that such exemption is not inconsistent with—~~

~~"(A) the promotion of the safety and soundness of the wholesale financial institution or any insured depository institution affiliate of the wholesale financial institution;~~

~~"(B) the protection of the deposit insurance funds; and~~

~~"(C) the protection of creditors and other persons, including Federal reserve banks, engaged in transactions with the wholesale financial institution.~~

~~"(5) LIMITATION ON TRANSACTIONS BETWEEN A WHOLESALE FINANCIAL INSTITUTION AND AN INSURED BANK.—For purposes of section 23A(d)(1) of the Federal Reserve Act, a wholesale financial insti-~~

~~tution that is affiliated with an insured bank shall not be a bank.~~

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

~~"(d) CAPITAL AND MANAGERIAL REQUIREMENTS.—~~

~~"(1) IN GENERAL.—A wholesale financial institution shall be well capitalized and well managed.~~

~~"(2) NOTICE TO COMPANY.—The Board shall promptly provide notice to a company that controls a wholesale financial institution whenever such wholesale financial institution is not well capitalized or well managed.~~

~~"(3) AGREEMENT TO RESTORE INSTITUTION.—Within 45 days of receipt of a notice under paragraph (2) (or such additional period not to exceed 90 days as the Board may permit), the company shall execute an agreement acceptable to the Board to restore the wholesale financial institution to compliance with all of the requirements of paragraph (1).~~

~~"(4) LIMITATIONS UNTIL INSTITUTION RESTORED.—Until the wholesale financial institution is restored to compliance with all of the requirements of paragraph (1), the Board may impose such limitations on the conduct or activities of the company or any affiliate of the company as the Board determines to be appropriate under the circumstances.~~

~~"(5) FAILURE TO RESTORE.—If the company does not execute and implement an agreement in accordance with paragraph (3), comply with any limitation imposed under paragraph (4), restore the wholesale financial institution to well capitalized status within 180 days after receipt by the company of the notice described in paragraph (2), or restore the wholesale financial institution to well managed status within such period as the Board may permit, the company shall, under such terms and conditions as may be imposed by the Board and subject to such extension of time as may be granted in the Board's discretion, divest control of its subsidiary depository institutions.~~

~~"(6) WELL MANAGED DEFINED.—For purposes of this subsection, the term 'well managed' has the same meaning as in section 2 of the Bank Holding Company Act of 1956.~~

~~"(e) CONSERVATORSHIP AUTHORITY.—~~

~~"(1) IN GENERAL.—The Board may appoint a conservator to take possession and control of a wholesale financial institution to the same extent and in the same manner as the Comptroller of the Currency may appoint a conservator for a national bank under section 203 of the Bank Conservation Act, and the conservator shall exercise the same powers, functions, and duties, subject to the same limitations, as are provided under such Act for conservators of national banks.~~

~~"(2) BOARD AUTHORITY.—The Board shall have the same authority with respect to any conservator appointed under paragraph (1) and the wholesale financial institution for which such conservator has been appointed as the Comptroller of the Currency has under the Bank Conservation Act with respect to a conservator appointed under such Act and a national bank for which the conservator has been appointed.~~

~~"(f) EXCLUSIVE JURISDICTION.—Subsections (c) and (e) of section 43 of the Federal Deposit Insurance Act shall not apply to any wholesale financial institution.".~~

~~(c) VOLUNTARY TERMINATION OF INSURED STATUS BY CERTAIN INSTITUTIONS.—~~

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

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

~~(B) by redesignating paragraphs (2) through (10) as paragraphs (1) through (9), respectively.~~

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

**~~"SEC. 8A. VOLUNTARY TERMINATION OF STATUS AS INSURED DEPOSITORY INSTITUTION.~~**

~~"(a) IN GENERAL.—Except as provided in subsection (b), an insured State bank or a national bank may voluntarily terminate such bank's status as an insured depository institution in accordance with regulations of the Corporation if—~~

~~"(1) the bank provides written notice of the bank's intent to terminate such insured status—~~

~~"(A) to the Corporation and the Board of Governors of the Federal Reserve System not less than 6 months before the effective date of such termination; and~~

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

~~"(2) either—~~

~~"(A) the deposit insurance fund of which such bank is a member equals or exceeds the fund's designated reserve ratio as of the date the bank provides a written notice under paragraph (1) and the Corporation determines that the fund will equal or exceed the applicable designated reserve ratio for the 2 semiannual assessment periods immediately following such date; or~~

~~"(B) the Corporation and the Board of Governors of the Federal Reserve System approved the termination of the bank's insured status and the bank pays an exit fee in accordance with subsection (e).~~

~~"(b) EXCEPTION.—Subsection (a) shall not apply with respect to—~~

~~"(1) an insured savings association; or~~

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

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

~~"(d) INSTITUTION MUST BECOME WHOLESALE FINANCIAL INSTITUTION OR TERMINATE DEPOSIT-TAKING ACTIVITIES.—Any depository institution which voluntarily terminates such institution's status as an insured depository institution under this section may not, upon termination of insurance, accept any deposits unless the institution is a wholesale financial institution subject to section 9B of the Federal Reserve Act.~~

~~"(e) EXIT FEES.—~~

~~"(1) IN GENERAL.—Any bank that voluntarily terminates such bank's status as an insured depository institution under this section shall pay an exit fee in an amount that the Corporation determines is sufficient to account for the institution's pro rata share of the amount (if any) which would be required to restore the relevant deposit insurance fund to the fund's designated reserve ratio as of the date the bank provides a written notice under subsection (a)(1).~~

~~"(2) PROCEDURES.—The Corporation shall prescribe, by regulation, procedures for assessing any exit fee under this subsection.~~

~~"(f) TEMPORARY INSURANCE OF DEPOSITS INSURED AS OF TERMINATION.—~~

~~"(1) TRANSITION PERIOD.—The insured deposits of each depositor in a State bank or a national bank on the effective date of the voluntary termination of the bank's insured status, less all subsequent withdrawals from any deposits of such depositor, shall continue to be insured for a period of not less than 6 months and not more than 2 years, as determined by the Corporation. During such period, no additions to any such deposits, and no new deposits in the depository institution made after the effective date of such termination shall be insured by the Corporation.~~

~~"(2) TEMPORARY ASSESSMENTS; OBLIGATIONS AND DUTIES.—During the period specified in paragraph (1) with respect to any bank, the bank shall continue to pay assessments under section 7 as if the bank were an insured depository institution. The bank shall, in all other respects, be subject to the authority of the Corporation and the duties and obligations of an insured depository institution under~~

~~this Act during such period, and in the event that the bank is closed due to an inability to meet the demands of the bank's depositors during such period, the Corporation shall have the same powers and rights with respect to such bank as in the case of an insured depository institution.~~

~~"(g) ADVERTISEMENTS.—~~

~~"(1) IN GENERAL.—A bank that voluntarily terminates the bank's insured status under this section shall not advertise or hold itself out as having insured deposits, except that the bank may advertise the temporary insurance of deposits under subsection (f) if, in connection with any such advertisement, the advertisement also states with equal prominence that additions to deposits and new deposits made after the effective date of the termination are not insured.~~

~~"(2) CERTIFICATES OF DEPOSIT, OBLIGATIONS, AND SECURITIES.—Any certificate of deposit or other obligation or security issued by a State bank or a national bank after the effective date of the voluntary termination of the bank's insured status under this section shall be accompanied by a conspicuous, prominently displayed notice that such cer-~~

~~tificate of deposit or other obligation or security is not insured under this Act.~~

~~"(h) NOTICE REQUIREMENTS.—~~

~~"(1) NOTICE TO THE CORPORATION.—The notice required under subsection (a)(1)(A) shall be in such form as the Corporation may require.~~

~~"(2) NOTICE TO DEPOSITORS.—The notice required under subsection (a)(1)(B) shall be—~~

~~"(A) sent to each depositor's last address of record with the bank; and~~

~~"(B) in such manner and form as the Corporation finds to be necessary and appropriate for the protection of depositors.".~~

~~(3) DEFINITION.—Section 19(b)(1)(A)(i) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i)) is amended by inserting ", or any wholesale financial institution subject to section 9B of this Act" after "such Act".~~

# ~~Subtitle E—Preservation of FTC Authority~~

**~~SEC. 141. AMENDMENT TO THE BANK HOLDING COMPANY ACT OF 1956 TO MODIFY NOTIFICATION AND POST-APPROVAL WAITING PERIOD FOR SECTION 3 TRANSACTIONS.~~**

~~Section 11(b)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1849(b)(1)) is amended by inserting "and, if the transaction also involves an acquisition under section 4 or section 6, the Board shall also notify the Federal Trade Commission of such approval" before the period at the end of the first sentence.~~

**~~SEC. 142. INTERAGENCY DATA SHARING.~~**

~~To the extent not prohibited by other law, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the Board of Governors of the Federal Reserve System shall make available to the Attorney General and the Federal Trade Commission any data in the possession of any such banking agency that the antitrust agency deems necessary for antitrust review of any transaction requiring notice to any such antitrust agency or the approval of such agency under section 3, 4, or 6 of the Bank Holding Company Act of 1956, section 18(c) of the Federal Deposit Insurance Act, the National Bank Consolidation and~~

~~Merger Act, section 10 of the Home Owners' Loan Act, or the antitrust laws.~~

**~~SEC. 143. CLARIFICATION OF STATUS OF SUBSIDIARIES AND AFFILIATES.~~**

~~(a) CLARIFICATION OF FEDERAL TRADE COMMISSION JURISDICTION.—Any person which directly or indirectly controls, is controlled directly or indirectly by, or is directly or indirectly under common control with, any bank or savings association (as such terms are defined in section 3 of the Federal Deposit Insurance Act) and is not itself a bank or savings association shall not be deemed to be a bank or savings association for purposes of the Federal Trade Commission Act or any other law enforced by the Federal Trade Commission.~~

~~(b) SAVINGS PROVISION.—No provision of this section shall be construed as restricting the authority of any Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) under any Federal banking law, including section 8 of the Federal Deposit Insurance Act.~~

~~(c) HART–SCOTT–RODINO AMENDMENT.—Section 7A(c)(7) of the Clayton Act (15 U.S.C. 18a(c)(7)) is amended by inserting before the semicolon at the end thereof the following: ", except that a portion of a transaction is not exempt under this paragraph if such portion~~

~~of the transaction (A) requires notice under section 6 of the Bank Holding Company Act of 1956; and (B) does not require approval under section 3 or 4 of the Bank Holding Company Act of 1956''.~~

**~~SEC. 144. ANNUAL GAO REPORT.~~**

~~(a) IN GENERAL.—By the end of the 1-year period beginning on the date of the enactment of this Act and annually thereafter, the Comptroller General of the United States shall submit a report to the Congress on market concentration in the financial services industry and its impact on consumers.~~

~~(b) ANALYSIS.—Each report submitted under subsection (a) shall contain an analysis of—~~

~~(1) the positive and negative effects of affiliations between various types of financial companies, and of acquisitions pursuant to this Act and the amendments made by this Act to other provisions of law, including any positive or negative effects on consumers, area markets, and submarkets thereof or on registered securities brokers and dealers which have been purchased by depository institutions or depository institution holding companies;~~

~~(2) the changes in business practices and the effects of any such changes on the availability of venture capital, consumer credit, and other financial~~

services or products and the availability of capital and credit for small businesses; and

(3) the acquisition patterns among depository institutions, depository institution holding companies, securities firms, and insurance companies including acquisitions among the largest 20 percent of firms and acquisitions within regions or other limited geographical areas.

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

### SEC. 151. APPLYING THE PRINCIPLES OF NATIONAL TREATMENT AND EQUALITY OF COMPETITIVE OPPORTUNITY TO FOREIGN BANKS THAT ARE FINANCIAL HOLDING COMPANIES.

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

"(3) TERMINATION OF GRANDFATHERED RIGHTS.—

"(A) IN GENERAL.—If any foreign bank or foreign company files a declaration under section 6(b)(1)(E) or which receives a determina-

~~tion under section 10(d)(1) of the Bank Holding Company Act of 1956, any authority conferred by this subsection on any foreign bank or company to engage in any activity which the Board has determined to be permissible for financial holding companies under section 6 of such Act shall terminate immediately.~~

~~"(B) RESTRICTIONS AND REQUIREMENTS AUTHORIZED.—If a foreign bank or company that engages, directly or through an affiliate pursuant to paragraph (1), in an activity which the Board has determined to be permissible for financial holding companies under section 6 of the Bank Holding Company Act of 1956 has not filed a declaration with the Board of its status as a financial holding company under such section or received a determination under section 10(d)(1) by the end of the 2-year period beginning on the date of enactment of the Financial Services Act of 1998, the Board, giving due regard to the principle of national treatment and equality of competitive opportunity, may impose such restrictions and requirements on the conduct of such activities by such foreign bank or company as are comparable to those~~

~~imposed on a financial holding company organized under the laws of the United States, including a requirement to conduct such activities in compliance with any prudential safeguards established under section 5(h) of the Bank Holding Company Act of 1956.''.~~

**~~SEC. 152. APPLYING THE PRINCIPLES OF NATIONAL TREATMENT AND EQUALITY OF COMPETITIVE OPPORTUNITY TO FOREIGN BANKS AND FOREIGN FINANCIAL INSTITUTIONS THAT ARE WHOLESALE FINANCIAL INSTITUTIONS.~~**

~~Section 8A of the Federal Deposit Insurance Act (as added by section 136(c)(2) of this Act) is amended by adding at the end the following new subsection:~~

~~''(i) VOLUNTARY TERMINATION OF DEPOSIT INSURANCE.—The provisions on voluntary termination of insurance in this section shall apply to an insured branch of a foreign bank (including a Federal branch) in the same manner and to the same extent as they apply to an insured State bank or a national bank.''.~~

# ~~Subtitle G—Federal Home Loan Bank System~~

**~~SEC. 161. FEDERAL HOME LOAN BANKS.~~**

~~The first sentence of section 3 of the Federal Home Loan Bank Act (12 U.S.C. 1423) is amended—~~

~~(1) by striking "the continental United States" and all that follows through the "eight"; and~~

~~(2) by inserting "the States into not less than 1" before "nor".~~

**~~SEC. 162. MEMBERSHIP AND COLLATERAL.~~**

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

~~"(f) FEDERAL HOME LOAN BANK MEMBERSHIP.—A Federal savings association may become a member, of the Federal Home Loan Bank System, and shall qualify for such membership in the manner provided by the Federal Home Loan Bank Act, beginning January 1, 1999.".~~

~~(b) Section 10(a)(5) of the Federal Home Loan Bank Act (12 U.S.C. 1430(a)(5)) is amended—~~

~~(1) in the second sentence, by striking "and the Board"; and~~

~~(2) in the third sentence, by striking "Board" and inserting "Bank".~~

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

~~(1) in the second sentence, by striking "All long-term advances" and inserting "Except as provided in the succeeding sentence, all long-term advances";~~

~~(2) by inserting after the second sentence, the following sentence: "Notwithstanding the preceding sentence, long-term advances may be made to members insured by the Federal Deposit Insurance Corporation which have less than $500,000,000 in total assets for the purpose of funding small businesses, agriculture, rural development, or low-income community development (as defined by the Board).";~~ ~~and~~

~~(3) by redesignating paragraph (5) as paragraph (6) and inserting after paragraph (4) the following new paragraph:~~

~~"(5) In the case of any member insured by the Federal Deposit Insurance Corporation which has total assets of less than $500,000,000, secured loans for small business, agriculture, rural development, or low-income community development, or securities representing a whole interest in such secured loans.".~~

~~(d) Section 4(a) of the Federal Home Loan Bank Act (12 U.S.C. 1424(a)) is amended by adding at the end the following new paragraph:~~

~~"(3) ELIGIBILITY REQUIREMENTS FOR COMMUNITY FINANCIAL INSTITUTIONS.—The requirements of paragraph (2) (other than subparagraph (B) of~~

~~such paragraph) shall not apply to any insured depository institution which has total assets of less than $500,000,000.~~

~~(c) Section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430) is amended by striking the first of the 2 subsections designated as subsection (c) (relating to qualified thrift lender status).~~

**~~SEC. 163. THE OFFICE OF FINANCE.~~**

~~The Federal Home Loan Bank Act (12 U.S.C. 1421) is amended by inserting after section 4 the following new section:~~

**~~"SEC. 5. THE OFFICE OF FINANCE.~~**

~~"(a) OPERATION.—The Federal home loan banks shall operate jointly an office of finance (hereafter in this section referred to as the 'Office') to issue the notes, bonds, and debentures of the Federal home loan banks in accordance with this Act.~~

~~"(b) POWERS.—Subject to the other provisions of this Act and such safety and soundness regulations as the Finance Board may prescribe, the Office shall be authorized by the Federal home loan banks to act as the agent of such banks to issue Federal home loan bank notes, bonds and debentures pursuant to section 11 of this Act on behalf of the banks.~~

~~"(c) CENTRAL BOARD OF DIRECTORS.—~~

1 ~~"(1) ESTABLISHMENT.—The Federal home~~
2 ~~loan banks shall establish a central board of direc-~~
3 ~~tors of the Office to administer the affairs of the Of-~~
4 ~~fice in accordance with the provisions of this Act.~~
5 ~~"(2) COMPOSITION OF BOARD.—Each Federal~~
6 ~~home loan bank shall annually select one individual~~
7 ~~who, as of the time of the election, is an officer or~~
8 ~~director of such bank to serve as a member of the~~
9 ~~central board of directors of the Office.~~
10 ~~"(d) STATUS.—Except to the extent expressly pro-~~
11 ~~vided in this Act, the Office shall be treated as a Federal~~
12 ~~home loan bank for purposes of any law.".~~
13 **~~SEC. 164. MANAGEMENT OF BANKS.~~**
14 ~~(a) Subsections (a) and (b) of section 7 of the Federal~~
15 ~~Home Loan Bank Act (12 U.S.C. 1427(a) and (b)) are~~
16 ~~amended to read as follows:~~
17 ~~"(a) The management of each Federal home loan~~
18 ~~bank shall be vested in a board of 15 directors, nine of~~
19 ~~whom shall be elected by the members in accordance with~~
20 ~~this section, six of whom shall be appointed by the Board~~
21 ~~referred to in section 2A, and all of whom shall be citizens~~
22 ~~of the United States and bona fide residents of the district~~
23 ~~in which such bank is located. At least two of the Federal~~
24 ~~home loan bank directors who are appointed by the Board~~
25 ~~shall be representatives chosen from organizations with~~

~~more than a 2-year history of representing consumer or community interests on banking services, credit needs, housing, or financial consumer protections. No Federal home loan bank director who is appointed pursuant to this subsection may, during such bank director's term of office, serve as an officer of any Federal home loan bank or a director or officer of any member of a bank, or hold shares, or any other financial interest in, any member of a bank.~~

~~"(b) The elective directors shall be divided into three classes, designated as classes A, B, and C, as nearly equal in number as possible. Each directorship shall be filled by a person who is an officer or director of a member located in that bank's district. Each class shall represent members of similar asset size, and the Board shall, to the maximum extent possible, seek to achieve geographic diversity. The Finance Board shall establish the minimum and maximum asset size for each class. Any member shall be entitled to nominate and elect eligible persons for its class of directorship; such offices shall be filled from such nominees by a plurality of the votes which members of each class may cast for nominees in their corresponding class of directors in an election held for the purpose of filling such offices. Each member shall be permitted to cast one vote for each share of Federal home loan bank stock owned by that~~

~~member. No person who is an officer or director of a member that fails to meet any applicable capital requirement is eligible to hold the office of Federal Home Loan Bank director. As used in this subsection, the term "member" means a member of a Federal home loan bank which was a member of such Bank as of a record date established by the Bank.".~~

~~(b) Section 7 of the Federal Home Loan Bank Act (12 U.S.C. 1427) is amended—~~

~~(1) by striking subsections (c) and (h); and~~

~~(2) by redesignating subsections (d), (e), (f), (g), (i), (j), and (k) as subsections (c), (d), (e), (f), (g), (h), and (i), respectively.~~

~~(c) Subsection (c) of section 7 of the Federal Home Loan Bank Act (12 U.S.C. 1427(d)) (as so redesignated by subsection (b) of this section) is amended by striking the first and second sentences and inserting the following two new sentences: "The term of each position of director shall be 3 years. No director serving for three consecutive terms, nor any other officer, director or that member or any affiliated depository institution, shall be eligible for another term earlier than 3 years after the expiration of the last expiring of said 3-year terms. Three elected directors of different classes as specified by the Finance Board shall be elected by ballot annually.".~~

~~(d) Subsection (d) of section 7 of the Federal Home Loan Bank Act (12 U.S.C. 1427(e)) (as so redesignated by subsection (b) of this section) is amended to read as follows:~~

~~"(d) TRANSITION PROVISION.—In the first election after the date of the enactment of the Financial Services Act of 1998, three directors shall be elected in each of the 3 classes of elective directorship. The Finance Board may, in the first election after such date of enactment, designate the terms of each elected director in each class, not to exceed 3 years, to assure that, in each subsequent election, 3 directors from different classes of elective directorships are elected each year.".~~

~~(e) Subsection (g) of section 7 of the Federal Home Loan Bank Act (12 U.S.C. 1427(i)) (as so redesignated by subsection (b) of this section) is amended by striking "subject to the approval of the board".~~

**~~SEC. 165. ADVANCES TO NONMEMBER BORROWERS.~~**

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

~~(1) in subsection (a), by striking "(a) IN GENERAL.—";~~

~~(2) by striking the fourth sentence of subsection (a), and inserting "Notwithstanding the preceding sentence, if an advance is made for the purpose of~~

~~facilitating mortgage lending that benefits individuals and families that meet the income requirements set forth in section 142(d) or 143(f) of the Internal Revenue Code of 1986, the advance may be collateralized as provided in section 10(a) of this Act.''; and~~

~~(3) by striking subsection (b).~~

**~~SEC. 166. POWERS AND DUTIES OF BANKS.~~**

~~(a) Subsection (a) of section 11 of the Federal Home Loan Bank Act (12 U.S.C. 1431(a)) is amended—~~

~~(1) by inserting ''through the Office of Finance'' after ''to issue''; and~~

~~(2) by striking ''Board'' after ''upon such terms and conditions as the'' and inserting ''board of directors of the bank''.~~

~~(b) Subsection (b) of section 11 of the Federal Home Loan Bank Act (12 U.S.C. 1431(b)) is amended to read as follows:~~

~~''(b) ISSUANCE OF FEDERAL HOME LOAN BANK CONSOLIDATED BONDS.—~~

~~''(1) IN GENERAL.— The Office of Finance may issue consolidated Federal home loan bank bonds and other consolidated obligations on behalf of the banks.~~

~~"(2) JOINT AND SEVERAL OBLIGATION; TERMS AND CONDITIONS.—Consolidated obligations issued by the Office of Finance under paragraph (1) shall—~~

~~"(A) be the joint and several obligations of all the Federal home loan banks; and~~

~~"(B) shall be issued upon such terms and conditions as shall be established by the Office of Finance subject to such rules and regulations as the Finance Board may prescribe.".~~

~~(c) Section 11(f) of the Federal Home Loan Bank Act (12 U.S.C. 1430(f) (as designated before the redesignation by subsection (c) of this section) is amended by striking both commas immediately following "permit" and inserting "or".~~

~~(d) Subsection (i) of section 11 of the Federal Home Loan Bank Act (12 U.S.C. 1431(i)) is amended by striking the second undesignated paragraph.~~

~~(e) Section 11 of the Federal Home Loan Bank Act (12 U.S.C. 1431) is amended—~~

~~(1) by striking subsection (e); and~~

~~(2) by redesignating subsections (d) through (k) as subsections (e) through (j), respectively.~~

**~~SEC. 167. MERGERS AND CONSOLIDATIONS OF FEDERAL HOME LOAN BANKS.~~**

~~Section 26 of the Federal Home Loan Bank Act (12 U.S.C. 1446) is amended by designating the current paragraph as "(a)" and adding the following new sections:~~

~~"(b) Nothing in this section shall preclude voluntary mergers, combinations or consolidation by or among the Federal home loan banks pursuant to such regulations as the Finance Board may prescribe.~~

~~"(c) NUMBER OF ELECTED DIRECTORS OF RESULTING BANK.—Subject to section 7 of this Act, any bank resulting from a merger, combination, or consolidation pursuant to this section may have a number of elected directors equal to or less than the total number of elected directors of all the banks which participated in such transaction (as determined immediately before such transaction).~~

~~"(d) NUMBER OF APPOINTED DIRECTORS OF RESULTING BANK.—The number of appointed directors of any bank resulting from a merger, combination, or consolidation pursuant to this section shall be a number that is three less than the number of elected directors.~~

~~"(e) ADJUSTMENT OF DISTRICT BOUNDARIES.—After consummation of any merger, combination, or consolidation of two or more Federal home loan banks, the Finance Board shall adjust the districts established in sec-~~

~~tion 3 of this Act to reflect such merger, combination, or consolidation.''.~~

**~~SEC. 168. TECHNICAL AMENDMENTS.~~**

~~(a) REPEAL OF SECTIONS 22A AND 27.—The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended by striking sections 22A (12 U.S.C. 1442a) and 27 (12 U.S.C. 1447).~~

~~(b) SECTION 12.—~~

~~(1) Section 12(a) of the Federal Home Loan Bank Act (12 U.S.C. 1432(a)) is amended—~~

~~(A) by striking ''subject to the approval of the Board'' immediately following ''transaction of its business''; and~~

~~(B) by striking ''and, by its Board of directors, to prescribe, amend, and repeal by-laws, rules, and regulations governing the manner in which its affairs may be administered, and the powers granted to it by law may be exercised and enjoyed subject to the approval of the Board. The president of a Federal Home Loan Bank may also be a member of the Board of directors thereof, but no other officer, employee, attorney, or agent of such bank,'' and inserting ''and, by the board of directors of the bank, to prescribe, amend, and repeal by-laws~~

~~governing the manner in which its affairs may be administered, consistent with applicable statute and regulation, as administered by the Finance Board. No officer, employee, attorney, or agent of a Federal home loan bank''.~~

~~(2) Section 12 of the Federal Home Loan Bank Act (12 U.S.C. 1432) is amended by inserting after subsection (b) the following new subsection:~~

~~''(c) PROHIBITION ON EXCESSIVE COMPENSATION.—~~

~~''(1) IN GENERAL.—The Finance Board shall prohibit the Federal home loan banks from providing compensation to any officer, director, or employee that is not reasonable and comparable with the compensation for employment in other similar businesses involving similar duties and responsibilities. However, the Finance Board may not prescribe or set a specific level or range of compensation for any officer, director, or employee.~~

~~''(2) REGULATIONS.—The Finance Board, by regulation, may provide for the requirements of paragraph (1) to be phased-in over a period not to exceed 3 years.~~

~~''(3) EXCEPTION FOR EXISTING CONTRACTS.—Paragraph (1) shall not apply to any contract entered into before June 1, 1997.''.~~

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

~~(1) Subsection (a)(1) of section 2B of the Federal Home Loan Bank Act (12 U.S.C. 1422b(a)(1)) is amended by striking the period at the end of the sentence and inserting "; and to have the same powers, rights, and duties to enforce this Act with respect to the Federal home loan banks and the senior officers and directors of such banks as the Office of Federal Housing Enterprise Oversight has over the Federal housing enterprises and the senior officers and directors of such enterprises under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.".~~

~~(2) Subsection (b) of section 2B of the Federal Home Loan Bank Act (12 U.S.C. 1422b(b)) is amended—~~

~~(A) by striking "(1) BOARD STAFF.—";~~

~~(B) by striking "function to any employee, administrative unit" and inserting "function to any employee or administrative unit";~~

~~(C) by striking the second sentence in paragraph (1); and~~

~~(D) by striking paragraph (2).~~

~~(3) Section 111 of Public Law 93–495 (12 U.S.C. 250) is amended by striking "Federal Home Loan Bank Board" and inserting "Federal Housing Finance Board".~~

~~(d) ELIGIBILITY TO SECURE ADVANCES.—~~

~~(1) SECTION 9.—Section 9 of the Federal Home Loan Bank Act (12 U.S.C. 1429) is amended—~~

~~(A) in the second sentence, by striking "with the approval of the Board"; and~~

~~(B) in the third sentence, by striking ", subject to the approval of the Board,".~~

~~(2) SECTION 10.—~~

~~(A) Subsection (a) of section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430(a)) is amended in paragraph (3), by striking "Deposits" and inserting "Cash or deposits".~~

~~(B) Subsection (c) of section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430(c)) is amended—~~

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

~~(ii) by striking the second sentence.~~

~~(C) Subsection (d) of section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430(d)) is amended—~~

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

~~(ii) in the last sentence, by striking "Subject to the approval of the Board, any" and inserting "Any".~~

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

~~(i) in the first sentence of paragraph (1) by striking "to subsidize the interest rate on advances" and inserting "to provide subsidies, including subsidized interest rates on advances";~~

~~(ii) in paragraphs (2), (3), (4), (5), (9), (11), and (12) by striking "advances" and "subsidized advances" each place such terms appear and inserting "subsidies, including subsidized advances";~~

~~(iii) in paragraph (1), by inserting "(A)" before the first sentence, and inserting the following at the end of the paragraph:~~

~~"(B) Subject to such regulations as the Finance Board may prescribe, the board of directors of each Federal home loan bank may approve or disapprove requests from members for Affordable Housing Program subsidies, and may not delegate such authority.";~~

~~(iv) in paragraph (2), by striking subparagraph (B) and inserting the following new subparagraph:~~

~~"(B) finance the purchase, construction or rehabilitation of rental housing if, for a period of at least 15 years, either 20 percent or more of the units in such housing are occupied by and affordable for households whose income is 50 percent or less of area median income (as determined by the Secretary of Housing and Urban Development, and as adjusted for family size); or 40 percent or more of the units in such housing are occupied by and affordable for households whose income is 60 percent or less of area median income (as determined by the Secretary of Housing and Urban Development, and as adjusted for family size).";~~

~~(v) in paragraph (5)—~~

~~(I) by striking the colon after "Affordable Housing Program";~~

~~(II) by striking subparagraphs (A) and (B); and~~

~~(III) by striking "(C) In 1995, and subsequent years,";~~

~~(vi) in paragraph (11)—~~

~~(I) by inserting ", pursuant to a nomination process that is as broad and as participatory as possible, and giving consideration to the size of the District and the diversity of low- and moderate-income housing needs and activities within the District," after "Advisory Council of 7 to 15 persons";~~

~~(II) by inserting "a diverse range of" before "community and nonprofit organizations"; and~~

~~(III) by inserting after the first sentence, the following new sentence: "Representatives of no one group shall constitute an undue proportion of the membership of the Advisory Council."; and~~

~~(vii) in paragraph (13), by striking subparagraph (D) and inserting the following new subparagraph:~~

~~"(D) AFFORDABLE.—For purposes of paragraph (2)(B), the term "affordable" means that the rent with respect to a unit shall not exceed 30 percent of the income limitation under paragraph (2)(B) applicable to occupants of such unit.".~~

~~(e) SECTION 16.—Subsection (a) of section 16 of the Federal Home Loan Bank Act (12 U.S.C. 1436) is amended in the third sentence by striking "net earnings" and inserting "previously retained earnings or current net earnings"; by striking ", and then only with the approval of the Federal Housing Finance Board"; and by striking the fourth sentence.~~

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

~~(g) SECTION 11.—Section 11 of the Federal Home Loan Bank Act (12 U.S.C. 1431) is amended by inserting after subsection (j) (as so redesignated by section 166(e) of this subtitle) the following subsection:~~

~~"(k) PROHIBITION ON OTHER ACTIVITIES.—~~

~~"(1) A Federal home loan bank may not engage in any activity other than the activities authorized under this Act and activities incidental to such authorized activities.~~

~~"(2) All activities specified in paragraph (1) are subject to Finance Board approval.".~~

**~~SEC. 169. DEFINITIONS.~~**

~~Paragraph (3) of section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422(3)) is amended to read as follows:~~

~~"(3) The term "State" in addition to the states of the United States, includes the District of Columbia, Guam, Puerto Rico, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.".~~

**~~SEC. 170. RESOLUTION FUNDING CORPORATION.~~**

~~(a) IN GENERAL.—Section 21B(f)(2)(C) of the Federal Home Loan Bank Act (12 U.S.C. 1441b(f)(2)(C)) is amended to read as follows:~~

~~"(C) PAYMENTS BY FEDERAL HOME LOAN BANKS.—To the extent the amounts available pursuant to subparagraphs (A) and (B) are insufficient to cover the amount of interest payments, each Federal home loan bank shall pay to the Funding Corporation each calendar year~~

~~20.75 percent of the net earnings of such bank (after deducting expenses relating to subsection (j) of section 10 and operating expenses).''.~~

~~(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on January 1, 1999.~~

**~~SEC. 171. CAPITAL STRUCTURE OF THE FEDERAL HOME LOAN BANKS.~~**

~~(a) IN GENERAL.—Section 6 of the Federal Home Loan Bank Act (12 U.S.C. 1426) is amended to read as follows:~~

**~~''SEC. 6. CAPITAL STRUCTURE OF FEDERAL HOME LOAN BANKS.~~**

~~''(a) CAPITAL STRUCTURE PLAN.—On or before January 1, 1999, the board of directors of each Federal home loan bank shall submit for Finance Board approval a plan establishing and implementing a capital structure for such bank which—~~

~~''(1) the board of directors determines is the best suited for the condition and operation of the bank and the interests of the shareholders of the bank;~~

~~''(2) meets the requirements of subsection (b); and~~

~~''(3) meets the minimum capital standards and requirements established under subsection (c) and~~

~~any regulations prescribed by the Finance Board pursuant to such subsection.~~

~~"(b) CONTENTS OF PLAN.—The capital structure plan of each Federal home loan bank shall meet the following requirements:~~

~~"(1) STOCK PURCHASE REQUIREMENTS.—~~

~~"(A) IN GENERAL.—Each capital structure plan of a Federal home loan bank shall require the shareholders of the bank to maintain an investment in the stock of the bank in amount not less than—~~

~~"(i) a minimum percentage of the total assets of the shareholder; and~~

~~"(ii) a minimum percentage of the outstanding advances from the bank to the shareholder.~~

~~"(B) MINIMUM PERCENTAGE LEVELS.—The minimum percentages established pursuant to subparagraph (A) shall be set at levels sufficient to meet the bank's minimum capital requirements established by the Finance Board under subsection (c).~~

~~"(C) MAXIMUM ASSET BASED CAPITAL REQUIREMENT.—The asset-based capital requirement applicable to any shareholder of a Federal~~

~~home loan bank in any year shall not exceed the lesser of—~~

~~"(i) 0.6 percent of a shareholder's total assets at the close of the preceding year; or~~

~~"(ii) $300,000,000.~~

~~"(D) MAXIMUM ADVANCE-BASED REQUIREMENT.—The advance-based capital requirement applicable to any shareholder of a Federal home loan bank shall not exceed 6 percent of the total outstanding advances from the bank to the shareholder.~~

~~"(E) MINIMUM STOCK PURCHASE REQUIREMENT AUTHORIZED.—A capital structure plan may establish a minimum dollar amount of stock of a Federal home loan bank in which a shareholder shall be required to invest.~~

~~"(2) ADJUSTMENTS TO STOCK PURCHASE REQUIREMENTS.—The capital structure plan adopted by each Federal home loan bank shall impose a continuing obligation on the board of directors of the bank to review and adjust as necessary member stock purchase requirements in order to ensure that the bank remains in compliance with applicable min-~~

~~imum capital levels established by the Finance Board.~~

~~"(3) TRANSITION RULE FOR STOCK PURCHASE REQUIREMENTS.—~~

~~"(A) IN GENERAL.—A capital structure plan may allow shareholders who were members of a Federal home loan bank on the date of the enactment of the Financial Services Act of 1998 to come into compliance with the asset-based stock purchase requirement established under paragraph (1) during a transition period established under the plan of not more than 3 years, if such requirement exceeds the asset-based stock purchase requirement in effect on such date of enactment.~~

~~"(B) INTERIM PURCHASE REQUIREMENTS.—A capital structure plan may establish interim asset-based stock purchase requirements applicable to members referred to in subparagraph (A) during a transition period established under subparagraph (A).~~

~~"(4) CLASSES OF STOCK.—~~

~~"(A) IN GENERAL.—Each capital structure plan shall afford each shareholder of a Federal home loan bank the option of meeting the~~

~~shareholder's stock purchase requirements through the purchase of any combination of Class A or Class B stock.~~

~~"(B) CLASS A STOCK.—Class A stock shall be stock of a Federal home loan bank that shall be redeemed in cash and at par by the bank no later than 12 months following submission of a written notice by a shareholder of the shareholder's intention to divest all shares of stock in the bank.~~

~~"(C) CLASS B STOCK.—Class B stock shall be stock of a Federal home loan bank that shall be redeemed in cash and at par by the bank no later than 5 years following submission of a written notice by a shareholder of the shareholder's intention to divest all shares of stock in the bank.~~

~~"(D) RIGHTS REQUIREMENT.—The Class B stock of a Federal home loan bank may receive a dividend premium over that paid on Class A stock, and may have preferential voting rights in the election of Federal home loan bank directors.~~

~~"(E) LOWER STOCK PURCHASE REQUIREMENTS FOR CLASS B STOCK.—A capital struc-~~

~~ture plan may provide for lower stock purchase requirements with respect to those shareholder's that elect to purchase Class B stock in a manner that is consistent with meeting the bank's own minimum capital requirements as established by the Finance Board.~~

~~"(F) NO OTHER CLASSES OF STOCK PERMITTED.—No class of stock other than the Class A and Class B stock described in subparagraphs (B) and (C) may be issued by a Federal home loan bank.~~

~~"(5) LIMITED TRANSFERABILITY OF STOCK.—Each capital structure plan shall provide that any equity securities issued by the bank shall be available only to, held only by, and tradable only among shareholders of the bank.~~

~~"(e) CAPITAL STANDARDS.—~~

~~"(1) IN GENERAL.—The Finance Board shall prescribe, by regulation, uniform capital standards applicable to each Federal home loan bank which shall include—~~

~~"(A) a leverage limit in accordance with paragraph (2); and~~

~~"(B) a risk-based capital requirement in accordance with paragraph (3).~~

~~"(2) MINIMUM LEVERAGE LIMIT.—The leverage limit established by the Finance Board shall require each Federal home loan bank to maintain total capital in an amount not less than 5 percent of the total assets of the bank. In determining compliance with the minimum leverage ratio, the amount of retained earnings and the paid-in value of Class B stock, if any, shall be multiplied by 1.5 and such higher amount shall be deemed to be capital for purposes of meeting the 5 percent minimum leverage ratio.~~

~~"(3) RISK-BASED CAPITAL STANDARD.—The risk-based capital requirement shall be composed of the following components:~~

~~"(A) Capital sufficient to meet the credit risk to which a Federal home loan bank is subject, based on an amount which is not less than the amount of tier 1, risk-based capital required by regulations prescribed, or guidelines issued under section 38 of the Federal Deposit Insurance Act for a well capitalized insured depository institution.~~

~~"(B) Capital sufficient to meet the interest rate risk to which a Federal home loan bank is subject, based on an interest rate stress test applied by the Finance Board that rigorously tests~~

~~for changes in interest rates, rate volatility, and changes in the shape of the yield curve.~~

~~"(d) REDEMPTION OF CAPITAL.—~~

~~"(1) IN GENERAL.—Any shareholder of a Federal home loan bank shall have the right to withdraw the shareholder's membership from a Federal home loan bank and to redeem the shareholder's stock in accordance with the redemption rights associated with the class of stock the shareholder holds, if—~~

~~"(A) such shareholder has filed a written notice of an intention to redeem all such shares; and~~

~~"(B) the shareholder has no outstanding advances from any Federal home loan bank at the time of such redemption.~~

~~"(2) PARTIAL REDEMPTION.—A shareholder who files notice of intention to redeem all shares of stock in a Federal home loan bank may redeem not more than 1/2 of all such shares, in cash and at par, 6 months before the date by which the bank is required to redeem such stock pursuant to subparagraph (B) or (C) of subsection (b)(4).~~

~~"(3) DIVESTITURE.—The board of directors of any Federal home loan bank may, after a hearing,~~

order the divestiture by any shareholder of all ownership interests of such shareholder in the bank, if—

"(A) in the opinion of the board of directors, such shareholder has failed to comply with a provision of this Act or any regulation prescribed under this Act; or

"(B) the shareholder has been determined to be insolvent, or otherwise subject to the appointment of a conservator, receiver, or other legal custodian, by a State or Federal authority with regulatory and supervisory responsibility for such shareholder.

"(4) RETIREMENT OF EXCESS STOCK.—Any shareholder may—

"(A) retire shares of Class A stock or, at the option of the shareholder, shares of Class B stock, or any combination of Class A and Class B stock, that are excess to the minimum stock purchase requirements applicable to the shareholder; and

"(B) receive from the Federal home loan bank a prompt payment in cash equal to the par value of such stock.

"(5) IMPAIRMENT OF CAPITAL.—If the Finance Board or the board of directors of a Federal home

~~loan bank determines that the paid-in capital of the bank is, or is likely to be, impaired as a result of losses in or depreciation of the assets of the bank, the Federal home loan bank shall withhold that portion of the amount due any shareholder with respect to any redemption or retirement of any class of stock which bears the same ratio to the total of such amount as the amount of the impaired capital bears to the total amount of capital allocable to such class of stock.~~

~~"(6) POLICIES.—Subject to the requirements of this section, the board of directors of each Federal home loan bank shall promptly establish policies, consistent with this Act, governing the capital stock of such bank and other provisions of this section.".~~

**~~SEC. 172. INVESTMENTS.~~**

~~Subsection (j) of section 11 of the Federal Home Loan Bank Act (12 U.S.C. 1431) (as so redesignated by section 166(c) of this subtitle) is amended to read as follows:~~

~~"(j) INVESTMENTS.—Each bank shall reduce its investments to those necessary for liquidity purposes, for safe and sound operation of the banks, or for housing finance, as administered by the Finance Board.".~~

**SEC. 173. FEDERAL HOUSING FINANCE BOARD.**

Section 2A(b)(1) of the Federal Home Loan Bank Act (12 U.S.C. 1422(b)(1)) is amended—

(1) by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively;

(2) by inserting before subparagraph (B) (as so redesignated by paragraph (1) of this section) the following new subparagraph:

"(A) The Secretary of the Treasury (or the Secretary of the Treasury's designee), who shall serve without additional compensation."; and

(3) in subparagraph (C) (as so redesignated by paragraph (1) of this section) by striking "Four" and inserting "3".

# Subtitle H—Direct Activities of Banks

**SEC. 181. AUTHORITY OF NATIONAL BANKS TO UNDERWRITE CERTAIN MUNICIPAL BONDS.**

The paragraph designated the Seventh of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24(7)) is amended by adding at the end the following new sentence: "In addition to the provisions in this paragraph for dealing in, underwriting or purchasing securities, the limitations and restrictions contained in this paragraph as to dealing in, underwriting, and purchasing investment securities for the national bank's own account

~~shall not apply to obligations (including limited obligation bonds, revenue bonds, and obligations that satisfy the requirements of section 142(b)(1) of the Internal Revenue Code of 1986) issued by or on behalf of any state or political subdivision of a state, including any municipal corporate instrumentality of 1 or more states, or any public agency or authority of any state or political subdivision of a state, if the national banking association is well capitalized (as defined in section 38 of the Federal Deposit Insurance Act).''.~~

# ~~Subtitle I—Deposit Insurance Funds~~

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

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

~~(1) The safety and soundness of the funds and the adequacy of the reserve requirements applicable to the funds in light of—~~

~~(A) the size of the insured depository institutions which are resulting from mergers and consolidations since the effective date of the~~

~~Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994; and~~

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

~~(2) The concentration levels of the funds, taking into account the number of members of each fund and the geographic distribution of such members, and the extent to which either fund is exposed to higher risks due to a regional concentration of members or an insufficient membership base relative to the size of member institutions.~~

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

~~(b) REPORT REQUIRED.—~~

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

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

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

~~(B) a description of the plans developed by the Board of Directors for merging the Bank Insurance Fund and the Savings Association Insurance Fund, including an estimate of the amount of the cost of such merger which would be borne by Savings Association Insurance Fund members; and~~

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

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

~~(1) INSURED DEPOSITORY INSTITUTION.—The term "insured depository institution" has the meaning given to such term in section 3(c) of the Federal Deposit Insurance Act.~~

(2) BIF AND SAIF MEMBERS.—The terms "Bank Insurance Fund member" and "Savings Association Insurance Fund member" have the meaning given to such terms in section 7(l) of the Federal Deposit Insurance Act.

## Subtitle J—Effective Date of Title

**SEC. 191. EFFECTIVE DATE.**

Except with regard to any subtitle or other provision of this title for which a specific effective date is provided, this title and the amendments made by this title shall take effect at the end of the 270-day period beginning on the date of the enactment of this Act.

# TITLE II—FUNCTIONAL REGULATION

## Subtitle A—Brokers and Dealers

**SEC. 201. DEFINITION OF BROKER.**

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

"(4) BROKER.—

"(A) IN GENERAL.—The term 'broker' means any person engaged in the business of effecting transactions in securities for the account of others.

"(B) EXCEPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be

~~a broker because the bank engages in any of the following activities under the conditions described:~~

~~"(i) THIRD PARTY BROKERAGE ARRANGEMENTS.—The bank enters into a contractual or other arrangement with a broker or dealer registered under this title under which the broker or dealer offers brokerage services on or off the premises of the bank if—~~

~~"(I) such broker or dealer is clearly identified as the person performing the brokerage services;~~

~~"(II) the broker or dealer performs brokerage services in an area that is clearly marked and, to the extent practicable, physically separate from the routine deposit-taking activities of the bank;~~

~~"(III) any materials used by the bank to advertise or promote generally the availability of brokerage services under the contractual or other arrangement clearly indicate that the brokerage services are being provided~~

~~by the broker or dealer and not by the bank;~~

~~"(IV) any materials used by the bank to advertise or promote generally the availability of brokerage services under the contractual or other arrangement are in compliance with the Federal securities laws before distribution;~~

~~"(V) bank employees (other than associated persons of a broker or dealer who are qualified pursuant to the rules of a self-regulatory organization) perform only clerical or ministerial functions in connection with brokerage transactions including scheduling appointments with the associated persons of a broker or dealer, except that bank employees may forward customer funds or securities and may describe in general terms the range of investment vehicles available from the bank and the broker or dealer under the contractual or other arrangement;~~

~~"(VI) bank employees do not directly receive incentive compensation for any brokerage transaction unless such employees are associated persons of a broker or dealer and are qualified pursuant to the rules of a self-regulatory organization, except that the bank employees may receive compensation for the referral of any customer if the compensation is a nominal one-time cash fee of a fixed dollar amount and the payment of the fee is not contingent on whether the referral results in a transaction;~~

~~"(VII) such services are provided by the broker or dealer on a basis in which all customers which receive any services are fully disclosed to the broker or dealer;~~

~~"(VIII) the bank does not carry a securities account of the customer except in a customary custodian or trustee capacity; and~~

~~"(IX) the bank, broker, or dealer informs each customer that the bro-~~

~~kerage services are provided by the broker or dealer and not by the bank and that the securities are not deposits or other obligations of the bank, are not guaranteed by the bank, and are not insured by the Federal Deposit Insurance Corporation.~~

~~"(ii) TRUST ACTIVITIES.—The bank effects transactions in a trustee capacity, or effects transactions in a fiduciary capacity in its trust department or other department that is regularly examined by bank examiners for compliance with fiduciary principles and standards, and (in either case)—~~

~~"(I) is primarily compensated on the basis of an administration or annual fee (payable on a monthly, quarterly, or other basis), a percentage of assets under management, or a flat or capped per order processing fee, or any combination of such fees, but does not otherwise receive brokerage commissions, or other similar remuneration based on effecting trans-~~

~~actions in securities, that exceed the cost incurred by the bank in connection with executing securities transactions for trustee or fiduciary customers; and~~

~~"(II) does not publicly solicit brokerage business, other than by advertising that it effects transactions in securities in conjunction with advertising its other trust activities.~~

~~"(iii) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank effects transactions in—~~

~~"(I) commercial paper, bankers acceptances, or commercial bills;~~

~~"(II) exempted securities;~~

~~"(III) qualified Canadian government obligations as defined in section 5136 of the Revised Statutes, in conformity with section 15C of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or~~

~~"(IV) any standardized, credit enhanced debt security issued by a~~

~~foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.~~

~~"(iv) CERTAIN STOCK PURCHASE PLANS.—~~

~~"(I) EMPLOYEE BENEFIT PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of any pension, retirement, profit-sharing, bonus, thrift, savings, incentive, or other similar benefit plan for the employees of that issuer or its subsidiaries, if—~~

~~(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan; and~~

~~"(bb) the bank's compensation for such plan or program consists of administration fees, or flat or capped per order process-~~

~~ing fees, or both, but the bank does not otherwise receive brokerage commissions, or other similar remuneration based on effecting transactions in securities, that exceed the cost incurred by the bank in connection with executing securities transactions under this subclause (I).~~

~~"(II) DIVIDEND REINVESTMENT PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of that issuer's dividend reinvestment plan, if—~~

~~"(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan;~~

~~"(bb) the bank does not net shareholders' buy and sell orders, other than for programs for odd-lot holders or plans registered with the Commission; and~~

~~"(cc) the bank's compensation for such plan or program consists of administration fees, or flat or capped per order processing fees, or both, but the bank does not otherwise receive brokerage commissions, or other similar remuneration based on effecting transactions in securities, that exceed the cost incurred by the bank in connection with executing securities transactions under this subclause (II).~~

~~"(III) ISSUER PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of a plan or program for the purchase or sale of that issuer's shares, if—~~

~~"(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan or program;~~

~~"(bb) the bank does not net shareholders' buy and sell orders, other than for programs for odd-lot holders or plans registered with the Commission; and~~

~~"(cc) the bank's compensation for such plan or program consists of administration fees, or flat or capped per order processing fees, or both, but the bank does not otherwise receive brokerage commissions, or other similar remuneration based on effecting transactions in securities, that exceed the cost incurred by the bank in connection with executing securities transactions under this subclause (III).~~

~~"(IV) PERMISSIBLE DELIVERY OF MATERIALS.—The exception to being considered a broker for a bank engaged in activities described in subclauses (I), (II), and (III) will not be affected by a bank's delivery of written or electronic plan materials to em-~~

~~ployees of the issuer, shareholders of the issuer, or members of affinity groups of the issuer, so long as such materials are—~~

~~"(aa) comparable in scope or nature to that permitted by the Commission as of the date of the enactment of the Financial Services Act of 1998; or~~

~~"(bb) otherwise permitted by the Commission.~~

~~"(v) SWEEP ACCOUNTS.—The bank effects transactions as part of a program for the investment or reinvestment of bank deposit funds into any no-load, open-end management investment company registered under the Investment Company Act of 1940 that holds itself out as a money market fund.~~

~~"(vi) AFFILIATE TRANSACTIONS.—The bank effects transactions for the account of any affiliate of the bank (as defined in section 2 of the Bank Holding Company Act of 1956) other than—~~

~~"(I) a registered broker or dealer; or~~

~~"(II) an affiliate that is engaged in merchant banking, as described in section 6(c)(3)(H) of the Bank Holding company Act of 1956.~~

~~"(vii) PRIVATE SECURITIES OFFERINGS.—The bank—~~

~~"(I) effects sales as part of a primary offering of securities not involving a public offering, pursuant to section 3(b), 4(2), or 4(6) of the Securities Act of 1933 or the rules and regulations issued thereunder;~~

~~"(II) at any time after one year after the date of enactment of the Financial Services Act of 1998, is not affiliated with a broker or dealer that has been registered for more than one year; and~~

~~"(III) effects transactions exclusively with qualified investors.~~

~~"(viii) SAFEKEEPING AND CUSTODY ACTIVITIES.—~~

~~"(I) IN GENERAL.—The bank, as part of customary banking activities—~~

~~"(aa) provides safekeeping or custody services with respect to securities, including the exercise of warrants and other rights on behalf of customers;~~

~~"(bb) facilitates the transfer of funds or securities, as a custodian or a clearing agency, in connection with the clearance and settlement of its customers' transactions in securities;~~

~~"(cc) effects securities lending or borrowing transactions with or on behalf of customers as part of services provided to customers pursuant to division (aa) or (bb) or invests cash collateral pledged in connection with such transactions; or~~

~~"(dd) holds securities pledged by a customer to another person or securities subject to purchase or resale agreements in-~~

~~volving a customer, or facilitates the pledging or transfer of such securities by book entry or as otherwise provided under applicable law.~~

~~"(II) EXCEPTION FOR CARRYING BROKER ACTIVITIES.—The exception to being considered a broker for a bank engaged in activities described in subclause (I) shall not apply if the bank, in connection with such activities, acts in the United States as a carrying broker (as such term, and different formulations thereof, are used in section 15(c)(3) and the rules and regulations thereunder) for any broker or dealer, unless such carrying broker activities are engaged in with respect to government securities (as defined in paragraph (42) of this subsection).~~

~~"(ix) BANKING PRODUCTS.—The bank effects transactions in traditional banking products, as defined in section 206(a) of the Financial Services Act of 1998.~~

~~"(x) DE MINIMIS EXCEPTION.—The bank effects, other than in transactions referred to in clauses (i) through (ix), not more than 500 transactions in securities in any calendar year, and such transactions are not effected by an employee of the bank who is also an employee of a broker or dealer.~~

~~"(C) BROKER DEALER EXECUTION.—The exception to being considered a broker for a bank engaged in activities described in clauses (ii), (iv), and (viii) of subparagraph (B) shall not apply if the activities described in such provisions result in the trade in the United States of any security that is a publicly traded security in the United States, unless—~~

~~"(i) the bank directs such trade to a registered or broker dealer for execution;~~

~~"(ii) the trade is a cross trade or other substantially similar trade of a security that—~~

~~"(I) is made by the bank or between the bank and an affiliated fiduciary; and~~

~~"(II) is not in contravention of fiduciary principles established under applicable Federal or State law; or~~

~~"(iii) the trade is conducted in some other manner permitted under rules, regulations, or orders as the Commission may prescribe or issue.~~

~~"(D) NO EFFECT OF BANK EXEMPTIONS ON OTHER COMMISSION AUTHORITY.—The exception to being considered a broker for a bank engaged in activities described in subparagraphs (B) and (C) shall not affect the commission's authority under any other provision of this Act or any other securities law.~~

~~"(E) FIDUCIARY CAPACITY.—For purposes of subparagraph (B)(ii), the term 'fiduciary capacity' means—~~

~~"(i) in the capacity as trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, or custodian under a uniform gift to minor act, or as an investment adviser if the bank receives a fee for its investment advice;~~

~~"(ii) in any capacity in which the bank possesses investment discretion on behalf of another; or~~

~~"(iii) in any other similar capacity.~~

~~"(F) EXCEPTION FOR ENTITIES SUBJECT TO SECTION 15(e).—The term 'broker' does not include a bank that—~~

~~"(i) was, immediately prior to the enactment of the Financial Services Act of 1998, subject to section 15(e); and~~

~~"(ii) is subject to such restrictions and requirements as the Commission considers appropriate.".~~

**~~SEC. 202. DEFINITION OF DEALER.~~**

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

~~"(5) DEALER.—~~

~~"(A) IN GENERAL.—The term 'dealer' means any person engaged in the business of buying and selling securities for such person's own account through a broker or otherwise.~~

~~"(B) EXCEPTION FOR PERSON NOT ENGAGED IN THE BUSINESS OF DEALING.—The term 'dealer' does not include a person that buys or sells securities for such person's own~~

~~account, either individually or in a fiduciary capacity, but not as a part of a regular business.~~

~~"(C) EXCEPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a dealer because the bank engages in any of the following activities under the conditions described:~~

~~"(i) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank buys or sells—~~

~~"(I) commercial paper, bankers acceptances, or commercial bills;~~

~~"(II) exempted securities;~~

~~"(III) qualified Canadian government obligations as defined in section 5136 of the Revised Statutes of the United States, in conformity with section 15C of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or~~

~~"(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such for-~~

~~eign government to retire outstanding commercial bank loans.~~

~~"(ii) INVESTMENT, TRUSTEE, AND FIDUCIARY TRANSACTIONS.—The bank buys or sells securities for investment purposes—~~

~~"(I) for the bank; or~~

~~"(II) for accounts for which the bank acts as a trustee or fiduciary.~~

~~"(iii) ASSET-BACKED TRANSACTIONS.—The bank engages in the issuance or sale to qualified investors, through a grantor trust or otherwise, of securities backed by or representing an interest in notes, drafts, acceptances, loans, leases, receivables, other obligations, or pools of any such obligations predominantly originated by the bank, or a syndicate of banks of which the bank is a member, or an affiliate of any such bank other than a broker or dealer.~~

~~"(iv) BANKING PRODUCTS.—The bank buys or sells traditional banking products, as defined in section 206(a) of the Financial Services Act of 1998.~~

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

~~"(I) to or from a corporation, limited liability company, or partnership that owns and invests on a discretionary basis, not less than $10,000,000 in investments, or to or from a qualified investor, except that if the instrument provides for the delivery of one or more securities (other than a derivative instrument or government security), the transaction shall be effected with or through a registered broker or dealer; or~~

~~"(II) to or from other persons, except that if the derivative instrument provides for the delivery of one or more securities (other than a derivative instrument or government security), or is a security (other than a government security), the transaction shall be effected with or through a registered broker or dealer; or~~

~~"(III) to or from any person if the instrument is neither a security nor provides for the delivery of one or more securities (other than a derivative instrument).".~~

**~~SEC. 203. REGISTRATION FOR SALES OF PRIVATE SECURITIES OFFERINGS.~~**

~~Section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3) is amended by inserting after subsection (i) the following new subsection:~~

~~"(j) REGISTRATION FOR SALES OF PRIVATE SECURITIES OFFERINGS.—A registered securities association shall create a limited qualification category for any associated person of a member who effects sales as part of a primary offering of securities not involving a public offering, pursuant to section 3(b), 4(2), or 4(6) of the Securities Act of 1933 and the rules and regulations thereunder, and shall deem qualified in such limited qualification category, without testing, any bank employee who, in the six month period preceding the date of enactment of this Act, engaged in effecting such sales.".~~

**~~SEC. 204. SALES PRACTICES AND COMPLAINT PROCEDURES.~~**

~~Section 18 of the Federal Deposit Insurance Act is amended by adding at the end the following new subsection:~~

~~"(s) SALES PRACTICES AND COMPLAINT PROCEDURES WITH RESPECT TO BANK SECURITIES ACTIVITIES.—~~

~~"(1) REGULATIONS REQUIRED.—Each Federal banking agency shall prescribe and publish in final form, not later than 6 months after the date of enactment of the Financial Services Act of 1998, regulations which apply to retail transactions, solicitations, advertising, or offers of any security by any insured depository institution or any affiliate thereof other than a registered broker or dealer or an individual acting on behalf of such a broker or dealer who is an associated person of such broker or dealer. Such regulations shall include—~~

~~"(A) requirements that sales practices comply with just and equitable principles of trade that are substantially similar to the Rules of Fair Practice of the National Association of Securities Dealers; and~~

~~"(B) requirements prohibiting (i) conditioning an extension of credit on the purchase~~

~~or sale of a security; and (ii) any conduct leading a customer to believe that an extension of credit is conditioned upon the purchase or sale of a security.~~

~~"(2) PROCEDURES REQUIRED.—The appropriate Federal banking agencies shall jointly establish procedures and facilities for receiving and expeditiously processing complaints against any bank or employee of a bank arising in connection with the purchase or sale of a security by a customer, including a complaint alleging a violation of the regulations prescribed under paragraph (1), but excluding a complaint involving an individual acting on behalf of such a broker or dealer who is an associated person of such broker or dealer. The use of any such procedures and facilities by such a customer shall be at the election of the customer. Such procedures shall include provisions to refer a complaint alleging fraud to the Securities and Exchange Commission and appropriate State securities commissions.~~

~~"(3) REQUIRED ACTIONS.—The actions required by the Federal banking agencies under paragraph (2) shall include the following:~~

~~"(A) establishing a group, unit, or bureau within each such agency to receive such complaints;~~

~~"(B) developing and establishing procedures for investigating, and permitting customers to investigate, such complaints;~~

~~"(C) developing and establishing procedures for informing customers of the rights they may have in connection with such complaints;~~

~~"(D) developing and establishing procedures that allow customers a period of at least 6 years to make complaints and that do not require customers to pay the costs of the proceeding; and~~

~~"(E) developing and establishing procedures for resolving such complaints, including procedures for the recovery of losses to the extent appropriate.~~

~~"(4) CONSULTATION AND JOINT REGULATIONS.—The Federal banking agencies shall consult with each other and prescribe joint regulations pursuant to paragraphs (1) and (2), after consultation with the Securities and Exchange Commission.~~

~~"(5) PROCEDURES IN ADDITION TO OTHER REMEDIES.—The procedures and remedies provided under this subsection shall be in addition to, and not in lieu of, any other remedies available under law.~~

~~"(6) DEFINITION.—As used in this subsection—~~

~~"(A) the term 'security' has the meaning provided in section 3(a)(10) of the Securities Exchange Act of 1934;~~

~~"(B) the term 'registered broker or dealer' has the meaning provided in section 3(a)(48) of such Act; and~~

~~"(C) the term 'associated person' has the meaning provided in section 3(a)(18) of such Act.".~~

**~~SEC. 205. INFORMATION SHARING.~~**

~~Section 18 of the Federal Deposit Insurance Act is amended by adding at the end the following new subsection:~~

~~"(t) RECORDKEEPING REQUIREMENTS.—~~

~~"(1) REQUIREMENTS.—Each appropriate Federal banking agency, after consultation with and consideration of the views of the Commission, shall establish recordkeeping requirements for banks relying on exceptions contained in paragraphs (4) and~~

~~(5) of section 3(a) of the Securities Exchange Act of 1934. Such recordkeeping requirements shall be sufficient to demonstrate compliance with the terms of such exceptions and be designed to facilitate compliance with such exceptions. Each appropriate Federal banking agency shall make any such information available to the Commission upon request.~~

~~"(2) DEFINITIONS.—As used in this subsection the term 'Commission' means the Securities and Exchange Commission.".~~

**~~SEC. 206. DEFINITION AND TREATMENT OF BANKING PRODUCTS.~~**

~~(a) DEFINITION OF TRADITIONAL BANKING PRODUCT.—~~

~~(1) IN GENERAL.—For purposes of paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4), (5)), the term 'traditional banking product' means—~~

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

~~(B) a banker's acceptance;~~

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

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

~~(E) a participation in a loan which the bank or an affiliate of the bank (other than a broker or dealer) funds, participates in, or owns that is sold—~~

~~(i) to qualified investors; or~~

~~(ii) to other persons that—~~

~~"(I) have the opportunity to review and assess any material information, including information regarding the borrower's creditworthiness; and~~

~~"(II) based on such factors as financial sophistication, net worth, and knowledge and experience in financial matters, have the capability to evaluate the information available, as determined under generally applicable banking standards or guidelines; or~~

~~(F) any derivative instrument, whether or not individually negotiated, involving or relating to—~~

~~(i) foreign currencies, except options on foreign currencies that trade on a national securities exchange;~~

~~(ii) interest rates, except interest rate derivative instruments: (I) that are based on a security or a group or index of securities (other than government securities or a group or index of government securities); (II) that provide for the delivery of one or more securities (other than government securities); or (III) that trade on a national securities exchange; or~~

~~(iii) commodities, other rates, indices, or other assets, except derivative instruments: (I) that are securities or that are based on a group or index of securities (other than government securities or a group or index of government securities); (II) that provide for the delivery of one or more securities (other than government securities); or (III) that trade on a national securities exchange.~~

~~(2) CLASSIFICATION LIMITED.—Classification of a particular product as a traditional banking product pursuant to this subsection shall not be construed as finding or implying that such product is or is not a security for any purpose under the securities laws, or is or is not an account, agreement,~~

~~contract, or transaction for any purpose under the Commodity Exchange Act.~~

~~(3) DEFINITIONS.—For purposes of this subsection—~~

~~(A) the term "bank" has the meaning provided in section 3(a)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(6);~~

~~(B) the term "qualified investor" has the meaning provided in section 3(a)(55) of such Act;~~

~~(C) the term "government securities" has the meaning provided in section 3(a)(42) of such Act, and, for purposes of this subsection, commercial paper, bankers acceptances, and commercial bills shall be treated in the same manner as government securities; and~~

~~(D) the term "Federal banking agency" has the meaning provided in section 3(z) of the Federal Deposit Insurance Act (12 U.S.C. 1813(z)).~~

~~(b) TREATMENT OF NEW BANKING PRODUCTS FOR PURPOSES OF BROKER/DEALER REQUIREMENTS.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following new subsection:~~

~~"(i) RULEMAKING TO EXTEND REQUIREMENTS TO NEW BANKING PRODUCTS.—~~

~~"(1) LIMITATION.—The Commission shall not—~~

~~"(A) require a bank to register as a broker or dealer under this section because the bank engages in any transaction in, or buys or sells, a new banking product; or~~

~~"(B) bring an action against a bank for a failure to comply with a requirement described in subparagraph (A);~~

~~unless the Commission has imposed such requirement by rule or regulation issued in accordance with this section.~~

~~"(2) CRITERIA FOR RULEMAKING.—The Commission shall not impose a requirement under paragraph (1) of this subsection with respect to any new banking product unless the Commission determines that—~~

~~"(A) the new banking product is a security; and~~

~~"(B) imposing such requirement is necessary or appropriate in the public interest and for the protection of investors, consistent with the requirements of section 3(f).~~

~~"(3) NEW BANKING PRODUCT.—For purposes of this subsection, the term 'new banking product' means a product that—~~

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

~~"(B) is not a traditional banking product, as such term is defined in section 206(a) of the Financial Services Act of 1998.~~

~~"(4) CONSULTATION.—In promulgating rules under this subsection, the Commission shall consult with and consider the views of the appropriate regulatory agencies concerning the proposed rule and the impact on the banking industry.".~~

**~~SEC. 207. DERIVATIVE INSTRUMENT AND QUALIFIED INVESTOR DEFINED.~~**

~~Section 3(a) of the Securities Exchange Act of 1934 is amended by adding at the end the following new paragraphs:~~

~~"(54) DERIVATIVE INSTRUMENT.—~~

~~"(A) DEFINITION.—The term 'derivative instrument' means any individually negotiated contract, agreement, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure~~

~~or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets, but does not include a traditional banking product, as defined in section 206(a) of the Financial Services Act of 1998.~~

~~"(B) CLASSIFICATION LIMITED.—Classification of a particular contract as a derivative instrument pursuant to this paragraph shall not be construed as finding or implying that such instrument is or is not a security for any purpose under the securities laws, or is or is not an account, agreement, contract, or transaction for any purpose under the Commodity Exchange Act.~~

~~"(55) QUALIFIED INVESTOR.—~~

~~"(A) DEFINITION.—For purposes of this title and section 206(a)(1)(E) of the Financial Services Act of 1998, the term 'qualified investor' means—~~

~~"(i) any investment company registered with the Commission under section 8 of the Investment Company Act of 1940;~~

~~"(ii) any issuer eligible for an exclusion from the definition of investment com-~~

~~pany pursuant to section 3(c)(7) of the Investment Company Act of 1940;~~

~~"(iii) any bank (as defined in paragraph (6) of this subsection), savings and loan association (as defined in section 3(b) of the Federal Deposit Insurance Act), broker, dealer, insurance company (as defined in section 2(a)(13) of the Securities Act of 1933), or business development company (as defined in section 2(a)(48) of the Investment Company Act of 1940);~~

~~"(iv) any small business investment company licensed by the United States Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958;~~

~~"(v) any State sponsored employee benefit plan, or any other employee benefit plan, within the meaning of the Employee Retirement Income Security Act of 1974, other than an individual retirement account, if the investment decisions are made by a plan fiduciary, as defined in section 3(21) of that Act, which is either a bank,~~

~~savings and loan association, insurance company, or registered investment adviser;~~

~~"(vi) any trust whose purchases of securities are directed by a person described in clauses (i) through (v) of this subparagraph;~~

~~"(vii) any market intermediary exempt under section 3(c)(2) of the Investment Company Act of 1940;~~

~~"(viii) any associated person of a broker or dealer other than a natural person;~~

~~"(ix) any foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978); or~~

~~"(x) the government of any foreign country.~~

~~"(B) ADDITIONAL QUALIFICATIONS DEFINED.—For purposes of paragraphs (4)(B)(vii) and (5)(C)(iii) of this subsection, and section 206(a)(1)(E) of the Financial Services Act of 1998, the term 'qualified investor' also means—~~

~~"(i) any corporation, company, or partnership that owns and invests on a dis-~~

~~cretionary basis, not less than $10,000,000 in investments;~~

~~"(ii) any natural person who owns and invests on a discretionary basis, not less than $10,000,000 in investments;~~

~~"(iii) any government or political subdivision, agency, or instrumentality of a government who owns and invests on a discretionary basis not less than $50,000,000 in investments; or~~

~~"(iv) any multinational or supranational entity or any agency or instrumentality thereof.~~

~~"(C) ADDITIONAL AUTHORITY.—The Commission may, by rule or order, define a 'qualified investor' as any other person, other than a natural person, taking into consideration such factors as the person's financial sophistication, net worth, and knowledge and experience in financial matters.".~~

**~~SEC. 208. GOVERNMENT SECURITIES DEFINED.~~**

~~Section 3(a)(42) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(42)) is amended—~~

~~(1) by striking "or" at the end of subparagraph (C);~~

(2) by striking the period at the end of subparagraph (D) and inserting "; or"; and

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

"(E) for purposes of section 15C as applied to a bank, a qualified Canadian government obligation as defined in section 5136 of the Revised Statutes.".

**SEC. 209. EFFECTIVE DATE.**

This subtitle shall take effect at the end of the 270-day period beginning on the date of the enactment of this Act.

**SEC. 210. RULE OF CONSTRUCTION.**

Nothing in this Act shall supersede, affect, or otherwise limit the scope and applicability of the Commodity Exchange Act (7 U.S.C. 1 et seq.).

## Subtitle B—Bank Investment Company Activities

**SEC. 211. CUSTODY OF INVESTMENT COMPANY ASSETS BY AFFILIATED BANK.**

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

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

~~(2) by striking "(f) Every registered" and inserting the following:~~

~~"(f) CUSTODY OF SECURITIES.—~~

~~"(1) Every registered";~~

~~(3) by redesignating the second, third, fourth, and fifth sentences of such subsection as paragraphs (2) through (5), respectively, and indenting the left margin of such paragraphs appropriately; and~~

~~(4) by adding at the end the following new paragraph:~~

~~"(6) The Commission may adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the conditions under which a bank, or an affiliated person of a bank, either of which is an affiliated person, promoter, organizer, or sponsor of, or principal underwriter for, a registered management company may serve as custodian of that registered management company.".~~

~~(b) UNIT INVESTMENT TRUSTS.—Section 26 of the Investment Company Act of 1940 (15 U.S.C. 80a–26) is amended—~~

~~(1) by redesignating subsections (b) through (e) as subsections (c) through (f), respectively; and~~

~~(2) by inserting after subsection (a) the following new subsection:~~

~~"(b) The Commission may adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the conditions under which a bank, or an affiliated person of a bank, either of which is an affiliated person of a principal underwriter for, or depositor of, a registered unit investment trust, may serve as trustee or custodian under subsection (a)(1).".~~

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

~~(1) in paragraph (1), by striking "or" at the end;~~

~~(2) in paragraph (2), by striking the period at the end and inserting "; or"; and~~

~~(3) by inserting after paragraph (2) the following:~~

~~"(3) as custodian.".~~

**~~SEC. 212. LENDING TO AN AFFILIATED INVESTMENT COMPANY.~~**

~~Section 17(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–17(a)) is amended—~~

~~(1) by striking "or" at the end of paragraph (2);~~

~~(2) by striking the period at the end of paragraph (3) and inserting "; or"; and~~

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

"(4) to loan money or other property to such registered company, or to any company controlled by such registered company, in contravention of such rules, regulations, or orders as the Commission may prescribe or issue consistent with the protection of investors.".

**SEC. 213. INDEPENDENT DIRECTORS.**

(a) IN GENERAL.—Section 2(a)(19)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)(A)) is amended—

(1) by striking clause (v) and inserting the following new clause:

"(v) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

"(I) the investment company;

~~"(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services; or~~

~~"(III) any account over which the investment company's investment adviser has brokerage placement discretion,";~~

~~(2) by redesignating clause (vi) as clause (vii); and~~

~~(3) by inserting after clause (v) the following new clause:~~

~~"(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to—~~

~~"(I) the investment company;~~

~~"(II) any other investment company having the same investment ad-~~

~~viser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services; or~~

~~"(III) any account for which the investment company's investment adviser has borrowing authority,".~~

~~(b) CONFORMING AMENDMENT.—Section 2(a)(19)(B) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)(B)) is amended—~~

~~(1) by striking clause (v) and inserting the following new clause:~~

~~"(v) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—~~

~~"(I) any investment company for which the investment adviser or principal underwriter serves as such;~~

~~"(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such; or~~

~~"(III) any account over which the investment adviser has brokerage placement discretion,";~~

~~(2) by redesignating clause (vi) as clause (vii), and~~

~~(3) by inserting after clause (v) the following new clause:~~

~~"(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to—~~

~~"(I) any investment company for which the investment adviser or principal underwriter serves as such;~~

~~"(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such; or~~

~~"(III) any account for which the investment adviser has borrowing authority,".~~

~~(c) AFFILIATION OF DIRECTORS.—Section 10(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–10(c)) is amended by striking "bank, except" and inserting "bank (together with its affiliates and subsidiaries) or any one bank holding company (together with its affiliates and subsidiaries) (as such terms are defined in section 2 of the Bank Holding Company Act of 1956), except".~~

~~(d) EFFECTIVE DATE.—The amendments made by this section shall take effect at the end of the 1-year period beginning on the date of enactment of this subtitle.~~

**~~SEC. 214. ADDITIONAL SEC DISCLOSURE AUTHORITY.~~**

~~Section 35(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–34(a)) is amended to read as follows:~~

~~"(a) MISREPRESENTATION OF GUARANTEES.—~~

~~"(1) IN GENERAL.—It shall be unlawful for any person, issuing or selling any security of which a registered investment company is the issuer, to represent or imply in any manner whatsoever that such security or company—~~

~~"(A) has been guaranteed, sponsored, recommended, or approved by the United States, or any agency, instrumentality or officer of the United States;~~

~~"(B) has been insured by the Federal Deposit Insurance Corporation; or~~

~~"(C) is guaranteed by or is otherwise an obligation of any bank or insured depository institution.~~

~~"(2) DISCLOSURES.—Any person issuing or selling the securities of a registered investment company that is advised by, or sold through, a bank shall prominently disclose that an investment in the company is not insured by the Federal Deposit Insurance Corporation or any other government agency. The Commission may adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the manner in which the disclosure under this paragraph shall be provided.~~

~~"(3) DEFINITIONS.—The terms 'insured depository institution' and 'appropriate Federal banking agency' have the meaning given to such terms in section 3 of the Federal Deposit Insurance Act.".~~

**~~SEC. 215. DEFINITION OF BROKER UNDER THE INVESTMENT COMPANY ACT OF 1940.~~**

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

~~"(6) The term 'broker' has the same meaning as in the Securities Exchange Act of 1934, except that such term does not include any person solely by reason of the fact that such person is an underwriter for one or more investment companies.".~~

**~~SEC. 216. DEFINITION OF DEALER UNDER THE INVESTMENT COMPANY ACT OF 1940.~~**

~~Section 2(a)(11) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(11)) is amended to read as follows:~~

~~"(11) The term 'dealer' has the same meaning as in the Securities Exchange Act of 1934, but does not include an insurance company or investment company.".~~

**~~SEC. 217. REMOVAL OF THE EXCLUSION FROM THE DEFINITION OF INVESTMENT ADVISER FOR BANKS THAT ADVISE INVESTMENT COMPANIES.~~**

~~(a) INVESTMENT ADVISER.—Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)) is amended in subparagraph (A), by striking "investment company" and inserting "investment company, except that the term 'investment adviser' includes any bank or bank holding company to the extent that such bank or bank holding company serves or acts as an investment adviser to a registered investment company, but if, in the case of a bank, such services or actions are performed through a separately identifiable department or division, the department or division, and not the bank itself, shall be deemed to be the investment adviser".~~

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

~~"(26) The term 'separately identifiable department or division' of a bank means a unit—~~

~~"(A) that is under the direct supervision of an officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's investment adviser activities for one or more investment companies,~~

~~including the supervision of all bank employees engaged in the performance of such activities; and~~

~~"(B) for which all of the records relating to its investment adviser activities are separately maintained in or extractable from such unit's own facilities or the facilities of the bank, and such records are so maintained or otherwise accessible as to permit independent examination and enforcement by the Commission of this Act or the Investment Company Act of 1940 and rules and regulations promulgated under this Act or the Investment Company Act of 1940.".~~

**~~SEC. 218. DEFINITION OF BROKER UNDER THE INVESTMENT ADVISERS ACT OF 1940.~~**

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

~~"(3) The term 'broker' has the same meaning as in the Securities Exchange Act of 1934.".~~

**SEC. 219. DEFINITION OF DEALER UNDER THE INVESTMENT ADVISERS ACT OF 1940.**

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

"(7) The term 'dealer' has the same meaning as in the Securities Exchange Act of 1934, but does not include an insurance company or investment company.".

**SEC. 220. INTERAGENCY CONSULTATION.**

The Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) is amended by inserting after section 210 the following new section:

**"SEC. 210A. CONSULTATION.**

"(a) EXAMINATION RESULTS AND OTHER INFORMATION.—

"(1) The appropriate Federal banking agency shall provide the Commission upon request the results of any examination, reports, records, or other information to which such agency may have access with respect to the investment advisory activities—

"(A) of any—

"(i) bank holding company;

"(ii) bank; or

"(iii) separately identifiable department or division of a bank,

that is registered under section 203 of this title; and

"(B) in the case of a bank holding company or bank that has a subsidiary or a separately identifiable department or division registered under that section, of such bank or bank holding company.

"(2) The Commission shall provide to the appropriate Federal banking agency upon request the results of any examination, reports, records, or other information with respect to the investment advisory activities of any bank holding company, bank, or separately identifiable department or division of a bank, any of which is registered under section 203 of this title.

"(b) EFFECT ON OTHER AUTHORITY.—Nothing in this section shall limit in any respect the authority of the appropriate Federal banking agency with respect to such bank holding company, bank, or department or division under any provision of law.

"(c) DEFINITION.—For purposes of this section, the term 'appropriate Federal banking agency' shall have the same meaning as in section 3 of the Federal Deposit Insurance Act.".

~~**SEC. 221. TREATMENT OF BANK COMMON TRUST FUNDS.**~~

~~(a) SECURITIES ACT OF 1933.—Section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is amended by striking "or any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian" and inserting "or any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term 'investment company' under section 3(c)(3) of the Investment Company Act of 1940".~~

~~(b) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a)(12)(A)(iii) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)(A)(iii)) is amended to read as follows:~~

> ~~"(iii) any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term 'investment company' under section 3(c)(3) of the Investment Company Act of 1940;".~~

~~(c) INVESTMENT COMPANY ACT OF 1940.—Section 3(c)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(3)) is amended by inserting before the period the following: ", if—~~

~~"(A) such fund is employed by the bank solely as an aid to the administration of trusts, estates, or other accounts created and maintained for a fiduciary purpose;~~

~~"(B) except in connection with the ordinary advertising of the bank's fiduciary services, interests in such fund are not—~~

~~"(i) advertised; or~~

~~"(ii) offered for sale to the general public; and~~

~~"(C) fees and expenses charged by such fund are not in contravention of fiduciary principles established under applicable Federal or State law".~~

**~~SEC. 222. INVESTMENT ADVISERS PROHIBITED FROM HAVING CONTROLLING INTEREST IN REGISTERED INVESTMENT COMPANY.~~**

~~Section 15 of the Investment Company Act of 1940 (15 U.S.C. 80a–15) is amended by adding at the end the following new subsection:~~

~~"(g) CONTROLLING INTEREST IN INVESTMENT COMPANY PROHIBITED.—~~

~~"(1) IN GENERAL.—If an investment adviser to a registered investment company, or an affiliated person of that investment adviser, holds a control-~~

~~ling interest in that registered investment company in a trustee or fiduciary capacity, such person shall—~~

~~"(A) if it holds the shares in a trustee or fiduciary capacity with respect to any employee benefit plan subject to the Employee Retirement Income Security Act of 1974, transfer the power to vote the shares of the investment company through to another person acting in a fiduciary capacity with respect to the plan who is not an affiliated person of that investment adviser or any affiliated person thereof; or~~

~~"(B) if it holds the shares in a trustee or fiduciary capacity with respect to any person or entity other than an employee benefit plan subject to the Employee Retirement Income Security Act of 1974—~~

~~"(i) transfer the power to vote the shares of the investment company through to—~~

~~"(I) the beneficial owners of the shares;~~

~~"(II) another person acting in a fiduciary capacity who is not an affili-~~

~~ated person of that investment adviser or any affiliated person thereof; or~~

~~"(III) any person authorized to receive statements and information with respect to the trust who is not an affiliated person of that investment adviser or any affiliated person thereof;~~

~~"(ii) vote the shares of the investment company held by it in the same proportion as shares held by all other shareholders of the investment company; or~~

~~"(iii) vote the shares of the investment company as otherwise permitted under such rules, regulations, or orders as the Commission may prescribe or issue consistent with the protection of investors.~~

~~"(2) EXEMPTION.—Paragraph (1) shall not apply to any investment adviser to a registered investment company, or any affiliated person of that investment adviser, that holds shares of the investment company in a trustee or fiduciary capacity if that registered investment company consists solely of assets held in such capacities.~~

~~"(3) SAFE HARBOR.—No investment adviser to a registered investment company or any affiliated person of such investment adviser shall be deemed to have acted unlawfully or to have breached a fiduciary duty under State or Federal law solely by reason of acting in accordance with clause (i), (ii), or (iii) of paragraph (1)(B).".~~

**~~SEC. 223. CONFORMING CHANGE IN DEFINITION.~~**

~~Section 2(a)(5) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(5)) is amended by striking "(A) a banking institution organized under the laws of the United States" and inserting "(A) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or a branch or agency of a foreign bank (as such terms are defined in section 1(b) of the International Banking Act of 1978)".~~

**~~SEC. 224. CONFORMING AMENDMENT.~~**

~~Section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2) is amended by adding at the end the following new subsection:~~

~~"(c) CONSIDERATION OF PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION.—Whenever pursuant to this title the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the~~

~~public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.''.~~

**~~SEC. 225. EFFECTIVE DATE.~~**

~~This subtitle shall take effect 90 days after the date of the enactment of this Act.~~

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

**~~SEC. 231. SUPERVISION OF INVESTMENT BANK HOLDING COMPANIES BY THE SECURITIES AND EXCHANGE COMMISSION.~~**

~~(a) AMENDMENT.—Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended—~~

~~(1) by redesignating subsection (i) as subsection (l); and~~

~~(2) by inserting after subsection (h) the following new subsections:~~

~~''(i) INVESTMENT BANK HOLDING COMPANIES.—~~

~~''(1) ELECTIVE SUPERVISION OF AN INVESTMENT BANK HOLDING COMPANY NOT HAVING A BANK OR SAVINGS ASSOCIATION AFFILIATE.—~~

~~"(A) IN GENERAL.—An investment bank holding company that is not—~~

~~"(i) an affiliate of a wholesale financial institution, an insured bank (other than an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956), or a savings association;~~

~~"(ii) a foreign bank, foreign company, or company that is described in section 8(a) of the International Banking Act of 1978; or~~

~~"(iii) a foreign bank that controls, directly or indirectly, a corporation chartered under section 25A of the Federal Reserve Act,~~

~~may elect to become supervised by filing with the Commission a notice of intention to become supervised, pursuant to subparagraph (B) of this paragraph. Any investment bank holding company filing such a notice shall be supervised in accordance with this section and comply with the rules promulgated by the Commission appli-~~

~~cable to supervised investment bank holding companies.~~

~~"(B) NOTIFICATION OF STATUS AS A SUPERVISED INVESTMENT BANK HOLDING COMPANY.—An investment bank holding company that elects under subparagraph (A) to become supervised by the Commission shall file with the Commission a written notice of intention to become supervised by the Commission in such form and containing such information and documents concerning such investment bank holding company as the Commission, by rule, may prescribe as necessary or appropriate in furtherance of the purposes of this section. Unless the Commission finds that such supervision is not necessary or appropriate in furtherance of the purposes of this section, such supervision shall become effective 45 days after receipt of such written notice by the Commission or within such shorter time period as the Commission, by rule or order, may determine.~~

~~"(2) ELECTION NOT TO BE SUPERVISED BY THE COMMISSION AS AN INVESTMENT BANK HOLDING COMPANY.—~~

~~"(A) VOLUNTARY WITHDRAWAL.—A supervised investment bank holding company that is supervised pursuant to paragraph (1) may, upon such terms and conditions as the Commission deems necessary or appropriate, elect not to be supervised by the Commission by filing a written notice of withdrawal from Commission supervision. Such notice shall not become effective until one year after receipt by the Commission, or such shorter or longer period as the Commission deems necessary or appropriate to ensure effective supervision of the material risks to the supervised investment bank holding company and to the affiliated broker or dealer, or to prevent evasion of the purposes of this section.~~

~~"(B) DISCONTINUATION OF COMMISSION SUPERVISION.—If the Commission finds that any supervised investment bank holding company that is supervised pursuant to paragraph (1) is no longer in existence or has ceased to be an investment bank holding company, or if the Commission finds that continued supervision of such a supervised investment bank holding company is not consistent with the purposes of this~~

~~section, the Commission may discontinue the supervision pursuant to a rule or order, if any, promulgated by the Commission under this section.~~

~~"(3) SUPERVISION OF INVESTMENT BANK HOLDING COMPANIES.—~~

~~"(A) RECORDKEEPING AND REPORTING.—~~

~~"(i) IN GENERAL.—Every supervised investment bank holding company and each affiliate thereof shall make and keep for prescribed periods such records, furnish copies thereof, and make such reports, as the Commission may require by rule, in order to keep the Commission informed as to—~~

~~"(I) the company's or affiliate's activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and transactions and relationships between any broker or dealer affiliate of the supervised investment bank holding company; and~~

~~"(II) the extent to which the company or affiliate has complied with~~

~~the provisions of this Act and regulations prescribed and orders issued under this Act.~~

~~"(ii) FORM AND CONTENTS.—Such records and reports shall be prepared in such form and according to such specifications (including certification by an independent public accountant), as the Commission may require and shall be provided promptly at any time upon request by the Commission. Such records and reports may include—~~

~~"(I) a balance sheet and income statement;~~

~~"(II) an assessment of the consolidated capital of the supervised investment bank holding company;~~

~~"(III) an independent auditor's report attesting to the supervised investment bank holding company's compliance with its internal risk management and internal control objectives; and~~

~~"(IV) reports concerning the extent to which the company or affiliate~~

~~has complied with the provisions of this title and any regulations prescribed and orders issued under this title.~~

~~"(B) USE OF EXISTING REPORTS.—~~

~~"(i) IN GENERAL.—The Commission shall, to the fullest extent possible, accept reports in fulfillment of the requirements under this paragraph that the supervised investment bank holding company or its affiliates have been required to provide to another appropriate regulatory agency or self-regulatory organization.~~

~~"(ii) AVAILABILITY.—A supervised investment bank holding company or an affiliate of such company shall provide to the Commission, at the request of the Commission, any report referred to in clause (i).~~

~~"(C) EXAMINATION AUTHORITY.—~~

~~"(i) FOCUS OF EXAMINATION AUTHORITY.—The Commission may make examinations of any supervised investment bank holding company and any affiliate of such company in order to—~~

~~"(I) inform the Commission regarding—~~

~~"(aa) the nature of the operations and financial condition of the supervised investment bank holding company and its affiliates;~~

~~"(bb) the financial and operational risks within the supervised investment bank holding company that may affect any broker or dealer controlled by such supervised investment bank holding company; and~~

~~"(cc) the systems of the supervised investment bank holding company and its affiliates for monitoring and controlling those risks; and~~

~~"(II) monitor compliance with the provisions of this subsection, provisions governing transactions and relationships between any broker or dealer affiliated with the supervised investment bank holding company and~~

~~any of the company's other affiliates, and applicable provisions of subchapter II of chapter 53, title 31, United States Code (commonly referred to as the 'Bank Secrecy Act') and regulations thereunder.~~

~~"(ii) RESTRICTED FOCUS OF EXAMINATIONS.—The Commission shall limit the focus and scope of any examination of a supervised investment bank holding company to—~~

~~"(I) the company; and~~

~~"(II) any affiliate of the company that, because of its size, condition, or activities, the nature or size of the transactions between such affiliate and any affiliated broker or dealer, or the centralization of functions within the holding company system, could, in the discretion of the Commission, have a materially adverse effect on the operational or financial condition of the broker or dealer.~~

~~"(iii) DEFERENCE TO OTHER EXAMINATIONS.—For purposes of this subpara-~~

~~graph, the Commission shall, to the fullest extent possible, use the reports of examination of an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956 made by the appropriate regulatory agency, or of a licensed insurance company made by the appropriate State insurance regulator.~~

~~"(4) HOLDING COMPANY CAPITAL.—~~

~~"(A) AUTHORITY.—If the Commission finds that it is necessary to adequately supervise investment bank holding companies and their broker or dealer affiliates consistent with the purposes of this subsection, the Commission may adopt capital adequacy rules for supervised investment bank holding companies.~~

~~"(B) METHOD OF CALCULATION.—In developing rules under this paragraph:~~

~~"(i) DOUBLE LEVERAGE.—The Commission shall consider the use by the supervised investment bank holding company of debt and other liabilities to fund capital investments in affiliates.~~

~~"(ii) NO UNWEIGHTED CAPITAL RATIO.—The Commission shall not impose under this section a capital ratio that is not based on appropriate risk-weighting considerations.~~

~~"(iii) NO CAPITAL REQUIREMENT ON REGULATED ENTITIES.—The Commission shall not, by rule, regulation, guideline, order or otherwise, impose any capital adequacy provision on a nonbanking affiliate (other than a broker or dealer) that is in compliance with applicable capital requirements of another Federal regulatory authority or State insurance authority.~~

~~"(iv) APPROPRIATE EXCLUSIONS.—The Commission shall take full account of the applicable capital requirements of another Federal regulatory authority or State insurance regulator.~~

~~"(C) INTERNAL RISK MANAGEMENT MODELS.—The Commission may incorporate internal risk management models into its capital adequacy rules for supervised investment bank holding companies.~~

~~"(5) FUNCTIONAL REGULATION OF BANKING AND INSURANCE ACTIVITIES OF SUPERVISED INVESTMENT BANK HOLDING COMPANIES.—The Commission shall defer to—~~

~~"(A) the appropriate regulatory agency with regard to all interpretations of, and the enforcement of, applicable banking laws relating to the activities, conduct, ownership, and operations of banks, and institutions described in subparagraph (D), (F), and (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956; and~~

~~"(B) the appropriate State insurance regulators with regard to all interpretations of, and the enforcement of, applicable State insurance laws relating to the activities, conduct, and operations of insurance companies and insurance agents.~~

~~"(6) DEFINITIONS.—For purposes of this subsection and subsection (j)—~~

~~"(A) The term 'investment bank holding company' means—~~

~~"(i) any person other than a natural person that owns or controls one or more brokers or dealers; and~~

~~"(ii) the associated persons of the investment bank holding company.~~

~~"(B) The term 'supervised investment bank holding company' means any investment bank holding company that is supervised by the Commission pursuant to this subsection.~~

~~"(C) The terms 'affiliate', 'bank', 'bank holding company', 'company', 'control', and 'savings association' have the meanings given to those terms in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).~~

~~"(D) The term 'insured bank' has the meaning given to that term in section 3 of the Federal Deposit Insurance Act.~~

~~"(E) The term 'foreign bank' has the meaning given to that term in section 1(b)(7) of the International Banking Act of 1978.~~

~~"(F) The terms "person associated with an investment bank holding company' and "associated person of an investment bank holding company' means any person directly or indirectly controlling, controlled by, or under common control with, an investment bank holding company.~~

~~"(j) COMMISSION BACKUP AUTHORITY.—~~

"(1) AUTHORITY.—The Commission may make inspections of any wholesale financial holding company that—

"(A) controls a wholesale financial institution;

"(B) is not a foreign bank; and

"(C) does not control an insured bank (other than an institution permitted under subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956) or a savings association,

and any affiliate of such company, for the purpose of monitoring and enforcing compliance by the wholesale financial holding company with the Federal securities laws.

"(2) LIMITATION.—The Commission shall limit the focus and scope of any inspection under paragraph (1) to those transactions, policies, procedures, or records that are reasonably necessary to monitor and enforce compliance by the wholesale financial holding company or any affiliate with the Federal securities laws.

"(3) DEFERENCE TO EXAMINATIONS.—To the fullest extent possible, the Commission shall use, for

~~the purposes of this subsection, the reports of examinations—~~

~~"(A) made by the Board of Governors of the Federal Reserve System of any wholesale financial holding company that is supervised by the Board;~~

~~"(B) made by or on behalf of any State regulatory agency responsible for the supervision of an insurance company of any licensed insurance company; and~~

~~"(C) made by any Federal or State banking agency of any bank or institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956.~~

~~"(4) NOTICE.—To the fullest extent possible, the Commission shall notify the appropriate regulatory agency prior to conducting an inspection of a wholesale financial institution or institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956.~~

~~"(k) AUTHORITY TO LIMIT DISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any infor-~~

~~mation required to be reported under subsection (h) or (i) or any information supplied to the Commission by any domestic or foreign regulatory agency that relates to the financial or operational condition of any associated person of a broker or dealer, investment bank holding company, or any affiliate of an investment bank holding company. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. In prescribing regulations to carry out the requirements of this subsection, the Commission shall designate information described in or obtained pursuant to subparagraphs (A), (B), and (C) of subsection (i)(5) as confidential information for purposes of section 24(b)(2) of this title.''.~~

~~(b) CONFORMING AMENDMENTS.—~~

~~(1) Section 3(a)(34) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34)) is amended by adding at the end the following new subparagraphs:~~

~~"(H) When used with respect to an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956—~~

~~"(i) the Comptroller of the Currency, in the case of a national bank or a bank in the District of Columbia examined by the Comptroller of the Currency;~~

~~"(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System or any corporation chartered under section 25A of the Federal Reserve Act;~~

~~"(iii) the Federal Deposit Insurance Corporation, in the case of any other bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act; or~~

~~"(iv) the Commission in the case of all other such institutions.".~~

~~(2) Section 1112(e) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3412(e)) is amended—~~

~~(A) by striking "this title" and inserting "law"; and~~

~~(B) by inserting ", examination reports" after "financial records".~~

## ~~Subtitle D—Study~~

### ~~SEC. 241. STUDY OF METHODS TO INFORM INVESTORS AND CONSUMERS OF UNINSURED PRODUCTS.~~

~~Within one year after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to the Congress regarding the efficacy, costs, and benefits of requiring that any depository institution that accepts federally insured deposits and that, directly or through a contractual or other arrangement with a broker, dealer, or agent, buys from, sells to, or effects transactions for retail investors in securities or consumers of insurance to inform such investors and consumers through the use of a logo or seal that the security or insurance is not insured by the Federal Deposit Insurance Corporation.~~

**~~SEC. 242. STUDY OF LIMITATION ON FEES ASSOCIATED WITH ACQUIRING FINANCIAL PRODUCTS.~~**

~~Before the end of the 1-year period beginning on the date of the enactment of this Act, the Comptroller General of the United States shall submit a report to the Congress regarding the efficacy and benefits of uniformly limiting any commissions, fees, markups, or other costs incurred by customers in the acquisition of financial products.~~

# ~~Subtitle E—Disclosure of Customer Costs of Acquiring Financial Products~~

**~~SEC. 251. IMPROVED AND CONSISTENT DISCLOSURE.~~**

~~(a) REVISED REGULATIONS REQUIRED.—Within one year after the date of enactment of this Act, each Federal financial regulatory authority shall prescribe rules, or revisions to its rules, to improve the accuracy, simplicity, and completeness, and to make more consistent, the disclosure of information by persons subject to the jurisdiction of such regulatory authority concerning any commissions, fees, markups, or other costs incurred by customers in the acquisition of financial products.~~

~~(b) CONSULTATION.—In prescribing rules and revisions under subsection (a), the Federal financial regulatory authorities shall consult with each other and with appropriate State financial regulatory authorities.~~

~~(c) CONSIDERATION OF EXISTING DISCLOSURES.—In prescribing rules and revisions under subsection (a), the Federal financial regulatory authorities shall consider the sufficiency and appropriateness of then existing laws and rules applicable to persons subject to their jurisdiction, and may prescribe exemptions from the rules and revisions required by subsection (a) to the extent appropriate in light of the objective of this section to increase the consistency of disclosure practices.~~

~~(d) ENFORCEMENT.—Any rule prescribed by a Federal financial regulatory authority pursuant to this section shall, for purposes of enforcement, be treated as a rule prescribed by such regulatory authority pursuant to the statute establishing such regulatory authority's jurisdiction over the persons to whom such rule applies.~~

~~(e) DEFINITION.—As used in this section, the term "Federal financial regulatory authority" means the Board of Governors of the Federal Reserve System, the Securities and Exchange Commission, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Commodity Futures Trading Commission, and any self-regulatory organization under the supervision of any of the foregoing.~~

# TITLE III—INSURANCE

## Subtitle A—State Regulation of Insurance

### SEC. 301. STATE REGULATION OF THE BUSINESS OF INSURANCE.

The Act entitled "An Act to express the intent of the Congress with reference to the regulation of the business of insurance" and approved March 9, 1945 (15 U.S.C. 1011 et seq.), commonly referred to as the "McCarran-Ferguson Act") remains the law of the United States.

### SEC. 302. MANDATORY INSURANCE LICENSING REQUIREMENTS.

No person or entity shall provide insurance in a State as principal or agent unless such person or entity is licensed as required by the appropriate insurance regulator of such State in accordance with the relevant State insurance law, subject to section 104 of this Act.

### SEC. 303. FUNCTIONAL REGULATION OF INSURANCE.

The insurance sales activity of any person or entity shall be functionally regulated by the States, subject to section 104 of this Act.

### SEC. 304. INSURANCE UNDERWRITING IN NATIONAL BANKS.

(a) IN GENERAL.—Except as provided in section 306, a national bank and the subsidiaries of a national bank

~~may not provide insurance in a State as principal except that this prohibition shall not apply to authorized products.~~

~~(b) AUTHORIZED PRODUCTS.—For the purposes of this section, a product is authorized if—~~

~~(1) as of January 1, 1997, the Comptroller of the Currency had determined in writing that national banks may provide such product as principal, or national banks were in fact lawfully providing such product as principal;~~

~~(2) no court of relevant jurisdiction had, by final judgment, overturned a determination of the Comptroller of the Currency that national banks may provide such product as principal; and~~

~~(3) the product is not title insurance, or an annuity contract the income of which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986.~~

~~(c) DEFINITION.—For purposes of this section, the term "insurance" means—~~

~~(1) any product regulated as insurance as of January 1, 1997, in accordance with the relevant State insurance law, in the State in which the product is provided;~~

~~(2) any product first offered after January 1, 1997, which—~~

~~(A) a State insurance regulator determines shall be regulated as insurance in the State in which the product is provided because the product insures, guarantees, or indemnifies against liability, loss of life, loss of health, or loss through damage to or destruction of property, including, but not limited to, surety bonds, life insurance, health insurance, title insurance, and property and casualty insurance (such as private passenger or commercial automobile, homeowners, mortgage, commercial multiperil, general liability, professional liability, workers' compensation, fire and allied lines, farm owners multiperil, aircraft, fidelity, surety, medical malpractice, ocean marine, inland marine, and boiler and machinery insurance); and~~

~~(B) is not a product or service of a bank that is—~~

~~(i) a deposit product;~~

~~(ii) a loan, discount, letter of credit, or other extension of credit;~~

~~(iii) a trust or other fiduciary service;~~

~~(iv) a qualified financial contract (as defined in or determined pursuant to section 11(e)(8)(D)(i) of the Federal Deposit Insurance Act); or~~

~~(v) a financial guaranty, except that this subparagraph (B) shall not apply to a product that includes an insurance component such that if the product is offered or proposed to be offered by the bank as principal—~~

~~(I) it would be treated as a life insurance contract under section 7702 of the Internal Revenue Code of 1986, as amended; or~~

~~(II) in the event that the product is not a letter of credit or other similar extension of credit, a qualified financial contract, or a financial guaranty, it would qualify for treatment for losses incurred with respect to such product under section 832(b)(5) of the Internal Revenue Code of 1986, as amended, if the bank were subject to tax as an insurance company under section 831 of such Code; or~~

~~(3) any annuity contract the income on which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986, as amended.~~

**~~SEC. 305. NEW BANK AGENCY ACTIVITIES ONLY THROUGH ACQUISITION OF EXISTING LICENSED AGENTS.~~**

~~If a national bank or a subsidiary of a national bank is not providing insurance as agent in a State as of the date of the enactment of this Act, the national bank and the subsidiary of the national bank may provide insurance (which such bank or subsidiary is otherwise authorized to provide) as agent in such State after such date only by acquiring a company which has been licensed by the appropriate State regulator to provide insurance as agent in such State for not less than 2 years before such acquisition. This section shall cease to have effect 5 years after the date of the enactment of this Act.~~

**~~SEC. 306. TITLE INSURANCE ACTIVITIES OF NATIONAL BANKS AND THEIR AFFILIATES.~~**

~~(a) AUTHORITY.—~~

~~(1) IN GENERAL.—Notwithstanding any other provision of this Act or any other law, no national bank, and no subsidiary of a national bank, may engage in any activity involving the underwriting or sale of title insurance other than title insurance ac-~~

~~tivities in which such national bank or subsidiary was actively and lawfully engaged before the date of the enactment of this Act.~~

~~(2) INSURANCE AFFILIATE.—In the case of a national bank which has an affiliate which provides insurance as principal and is not a subsidiary of the bank, the national bank and any subsidiary of the national bank may not engage in any activity involving the underwriting or sale of title insurance pursuant to paragraph (1).~~

~~(3) INSURANCE SUBSIDIARY.—In the case of a national bank which has a subsidiary which provides insurance as principal and has no affiliate which provides insurance as principal and is not a subsidiary, the national bank may not engage in any activity involving the underwriting or sale of title insurance pursuant to paragraph (1).~~

~~(4) AFFILIATE AND SUBSIDIARY DEFINED.—For purposes of this section, the terms "affiliate" and "subsidiary" have the meaning given such terms in section 2 of the Bank Holding Company Act of 1956.~~

~~(b) PARITY EXCEPTION.—Notwithstanding subsection (a), in the case of any State in which banks organized under the laws of such State were authorized to sell~~

title insurance as agent as of January 1, 1997, a national bank and a subsidiary of a national bank may sell title insurance as agent in such State in the same manner and to the same extent such State banks are authorized to sell title insurance as agent in such State.

**SEC. 307. EXPEDITED AND EQUALIZED DISPUTE RESOLUTION FOR FINANCIAL REGULATORS.**

(a) FILING IN COURT OF APPEAL.—In the case of a regulatory conflict between a State insurance regulator and a Federal regulator as to whether any product is or is not insurance as defined in section 304(c) of this Act, or whether a State statute, regulation, order, or interpretation regarding any insurance sales or solicitation activity is properly treated as preempted under Federal law, either regulator may seek expedited judicial review of such determination by the United States Court of Appeals for the circuit in which the State is located or in the United States Court of Appeals for the District of Columbia Circuit by filing a petition for review in such court.

(b) EXPEDITED REVIEW.—The United States court of appeals in which a petition for review is filed in accordance with paragraph (1) shall complete all action on such petition, including rendering a judgment, before the end of the 60-day period beginning on the date such petition

~~is filed, unless all parties to such proceeding agree to any extension of such period.~~

~~(c) SUPREME COURT REVIEW.—Any request for certiori to the Supreme Court of the United States of any judgment of a United States court of appeals with respect to a petition for review under this section shall be filed with the United States Supreme Court as soon as practicable after such judgment is issued.~~

~~(d) STATUTE OF LIMITATION.—No action may be filed under this section challenging an order, ruling, determination, or other action of a Federal financial regulator or State insurance regulator after the later of—~~

~~(1) the end of the 12-month period beginning on the date the first public notice is made of such order, ruling, or determination in its final form; or~~

~~(2) the end of the 6-month period beginning on the date such order, ruling, or determination takes effect.~~

~~(e) STANDARD OF REVIEW.—The court shall decide an action filed under this section based on its review on the merits of all questions presented under State and Federal law, including the nature of the product or activity and the history and purpose of its regulation under State and Federal law, without unequal deference.~~

**~~SEC. 308. CONSUMER PROTECTION REGULATIONS.~~**

~~(a) REGULATIONS REQUIRED.—~~

~~(1) IN GENERAL.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:~~

**~~"SEC. 45. CONSUMER PROTECTION REGULATIONS.~~**

~~"(a) REGULATIONS REQUIRED.—~~

~~"(1) IN GENERAL.—The Federal banking agencies shall prescribe and publish in final form, before the end of the 1-year period beginning on the date of the enactment of this Act, consumer protection regulations (which the agencies jointly determine to be appropriate) that—~~

~~"(A) apply to retail sales practices, solicitations, advertising, or offers of any insurance product by any insured depository institution or wholesale financial institution or any person who is engaged in such activities at an office of the institution or on behalf of the institution; and~~

~~"(B) are consistent with the requirements of this Act and provide such additional protections for consumers to whom such sales, solicitations, advertising, or offers are directed as the agency determines to be appropriate.~~

~~"(2) APPLICABILITY TO SUBSIDIARIES.—The regulations prescribed pursuant to paragraph (1) shall extend such protections to any subsidiaries of an insured depository institution, as deemed appropriate by the regulators referred to in paragraph (3), where such extension is determined to be necessary to ensure the consumer protections provided by this section.~~

~~"(3) CONSULTATION AND JOINT REGULATIONS.—The Federal banking agencies shall consult with each other and prescribe joint regulations pursuant to paragraph (1), after consultation with the State insurance regulators, as appropriate.~~

~~"(b) SALES PRACTICES.—The regulations prescribed pursuant to subsection (a) shall include anticoercion rules applicable to the sale of insurance products which prohibit an insured depository institution from engaging in any practice that would lead a consumer to believe an extension of credit, in violation of section 106(b) of the Bank Holding Company Act Amendments of 1970, is conditional upon—~~

~~"(1) the purchase of an insurance product from the institution or any of its affiliates or subsidiaries; or~~

~~"(2) an agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product from an unaffiliated entity.~~

~~"(c) DISCLOSURES AND ADVERTISING.—The regulations prescribed pursuant to subsection (a) shall include the following provisions relating to disclosures and advertising in connection with the initial purchase of an insurance product:~~

~~"(1) DISCLOSURES.—~~

~~"(A) IN GENERAL.—Requirements that the following disclosures be made orally and in writing before the completion of the initial sale and, in the case of clause (iv), at the time of application for an extension of credit:~~

~~"(i) UNINSURED STATUS.—As appropriate, the product is not insured by the Federal Deposit Insurance Corporation, the United States Government, or the insured depository institution.~~

~~"(ii) INVESTMENT RISK.—In the case of a variable annuity or other insurance product which involves an investment risk, that there is an investment risk associated~~

with the product, including possible loss of value.

"(iv) COERCION.—The approval of an extension of credit may not be conditioned on—

"(I) the purchase of an insurance product from the institution in which the application for credit is pending or any of its affiliates or subsidiaries; or

"(II) an agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product from an unaffiliated entity.

"(B) MAKING DISCLOSURE READILY UNDERSTANDABLE.—Regulations prescribed under subparagraph (A) shall encourage the use of disclosure that is conspicuous, simple, direct, and readily understandable, such as the following:

"(i) 'NOT FDIC-INSURED'.

"(ii) 'NOT GUARANTEED BY THE BANK'.

"(iii) 'MAY GO DOWN IN VALUE'.

~~"(C) ADJUSTMENTS FOR ALTERNATIVE METHODS OF PURCHASE.—In prescribing the requirements under subparagraphs (A) and (D), necessary adjustments shall be made for purchase in person, by telephone, or by electronic media to provide for the most appropriate and complete form of disclosure and acknowledgments.~~

~~"(D) CONSUMER ACKNOWLEDGMENT.—A requirement that an insured depository institution shall require any person selling an insurance product at any office of, or on behalf of, the institution to obtain, at the time a consumer receives the disclosures required under this paragraph or at the time of the initial purchase by the consumer of such product, an acknowledgment by such consumer of the receipt of the disclosure required under this subsection with respect to such product.~~

~~"(2) PROHIBITION ON MISREPRESENTATIONS.—A prohibition on any practice, or any advertising, at any office of, or on behalf of, the insured depository institution, or any subsidiary as appropriate, which could mislead any person or otherwise~~

~~cause a reasonable person to reach an erroneous belief with respect to—~~

~~"(A) the uninsured nature of any insurance product sold, or offered for sale, by the institution or any subsidiary of the institution; or~~

~~"(B) in the case of a variable annuity or other insurance product that involves an investment risk, the investment risk associated with any such product.~~

~~"(d) SEPARATION OF BANKING AND NONBANKING ACTIVITIES.—~~

~~"(1) REGULATIONS REQUIRED.—The regulations prescribed pursuant to subsection (a) shall include such provisions as the Federal banking agencies consider appropriate to ensure that the routine acceptance of deposits and the making of loans is kept, to the extent practicable, physically segregated from insurance product activity.~~

~~"(2) REQUIREMENTS.—Regulations prescribed pursuant to paragraph (1) shall include the following requirements:~~

~~"(A) SEPARATE SETTING.—A clear delineation of the setting in which, and the circumstances under which, transactions involving insurance products should be conducted in a lo-~~

~~cation physically segregated from an area where retail deposits are routinely accepted.~~

~~"(B) REFERRALS.—Standards which permit any person accepting deposits from, or making loans to, the public in an area where such transactions are routinely conducted in an insured depository institution to refer a customer who seeks to purchase any insurance product to a qualified person who sells such product, only if the person making the referral receives no more than a one-time nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.~~

~~"(C) QUALIFICATION AND LICENSING REQUIREMENTS.—Standards prohibiting any insured depository institution from permitting any person to sell or offer for sale any insurance product in any part of any office of the institution, or on behalf of the institution, unless such person is appropriately qualified and licensed.~~

~~"(e) DOMESTIC VIOLENCE DISCRIMINATION PROHIBITION.—~~

~~"(1) IN GENERAL.—In the case of an applicant for, or an insured under, any insurance product described in paragraph (2), the status of the applicant or insured as a victim of domestic violence, or as a provider of services to victims of domestic violence, shall not be considered as a criterion in any decision with regard to insurance underwriting, pricing, renewal, or scope of coverage of insurance policies, or payment of insurance claims, except as required or expressly permitted under State law.~~

~~"(2) SCOPE OF APPLICATION.—The prohibition contained in paragraph (1) shall apply to any insurance product which is sold or offered for sale, as principal, agent, or broker, by any insured depository institution or any person who is engaged in such activities at an office of the institution or on behalf of the institution.~~

~~"(3) SENSE OF THE CONGRESS.—It is the sense of the Congress that, by the end of the 30-month period beginning on the date of the enactment of this Act, the States should enact prohibitions against discrimination with respect to insurance products that are at least as strict as the prohibitions contained in paragraph (1).~~

1 ~~"(4) DOMESTIC VIOLENCE DEFINED.—For purposes of this subsection, the term 'domestic violence'~~
2 ~~means the occurrence of 1 or more of the following acts by a current or former family member, house-~~
3 ~~hold member, intimate partner, or caretaker:~~
4 ~~"(A) Attempting to cause or causing or threatening another person physical harm, se-~~
5 ~~vere emotional distress, psychological trauma, rape, or sexual assault.~~
6 ~~"(B) Engaging in a course of conduct or repeatedly committing acts toward another per-~~
7 ~~son, including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily in-~~
8 ~~jury or physical harm.~~
9 ~~"(C) Subjecting another person to false imprisonment.~~
10 ~~"(D) Attempting to cause or cause damage to property so as to intimidate or attempt to control the behavior of another person.~~
11 ~~"(f) CONSUMER GRIEVANCE PROCESS.—The Federal banking agencies shall jointly establish a consumer com-~~
12 ~~plaint mechanism, for receiving and expeditiously address-~~
13 ~~ing consumer complaints alleging a violation of regulations issued under the section, which shall—~~

~~"(1) establish a group within each regulatory agency to receive such complaints;~~

~~"(2) develop procedures for investigating such complaints;~~

~~"(3) develop procedures for informing consumers of rights they may have in connection with such complaints; and~~

~~"(4) develop procedures for addressing concerns raised by such complaints, as appropriate, including procedures for the recovery of losses to the extent appropriate.~~

~~"(g) EFFECT ON OTHER AUTHORITY.—~~

~~"(1) IN GENERAL.—No provision of this section shall be construed as granting, limiting, or otherwise affecting—~~

~~"(A) any authority of the Securities and Exchange Commission, any self-regulatory organization, the Municipal Securities Rulemaking Board, or the Secretary of the Treasury under any Federal securities law; or~~

~~"(B) except as provided in paragraph (2), any authority of any State insurance commissioner or other State authority under any State law.~~

~~"(2) COORDINATION WITH STATE LAW.—~~

~~"(A) IN GENERAL.—Except as provided in subparagraph (B), regulations prescribed by a Federal banking agency under this section shall not apply to retail sales, solicitations, advertising, or offers of any insurance product by any insured depository institution or wholesale financial institution or to any person who is engaged in such activities at an office of such institution or on behalf of the institution, in a State where the State has in effect statutes, regulations, orders, or interpretations, that are inconsistent with or contrary to the regulations prescribed by the Federal banking agencies.~~

~~"(B) PREEMPTION.—If, with respect to any provision of the regulations prescribed under this section, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Board of Directors of the Federal Deposit Insurance Corporation determine jointly that the protection afforded by such provision for consumers is greater than the protection provided by a comparable provision of the statutes, regulations, orders, or interpretations referred to in subparagraph (A) of any State, such provision of the regulations pre-~~

~~scribed under this section shall supersede the comparable provision of such State statute, regulation, order, or interpretation.~~

~~"(h) INSURANCE PRODUCT DEFINED.—For purposes of this section, the term 'insurance product' includes an annuity contract the income of which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986.".~~

**~~SEC. 309. CERTAIN STATE AFFILIATION LAWS PREEMPTED FOR INSURANCE COMPANIES AND AFFILIATES.~~**

~~No State may, by law, regulation, order, interpretation, or otherwise—~~

~~(1) prevent or significantly interfere with the ability of any insurer, or any affiliate of an insurer (whether such affiliate is organized as a stock company, mutual holding company, or otherwise), to become a financial holding company or to acquire control of an insured depository institution;~~

~~(2) limit the amount of an insurer's assets that may be invested in the voting securities of an insured depository institution (or any company which controls such institution), except that the laws of an insurer's State of domicile may limit the amount of~~

~~such investment to an amount that is not less than 5 percent of the insurer's admitted assets; or~~

~~(3) prevent, significantly interfere with, or have the authority to review, approve, or disapprove a plan of reorganization by which an insurer proposes to reorganize from mutual form to become a stock insurer (whether as a direct or indirect subsidiary of a mutual holding company or otherwise) unless such State is the State of domicile of the insurer.~~

# ~~Subtitle B—Redomestication of Mutual Insurers~~

**~~SEC. 311. GENERAL APPLICATION.~~**

~~This subtitle shall only apply to a mutual insurance company in a State which has not enacted a law which expressly establishes reasonable terms and conditions for a mutual insurance company domiciled in such State to reorganize into a mutual holding company.~~

**~~SEC. 312. REDOMESTICATION OF MUTUAL INSURERS.~~**

~~(a) REDOMESTICATION.—A mutual insurer organized under the laws of any State may transfer its domicile to a transferee domicile as a step in a reorganization in which, pursuant to the laws of the transferee domicile and consistent with the standards in subsection (f), the mutual insurer becomes a stock insurer that is a direct or indirect subsidiary of a mutual holding company.~~

~~(b) RESULTING DOMICILE.—Upon complying with the applicable law of the transferee domicile governing transfers of domicile and completion of a transfer pursuant to this section, the mutual insurer shall cease to be a domestic insurer in the transferor domicile and, as a continuation of its corporate existence, shall be a domestic insurer of the transferee domicile.~~

~~(c) LICENSES PRESERVED.—The certificate of authority, agents' appointments and licenses, rates, approvals and other items that a licensed State allows and that are in existence immediately prior to the date that a redomesticating insurer transfers its domicile pursuant to this subtitle shall continue in full force and effect upon transfer, if the insurer remains duly qualified to transact the business of insurance in such licensed State.~~

~~(d) EFFECTIVENESS OF OUTSTANDING POLICIES AND CONTRACTS.—~~

~~(1) IN GENERAL.—All outstanding insurance policies and annuities contracts of a redomesticating insurer shall remain in full force and effect and need not be endorsed as to the new domicile of the insurer, unless so ordered by the State insurance regulator of a licensed State, and then only in the case of outstanding policies and contracts whose owners reside in such licensed State.~~

~~(2) FORMS.—~~

~~(A) Applicable State law may require a redomesticating insurer to file new policy forms with the State insurance regulator of a licensed State on or before the effective date of the transfer.~~

~~(B) Notwithstanding subparagraph (A), a redomesticating insurer may use existing policy forms with appropriate endorsements to reflect the new domicile of the redomesticating insurer until the new policy forms are approved for use by the State insurance regulator of such licensed State.~~

~~(e) NOTICE.—A redomesticating insurer shall give notice of the proposed transfer to the State insurance regulator of each licensed State and shall file promptly any resulting amendments to corporate documents required to be filed by a foreign licensed mutual insurer with the insurance regulator of each such licensed State.~~

~~(f) PROCEDURAL REQUIREMENTS.—No mutual insurer may redomesticate to another State and reorganize into a mutual holding company pursuant to this section unless the State insurance regulator of the transferee domicile determines that the plan of reorganization of the insurer includes the following requirements:~~

~~(1) APPROVAL BY BOARD OF DIRECTORS AND POLICYHOLDERS.—The reorganization is approved by at least a majority of the board of directors of the mutual insurer and at least a majority of the policyholders who vote after notice, disclosure of the reorganization and the effects of the transaction on policyholder contractual rights, and reasonable opportunity to vote, in accordance with such notice, disclosure, and voting procedures as are approved by the State insurance regulator of the transferee domicile.~~

~~(2) CONTINUED VOTING CONTROL BY POLICYHOLDERS; REVIEW OF PUBLIC STOCK OFFERING.—After the consummation of a reorganization, the policyholders of the reorganized insurer shall have the same voting rights with respect to the mutual holding company as they had before the reorganization with respect to the mutual insurer. With respect to an initial public offering of stock, the offering shall be conducted in compliance with applicable securities laws and in a manner approved by the State insurance regulator of the transferee domicile.~~

~~(3) AWARD OF STOCK OR GRANT OF OPTIONS TO OFFICERS AND DIRECTORS.—For a period of 6 months after completion of an initial public offering,~~

~~neither a stock holding company nor the converted insurer shall award any stock options or stock grants to persons who are elected officers or directors of the mutual holding company, the stock holding company, or the converted insurer, except with respect to any such awards or options to which a person is entitled as a policyholder and as approved by the State insurance regulator of the transferee domicile.~~

~~(4) CONTRACTUAL RIGHTS.—Upon reorganization into a mutual holding company, the contractual rights of the policyholders are preserved.~~

~~(5) FAIR AND EQUITABLE TREATMENT OF POLICYHOLDERS.—The reorganization is approved as fair and equitable to the policyholders by the insurance regulator of the transferee domicile.~~

**~~SEC. 313. EFFECT ON STATE LAWS RESTRICTING REDOMESTICATION.~~**

~~(a) IN GENERAL.—Unless otherwise permitted by this subtitle, State laws of any transferor domicile that conflict with the purposes and intent of this subtitle are preempted, including but not limited to—~~

~~(1) any law that has the purpose or effect of impeding the activities of, taking any action against, or applying any provision of law or regulation to,~~

~~any insurer or an affiliate of such insurer because that insurer or any affiliate plans to redomesticate, or has redomesticated, pursuant to this subtitle;~~

~~(2) any law that has the purpose or effect of impeding the activities of, taking action against, or applying any provision of law or regulation to, any insured or any insurance licensee or other intermediary because such person or entity has procured insurance from or placed insurance with any insurer or affiliate of such insurer that plans to redomesticate, or has redomesticated, pursuant to this subtitle, but only to the extent that such law would treat such insured licensee or other intermediary differently than if the person or entity procured insurance from, or placed insurance with, an insured licensee or other intermediary which had not redomesticated;~~

~~(3) any law that has the purpose or effect of terminating, because of the redomestication of a mutual insurer pursuant to this subtitle, any certificate of authority, agent appointment or license, rate approval, or other approval, of any State insurance regulator or other State authority in existence immediately prior to the redomestication in any State other than the transferee domicile.~~

~~(b) DIFFERENTIAL TREATMENT PROHIBITED.—No State law, regulation, interpretation, or functional equivalent thereof, of a State other than a transferee domicile may treat a redomesticating or redomesticated insurer or any affiliate thereof any differently than an insurer operating in that State that is not a redomesticating or redomesticated insurer.~~

~~(c) LAWS PROHIBITING OPERATIONS.—If any licensed State fails to issue, delays the issuance of, or seeks to revoke an original or renewal certificate of authority of a redomesticated insurer immediately following redomestication, except on grounds and in a manner consistent with its past practices regarding the issuance of certificates of authority to foreign insurers that are not redomesticating, then the redomesticating insurer shall be exempt from any State law of the licensed State to the extent that such State law or the operation of such State law would make unlawful, or regulate, directly or indirectly, the operation of the redomesticated insurer, except that such licensed State may require the redomesticated insurer to—~~

~~(1) comply with the unfair claim settlement practices law of the licensed State;~~

~~(2) pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on li-~~

~~censed insurers or policyholders under the laws of the licensed State;~~

~~(3) register with and designate the State insurance regulator as its agent solely for the purpose of receiving service of legal documents or process;~~

~~(4) submit to an examination by the State insurance regulator in any licensed state in which the redomesticated insurer is doing business to determine the insurer's financial condition, if—~~

~~(A) the State insurance regulator of the transferee domicile has not begun an examination of the redomesticated insurer and has not scheduled such an examination to begin before the end of the 1-year period beginning on the date of the redomestication; and~~

~~(B) any such examination is coordinated to avoid unjustified duplication and repetition;~~

~~(5) comply with a lawful order issued in—~~

~~(A) a delinquency proceeding commenced by the State insurance regulator of any licensed State if there has been a judicial finding of financial impairment under paragraph (7); or~~

~~(B) a voluntary dissolution proceeding;~~

~~(6) comply with any State law regarding deceptive, false, or fraudulent acts or practices, except~~

that if the licensed State seeks an injunction regarding the conduct described in this paragraph, such injunction must be obtained from a court of competent jurisdiction as provided in section 314(a);

(7) comply with an injunction issued by a court of competent jurisdiction, upon a petition by the State insurance regulator alleging that the redomesticating insurer is in hazardous financial condition or is financially impaired;

(8) participate in any insurance insolvency guaranty association on the same basis as any other insurer licensed in the licensed State; and

(9) require a person acting, or offering to act, as an insurance licensee for a redomesticated insurer in the licensed State to obtain a license from that State, except that such State may not impose any qualification or requirement that discriminates against a nonresident insurance licensee.

**SEC. 314. OTHER PROVISIONS.**

(a) JUDICIAL REVIEW.—The appropriate United States district court shall have exclusive jurisdiction over litigation arising under this section involving any redomesticating or redomesticated insurer.

(b) SEVERABILITY.—If any provision of this section, or the application thereof to any person or circumstances,

~~is held invalid, the remainder of the section, and the application of such provision to other persons or circumstances, shall not be affected thereby.~~

**~~SEC. 315. DEFINITIONS.~~**

~~For purposes of this subtitle, the following definitions shall apply:~~

~~(1) COURT OF COMPETENT JURISDICTION.—The term "court of competent jurisdiction" means a court authorized pursuant to section 314(a) to adjudicate litigation arising under this subtitle.~~

~~(2) DOMICILE.—The term "domicile" means the State in which an insurer is incorporated, chartered, or organized.~~

~~(3) INSURANCE LICENSEE.—The term "insurance licensee" means any person holding a license under State law to act as insurance agent, subagent, broker, or consultant.~~

~~(4) INSTITUTION.—The term "institution" means a corporation, joint stock company, limited liability company, limited liability partnership, association, trust, partnership, or any similar entity.~~

~~(5) LICENSED STATE.—The term "licensed State" means any State, the District of Columbia, American Samoa, Guam, Puerto Rico, or the United States Virgin Islands in which the redomesticating~~

~~insurer has a certificate of authority in effect immediately prior to the redomestication.~~

~~(6) MUTUAL INSURER.—The term "mutual insurer" means a mutual insurer organized under the laws of any State.~~

~~(7) PERSON.—The term "person" means an individual, institution, government or governmental agency, State or political subdivision of a State, public corporation, board, association, estate, trustee, or fiduciary, or other similar entity.~~

~~(8) POLICYHOLDER.—The term "policyholder" means the owner of a policy issued by a mutual insurer, except that, with respect to voting rights, the term means a member of a mutual insurer or mutual holding company granted the right to vote, as determined under applicable State law.~~

~~(9) REDOMESTICATED INSURER.—The term "redomesticated insurer" means a mutual insurer that has redomesticated pursuant to this subtitle.~~

~~(10) REDOMESTICATING INSURER.—The term "redomesticating insurer" means a mutual insurer that is redomesticating pursuant to this subtitle.~~

~~(11) REDOMESTICATION OR TRANSFER.—The terms "redomestication" and "transfer" mean the~~

~~transfer of the domicile of a mutual insurer from one State to another State pursuant to this subtitle.~~

~~(12) STATE INSURANCE REGULATOR.—The term "State insurance regulator" means the principal insurance regulatory authority of a State, the District of Columbia, American Samoa, Guam, Puerto Rico, or the United States Virgin Islands.~~

~~(13) STATE LAW.—The term "State law" means the statutes of any State, the District of Columbia, American Samoa, Guam, Puerto Rico, or the United States Virgin Islands and any regulation, order, or requirement prescribed pursuant to any such statute.~~

~~(14) TRANSFEREE DOMICILE.—The term "transferee domicile" means the State to which a mutual insurer is redomesticating pursuant to this subtitle.~~

~~(15) TRANSFEROR DOMICILE.—The term "transferor domicile" means the State from which a mutual insurer is redomesticating pursuant to this subtitle.~~

**~~SEC. 316. EFFECTIVE DATE.~~**

~~This subtitle shall take effect on the date of the enactment of this Act.~~

# ~~Subtitle C—National Association of Registered Agents and Brokers~~

**~~SEC. 321. STATE FLEXIBILITY IN MULTISTATE LICENSING REFORMS.~~**

~~(a) IN GENERAL.—The provisions of this subtitle shall take effect unless by the end of the 3-year period beginning on the date of the enactment of this Act at least a majority of the States—~~

~~(1) have enacted uniform laws and regulations governing the licensure of individuals and entities authorized to sell and solicit the purchase of insurance within the State; or~~

~~(2) have enacted reciprocity laws and regulations governing the licensure of nonresident individuals and entities authorized to sell and solicit insurance within those States.~~

~~(b) UNIFORMITY REQUIRED.—States shall be deemed to have established the uniformity necessary to satisfy subsection (a)(1) if the States—~~

~~(1) establish uniform criteria regarding the integrity, personal qualifications, education, training, and experience of licensed insurance producers, including the qualification and training of sales personnel in ascertaining the appropriateness of a particular insurance product for a prospective customer;~~

~~(2) establish uniform continuing education requirements for licensed insurance producers;~~

~~(3) establish uniform ethics course requirements for licensed insurance producers in conjunction with the continuing education requirements under paragraph (2);~~

~~(4) establish uniform criteria to ensure that an insurance product, including any annuity contract, sold to a consumer is suitable and appropriate for the consumer based on financial information disclosed by the consumer; and~~

~~(5) do not impose any requirement upon any insurance producer to be licensed or otherwise qualified to do business as a nonresident that has the effect of limiting or conditioning that producer's activities because of its residence or place of operations, except that counter-signature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section.~~

~~(c) RECIPROCITY REQUIRED.—States shall be deemed to have established the reciprocity required to satisfy subsection (a)(2) if the following conditions are met:~~

~~(1) ADMINISTRATIVE LICENSING PROCEDURES.—At least a majority of the States permit a producer that has a resident license for selling or soliciting the purchase of insurance in its home State to receive a license to sell or solicit the purchase of insurance in such majority of States as a nonresident to the same extent such producer is permitted to sell or solicit the purchase of insurance in its State, without satisfying any additional requirements other than submitting—~~

~~(A) a request for licensure;~~

~~(B) the application for licensure that the producer submitted to its home State;~~

~~(C) proof that the producer is licensed and in good standing in its home State; and~~

~~(D) the payment of any requisite fee to the appropriate authority,~~

~~if the producer's home State also awards such licenses on such a reciprocal basis.~~

~~(2) CONTINUING EDUCATION REQUIREMENTS.—A majority of the States accept an insurance producer's satisfaction of its home State's continuing education requirements for licensed insurance producers to satisfy the States' own continuing education requirements if the producer's home State~~

~~also recognizes the satisfaction of continuing education requirements on such a reciprocal basis.~~

~~(3) NO LIMITING NONRESIDENT REQUIREMENTS.—A majority of the States do not impose any requirement upon any insurance producer to be licensed or otherwise qualified to do business as a nonresident that has the effect of limiting or conditioning that producer's activities because of its residence or place of operations, except that countersignature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section.~~

~~(4) RECIPROCAL RECIPROCITY.—Each of the States that satisfies paragraphs (1), (2), and (3) grants reciprocity to residents of all of the other States that satisfy such paragraphs.~~

~~(d) DETERMINATION.—~~

~~(1) NAIC DETERMINATION.—At the end of the 3-year period beginning on the date of the enactment of this Act, the National Association of Insurance Commissioners shall determine, in consultation with the insurance commissioners or chief insurance regulatory officials of the States, whether the uni-~~

~~formity or reciprocity required by subsections (b) and (c) has been achieved.~~

~~(2) JUDICIAL REVIEW.—The appropriate United States district court shall have exclusive jurisdiction over any challenge to the National Association of Insurance Commissioners' determination under this section and such court shall apply the standards set forth in section 706 of title 5, United States Code, when reviewing any such challenge.~~

~~(e) CONTINUED APPLICATION.—If, at any time, the uniformity or reciprocity required by subsections (b) and (c) no longer exists, the provisions of this subtitle shall take effect within 2 years, unless the uniformity or reciprocity required by those provisions is satisfied before the expiration of that 2-year period.~~

~~(f) SAVINGS PROVISION.—No provision of this section shall be construed as requiring that any law, regulation, provision, or action of any State which purports to regulate insurance producers, including any such law, regulation, provision, or action which purports to regulate unfair trade practices or establish consumer protections, including countersignature laws, be altered or amended in order to satisfy the uniformity or reciprocity required by subsections (b) and (c), unless any such law, regulation, provision, or action is inconsistent with a specific require-~~

~~ment of any such subsection and then only to the extent of such inconsistency.~~

**~~SEC. 322. NATIONAL ASSOCIATION OF REGISTERED AGENTS AND BROKERS.~~**

~~(a) ESTABLISHMENT.—There is established the National Association of Registered Agents and Brokers (hereafter in this subtitle referred to as the "Association").~~

~~(b) STATUS.—The Association shall—~~

~~(1) be a nonprofit corporation;~~

~~(2) have succession until dissolved by an Act of Congress;~~

~~(3) not be an agency or establishment of the United States Government; and~~

~~(4) except as otherwise provided in this Act, be subject to, and have all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (D.C. Code, sec. 29y–1001 et seq.).~~

**~~SEC. 323. PURPOSE.~~**

~~The purpose of the Association shall be to provide a mechanism through which uniform licensing, appointment, continuing education, and other insurance producer sales qualification requirements and conditions can be adopted and applied on a multistate basis, while preserv-~~

~~ing the right of States to license, supervise, and discipline insurance producers and to prescribe and enforce laws and regulations with regard to insurance-related consumer protection and unfair trade practices.~~

**~~SEC. 324. RELATIONSHIP TO THE FEDERAL GOVERNMENT.~~**

~~The Association shall be subject to the supervision and oversight of the National Association of Insurance Commissioners (hereafter in this subtitle referred to as the "NAIC") and shall not be an agency or an instrumentality of the United States Government.~~

**~~SEC. 325. MEMBERSHIP.~~**

~~(a) ELIGIBILITY.—~~

~~(1) IN GENERAL.—Any State-licensed insurance producer shall be eligible to become a member in the Association.~~

~~(2) INELIGIBILITY FOR SUSPENSION OR REVOCATION OF LICENSE.—Notwithstanding paragraph (1), a State-licensed insurance producer shall not be eligible to become a member if a State insurance regulator has suspended or revoked such producer's license in that State during the 3-year preceding the date such producer applies for membership.~~

~~(3) RESUMPTION OF ELIGIBILITY.—Paragraph (2) shall cease to apply to any insurance producer if—~~

~~(A) the State insurance regulator renews the license of such producer in the State in which the license was suspended or revoked; or~~

~~(B) the suspension or revocation is subsequently overturned.~~

~~(b) AUTHORITY TO ESTABLISH MEMBERSHIP CRITERIA.—The Association shall have the authority to establish membership criteria that—~~

~~(1) bear a reasonable relationship to the purposes for which the Association was established; and~~

~~(2) do not unfairly limit the access of smaller agencies to the Association membership.~~

~~(c) ESTABLISHMENT OF CLASSES AND CATEGORIES.—~~

~~(1) CLASSES OF MEMBERSHIP.—The Association may establish separate classes of membership, with separate criteria, if the Association reasonably determines that performance of different duties requires different levels of education, training, or experience.~~

~~(2) CATEGORIES.—The Association may establish separate categories of membership for individuals and for other persons. The establishment of any such categories of membership shall be based either on the types of licensing categories that exist under~~

~~State laws or on the aggregate amount of business handled by an insurance producer. No special categories of membership, and no distinct membership criteria, shall be established for members which are insured depository institutions or wholesale financial institutions or for their employees, agents, or affiliates.~~

~~(d) MEMBERSHIP CRITERIA.—~~

~~(1) IN GENERAL.—The Association may establish criteria for membership which shall include standards for integrity, personal qualifications, education, training, and experience.~~

~~(2) MINIMUM STANDARD.—In establishing criteria under paragraph (1), the Association shall consider the highest levels of insurance producer qualifications established under the licensing laws of the States.~~

~~(e) EFFECT OF MEMBERSHIP.—Membership in the Association shall entitle the member to licensure in each State for which the member pays the requisite fees, including licensing fees and, where applicable, bonding requirements, set by such State.~~

~~(f) ANNUAL RENEWAL.—Membership in the Association shall be renewed on an annual basis.~~

~~(g) CONTINUING EDUCATION.—The Association shall establish, as a condition of membership, continuing education requirements which shall be comparable to or greater than the continuing education requirements under the licensing laws of a majority of the States.~~

~~(h) SUSPENSION AND REVOCATION.—The Association may—~~

~~(1) inspect and examine the records and offices of the members of the Association to determine compliance with the criteria for membership established by the Association; and~~

~~(2) suspend or revoke the membership of an insurance producer if—~~

~~(A) the producer fails to meet the applicable membership criteria of the Association; or~~

~~(B) the producer has been subject to disciplinary action pursuant to a final adjudicatory proceeding under the jurisdiction of a State insurance regulator, and the Association concludes that retention of membership in the Association would not be in the public interest.~~

~~(i) OFFICE OF CONSUMER COMPLAINTS.—~~

~~(1) IN GENERAL.—The Association shall establish an office of consumer complaints that shall—~~

~~(A) receive and investigate complaints from both consumers and State insurance regulators related to members of the Association; and~~

~~(B) recommend to the Association any disciplinary actions that the office considers appropriate, to the extent that any such recommendation is not inconsistent with State law.~~

~~(2) RECORDS AND REFERRALS.—The office of consumer complaints of the Association shall—~~

~~(A) maintain records of all complaints received in accordance with paragraph (1) and make such records available to the NAIC and to each State insurance regulator for the State of residence of the consumer who filed the complaint; and~~

~~(B) refer, when appropriate, any such complaint to any appropriate State insurance regulator.~~

~~(3) TELEPHONE AND OTHER ACCESS.—The office of consumer complaints shall maintain a toll-free telephone number for the purpose of this subsection and, as practicable, other alternative means of communication with consumers, such as an Internet home page.~~

**~~SEC. 326. BOARD OF DIRECTORS.~~**

~~(a) ESTABLISHMENT.—There is established the board of directors of the Association (hereafter in this subtitle referred to as the "Board") for the purpose of governing and supervising the activities of the Association and the members of the Association.~~

~~(b) POWERS.—The Board shall have such powers and authority as may be specified in the bylaws of the Association.~~

~~(c) COMPOSITION.—~~

~~(1) MEMBERS.—The Board shall be composed of 7 members appointed by the NAIC.~~

~~(2) REQUIREMENT.—At least 4 of the members of the Board shall have significant experience with the regulation of commercial lines of insurance in at least 1 of the 20 States in which the greatest total dollar amount of commercial lines insurance is placed in the United States.~~

~~(3) INITIAL BOARD MEMBERSHIP.—~~

~~(A) IN GENERAL.—If, by the end of the 2-year period beginning on the date of the enactment of this Act, the NAIC has not appointed the initial 7 members of the Board of the Association, the initial Board shall consist of the 7 State insurance regulators of the 7 States with the greatest total dollar amount of commercial-~~

~~lines insurance in place as of the end of such period.~~

~~(B) ALTERNATE COMPOSITION.—If any of the State insurance regulators described in subparagraph (A) declines to serve on the Board, the State insurance regulator with the next greatest total dollar amount of commercial-lines insurance in place, as determined by the NAIC as of the end of such period, shall serve as a member of the Board.~~

~~(C) INOPERABILITY.—If fewer than 7 State insurance regulators accept appointment to the Board, the Association shall be established without NAIC oversight pursuant to section 332.~~

~~(d) TERMS.—The term of each director shall, after the initial appointment of the members of the Board, be for 3 years, with ⅓ of the directors to be appointed each year.~~

~~(e) BOARD VACANCIES.—A vacancy on the Board shall be filled in the same manner as the original appointment of the initial Board for the remainder of the term of the vacating member.~~

~~(f) MEETINGS.—The Board shall meet at the call of the chairperson, or as otherwise provided by the bylaws of the Association.~~

**~~SEC. 327. OFFICERS.~~**

~~(a) IN GENERAL.—~~

~~(1) POSITIONS.—The officers of the Association shall consist of a chairperson and a vice chairperson of the Board, a president, secretary, and treasurer of the Association, and such other officers and assistant officers as may be deemed necessary.~~

~~(2) MANNER OF SELECTION.—Each officer of the Board and the Association shall be elected or appointed at such time and in such manner and for such terms not exceeding 3 years as may be prescribed in the bylaws of the Association.~~

~~(b) CRITERIA FOR CHAIRPERSON.— Only individuals who are members of the National Association of Insurance Commissioners shall be eligible to serve as the chairperson of the board of directors.~~

**~~SEC. 328. BYLAWS, RULES, AND DISCIPLINARY ACTION.~~**

~~(a) ADOPTION AND AMENDMENT OF BYLAWS.—~~

~~(1) COPY REQUIRED TO BE FILED WITH THE NAIC.—The board of directors of the Association shall file with the NAIC a copy of the proposed bylaws or any proposed amendment to the bylaws, ac-~~

~~companied by a concise general statement of the basis and purpose of such proposal.~~

~~(2) EFFECTIVE DATE.—Except as provided in paragraph (3), any proposed bylaw or proposed amendment shall take effect—~~

~~(A) 30 days after the date of the filing of a copy with the NAIC;~~

~~(B) upon such later date as the Association may designate; or~~

~~(C) such earlier date as the NAIC may determine.~~

~~(3) DISAPPROVAL BY THE NAIC.—Notwithstanding paragraph (2), a proposed bylaw or amendment shall not take effect if, after public notice and opportunity to participate in a public hearing—~~

~~(A) the NAIC disapproves such proposal as being contrary to the public interest or contrary to the purposes of this subtitle and provides notice to the Association setting forth the reasons for such disapproval; or~~

~~(B) the NAIC finds that such proposal involves a matter of such significant public interest that public comment should be obtained, in which case it may, after notifying the Association in writing of such finding, require that the~~

~~procedures set forth in subsection (b) be followed with respect to such proposal, in the same manner as if such proposed bylaw change were a proposed rule change within the meaning of such paragraph.~~

~~(b) ADOPTION AND AMENDMENT OF RULES.—~~

~~(1) FILING PROPOSED REGULATIONS WITH THE NAIC.—~~

~~(A) IN GENERAL.—The board of directors of the Association shall file with the NAIC a copy of any proposed rule or any proposed amendment to a rule of the Association which shall be accompanied by a concise general statement of the basis and purpose of such proposal.~~

~~(B) OTHER RULES AND AMENDMENTS INEFFECTIVE.—No proposed rule or amendment shall take effect unless approved by the NAIC or otherwise permitted in accordance with this paragraph.~~

~~(2) INITIAL CONSIDERATION BY THE NAIC.—Within 35 days after the date of publication of notice of filing of a proposal, or before the end of such longer period not to exceed 90 days as the NAIC may designate after such date if the NAIC finds such longer period to be appropriate and sets forth~~

~~its reasons for so finding, or as to which the Association consents, the NAIC shall—~~

~~(A) by order approve such proposed rule or amendment; or~~

~~(B) institute proceedings to determine whether such proposed rule or amendment should be modified or disapproved.~~

~~(3) NAIC PROCEEDINGS.—~~

~~(A) IN GENERAL.—Proceedings instituted by the NAIC with respect to a proposed rule or amendment pursuant to paragraph (2) shall—~~

~~(i) include notice of the grounds for disapproval under consideration;~~

~~(ii) provide opportunity for hearing; and~~

~~(iii) be concluded within 180 days after the date of the Association's filing of such proposed rule or amendment.~~

~~(B) DISPOSITION OF PROPOSAL.—At the conclusion of any proceeding under subparagraph (A), the NAIC shall, by order, approve or disapprove the proposed rule or amendment.~~

~~(C) EXTENSION OF TIME FOR CONSIDERATION.—The NAIC may extend the time for~~

~~concluding any proceeding under subparagraph (A) for—~~

~~(i) not more than 60 days if the NAIC finds good cause for such extension and sets forth its reasons for so finding; or~~

~~(ii) for such longer period as to which the Association consents.~~

~~(4) STANDARDS FOR REVIEW.—~~

~~(A) GROUNDS FOR APPROVAL.—The NAIC shall approve a proposed rule or amendment if the NAIC finds that the rule or amendment is in the public interest and is consistent with the purposes of this Act.~~

~~(B) APPROVAL BEFORE END OF NOTICE PERIOD.—The NAIC shall not approve any proposed rule before the end of the 30-day period beginning on the date the Association files proposed rules or amendments in accordance with paragraph (1) unless the NAIC finds good cause for so doing and sets forth the reasons for so finding.~~

~~(5) ALTERNATE PROCEDURE.—~~

~~(A) IN GENERAL.—Notwithstanding any provision of this subsection other than subparagraph (B), a proposed rule or amendment relat-~~

~~ing to the administration or organization of the Association may take effect—~~

~~(i) upon the date of filing with the NAIC, if such proposed rule or amendment is designated by the Association as relating solely to matters which the NAIC, consistent with the public interest and the purposes of this subsection, determines by rule do not require the procedures set forth in this paragraph; or~~

~~(ii) upon such date as the NAIC shall for good cause determine.~~

~~(B) ABROGATION BY THE NAIC.—~~

~~(i) IN GENERAL.—At any time within 60 days after the date of filing of any proposed rule or amendment under subparagraph (A)(i) or (B)(ii), the NAIC may repeal such rule or amendment and require that the rule or amendment be refiled and reviewed in accordance with this paragraph, if the NAIC finds that such action is necessary or appropriate in the public interest, for the protection of insurance producers or policyholders, or otherwise in furtherance of the purposes of this subtitle.~~

~~(ii) EFFECT OF RECONSIDERATION BY THE NAIC.—Any action of the NAIC pursuant to clause (i) shall—~~

~~(I) not affect the validity or force of a rule change during the period such rule or amendment was in effect; and~~

~~(II) not be considered to be final action.~~

~~(c) ACTION REQUIRED BY THE NAIC.—The NAIC may, in accordance with such rules as the NAIC determines to be necessary or appropriate to the public interest or to carry out the purposes of this subtitle, require the Association to adopt, amend, or repeal any bylaw, rule or amendment of the Association, whenever adopted.~~

~~(d) DISCIPLINARY ACTION BY THE ASSOCIATION.—~~

~~(1) SPECIFICATION OF CHARGES.—In any proceeding to determine whether membership shall be denied, suspended, revoked, and not renewed (hereafter in this section referred to as a "disciplinary action"), the Association shall bring specific charges, notify such member of such charges and give the member an opportunity to defend against the charges, and keep a record.~~

~~(2) SUPPORTING STATEMENT.—A determination to take disciplinary action shall be supported by a statement setting forth—~~

~~(A) any act or practice in which such member has been found to have been engaged;~~

~~(B) the specific provision of this subtitle, the rules or regulations under this subtitle, or the rules of the Association which any such act or practice is deemed to violate; and~~

~~(C) the sanction imposed and the reason for such sanction.~~

~~(c) NAIC REVIEW OF DISCIPLINARY ACTION.—~~

~~(1) NOTICE TO THE NAIC.—If the Association orders any disciplinary action, the Association shall promptly notify the NAIC of such action.~~

~~(2) REVIEW BY THE NAIC.—Any disciplinary action taken by the Association shall be subject to review by the NAIC—~~

~~(A) on the NAIC's own motion; or~~

~~(B) upon application by any person aggrieved by such action if such application is filed with the NAIC not more than 30 days after the later of—~~

~~(i) the date the notice was filed with the NAIC pursuant to paragraph (1); or~~

~~(ii) the date the notice of the disciplinary action was received by such aggrieved person.~~

~~(f) EFFECT OF REVIEW.—The filing of an application to the NAIC for review of a disciplinary action, or the institution of review by the NAIC on the NAIC's own motion, shall not operate as a stay of disciplinary action unless the NAIC otherwise orders.~~

~~(g) SCOPE OF REVIEW.—~~

~~(A) IN GENERAL.—In any proceeding to review such action, after notice and the opportunity for hearing, the NAIC shall—~~

~~(i) determine whether the action should be taken;~~

~~(ii) affirm, modify, or rescind the disciplinary sanction; or~~

~~(iii) remand to the Association for further proceedings.~~

~~(B) DISMISSAL OF REVIEW.—The NAIC may dismiss a proceeding to review disciplinary action if the NAIC finds that—~~

~~(i) the specific grounds on which the action is based exist in fact;~~

~~(ii) the action is in accordance with applicable rules and regulations; and~~

~~(iii) such rules and regulations are, and were, applied in a manner consistent with the purposes of this Act.~~

**~~SEC. 329. ASSESSMENTS.~~**

~~(a) INSURANCE PRODUCERS SUBJECT TO ASSESSMENT.—The Association may establish such application and membership fees as the Association finds necessary to cover the costs of its operations, including fees made reimbursable to the NAIC under subsection (b), except that, in setting such fees, the Association may not discriminate against smaller insurance producers.~~

~~(b) NAIC ASSESSMENTS.—The NAIC may assess the Association for any costs it incurs under this subtitle.~~

**~~SEC. 330. FUNCTIONS OF THE NAIC.~~**

~~(a) ADMINISTRATIVE PROCEDURE.—Determinations of the NAIC, for purposes of making rules pursuant to section 328, shall be made after appropriate notice and opportunity for a hearing and for submission of views of interested persons.~~

~~(b) EXAMINATIONS AND REPORTS.—~~

~~(1) The NAIC may make such examinations and inspections of the Association and require the Association to furnish it with such reports and records or copies thereof as the NAIC may consider~~

~~necessary or appropriate in the public interest or to effectuate the purposes of this subtitle.~~

~~(2) As soon as practicable after the close of each fiscal year, the Association shall submit to the NAIC a written report regarding the conduct of its business, and the exercise of the other rights and powers granted by this subtitle, during such fiscal year. Such report shall include financial statements setting forth the financial position of the Association at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year. The NAIC shall transmit such report to the President and the Congress with such comment thereon as the NAIC determines to be appropriate.~~

**~~SEC. 331. LIABILITY OF THE ASSOCIATION AND THE DIRECTORS, OFFICERS, AND EMPLOYEES OF THE ASSOCIATION.~~**

~~(a) IN GENERAL.—The Association shall not be deemed to be an insurer or insurance producer within the meaning of any State law, rule, regulation, or order regulating or taxing insurers, insurance producers, or other entities engaged in the business of insurance, including provisions imposing premium taxes, regulating insurer solvency or financial condition, establishing guaranty funds~~

~~and levying assessments, or requiring claims settlement practices.~~

~~(b) LIABILITY OF THE ASSOCIATION, ITS DIRECTORS, OFFICERS, AND EMPLOYEES.—Neither the Association nor any of its directors, officers, or employees shall have any liability to any person for any action taken or omitted in good faith under or in connection with any matter subject to this subtitle.~~

**~~SEC. 332. ELIMINATION OF NAIC OVERSIGHT.~~**

~~(a) IN GENERAL.—The Association shall be established without NAIC oversight and the provisions set forth in section 324, subsections (a), (b), (c), and (e) of section 328, and sections 329(b) and 330 of this subtitle shall cease to be effective if, at the end of the 2-year period after the date on which the provisions of this subtitle take effect pursuant to section 321—~~

~~(1) at least a majority of the States representing at least 50 percent of the total United States commercial-lines insurance premiums have not satisfied the uniformity or reciprocity requirements of subsections (a) and (b) of section 321; and~~

~~(2) the NAIC has not approved the Association's bylaws as required by section 328, the NAIC is unable to operate or supervise the Association, or~~

~~the Association is not conducting its activities as required under this Act.~~

~~(b) BOARD APPOINTMENTS.—If the repeals required by subsection (a) are implemented—~~

~~(1) GENERAL APPOINTMENT POWER.—The President, with the advice and consent of the United States Senate, shall appoint the members of the Association's Board established under section 326 from lists of candidates recommended to the President by the National Association of Insurance Commissioners.~~

~~(2) PROCEDURES FOR OBTAINING NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS APPOINTMENT RECOMMENDATIONS.—~~

~~(A) INITIAL DETERMINATION AND RECOMMENDATIONS.—After the date on which the provisions of part a of this section take effect, then the National Association of Insurance Commissioners shall have 60 days to provide a list of recommended candidates to the President. If the National Association of Insurance Commissioners fails to provide a list by that date, or if any list that is provided does not include at least 14 recommended candidates or comply with the requirements of section 326(c),~~

~~the President shall, with the advice and consent of the United States Senate, make the requisite appointments without considering the views of the NAIC.~~

~~(B) SUBSEQUENT APPOINTMENTS.—After the initial appointments, the National Association of Insurance Commissioners shall provide a list of at least 6 recommended candidates for the Board to the President by January 15 of each subsequent year. If the National Association of Insurance Commissioners fails to provide a list by that date, or if any list that is provided does not include at least 6 recommended candidates or comply with the requirements of section 326(c), the President, with the advice and consent of the Senate, shall make the requisite appointments without considering the views of the NAIC.~~

~~(C) PRESIDENTIAL OVERSIGHT.—~~

~~(i) REMOVAL.—If the President determines that the Association is not acting in the interests of the public, the President may remove the entire existing Board for the remainder of the term to which the members of the Board were appointed and~~

appoint, with the advice and consent of the Senate, new members to fill the vacancies on the Board for the remainder of such terms.

(ii) SUSPENSION OF RULES OR ACTIONS.—The President, or a person designated by the President for such purpose, may suspend the effectiveness of any rule, or prohibit any action, of the Association which the President or the designee determines is contrary to the public interest.

(d) ANNUAL REPORT.—As soon as practicable after the close of each fiscal year, the Association shall submit to the President and to Congress a written report relative to the conduct of its business, and the exercise of the other rights and powers granted by this subtitle, during such fiscal year. Such report shall include financial statements setting forth the financial position of the Association at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year.

**SEC. 333. RELATIONSHIP TO STATE LAW.**

(a) PREEMPTION OF STATE LAWS.—State laws, regulations, provisions, or actions purporting to regulate in-

~~surance producers shall be preempted in the following instances:~~

~~(1) No State shall impede the activities of, take any action against, or apply any provision of law or regulation to, any insurance producer because that insurance producer or any affiliate plans to become, has applied to become, or is a member of the Association.~~

~~(2) No State shall impose any requirement upon a member of the Association that it pay different fees to be licensed or otherwise qualified to do business in that State, including bonding requirements, based on its residency.~~

~~(3) No State shall impose any licensing, appointment, integrity, personal or corporate qualifications, education, training, experience, residency, or continuing education requirement upon a member of the Association that is different than the criteria for membership in the Association or renewal of such membership, except that counter-signature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section.~~

~~(4) No State shall implement the procedures of such State's system of licensing or renewing the licenses of insurance producers in a manner different from the authority of the Association under section 325.~~

~~(b) SAVINGS PROVISION.—Except as provided in subsection (a), no provision of this section shall be construed as altering or affecting the continuing effectiveness of any law, regulation, provision, or action of any State which purports to regulate insurance producers, including any such law, regulation, provision, or action which purports to regulate unfair trade practices or establish consumer protections, including, but not limited to, countersignature laws.~~

**~~SEC. 334. COORDINATION WITH OTHER REGULATORS.~~**

~~(a) COORDINATION WITH STATE INSURANCE REGULATORS.—The Association shall have the authority to—~~

~~(1) issue uniform insurance producer applications and renewal applications that may be used to apply for the issuance or removal of State licenses, while preserving the ability of each State to impose such conditions on the issuance or renewal of a license as are consistent with section 333;~~

~~(2) establish a central clearinghouse through which members of the Association may apply for the~~

~~issuance or renewal of licenses in multiple States; and~~

~~(3) establish or utilize a national database for the collection of regulatory information concerning the activities of insurance producers.~~

~~(b) COORDINATION WITH THE NATIONAL ASSOCIATION OF SECURITIES DEALERS.—The Association shall coordinate with the National Association of Securities Dealers in order to ease any administrative burdens that fall on persons that are members of both associations, consistent with the purposes of this subtitle and the Federal securities laws.~~

**~~SEC. 335. JUDICIAL REVIEW.~~**

~~(a) JURISDICTION.—The appropriate United States district court shall have exclusive jurisdiction over litigation involving the Association, including disputes between the Association and its members that arise under this subtitle. Suits brought in State court involving the Association shall be deemed to have arisen under Federal law and therefore be subject to jurisdiction in the appropriate United States district court.~~

~~(b) EXHAUSTION OF REMEDIES.—An aggrieved person must exhaust all available administrative remedies before the Association and the NAIC before it may seek judicial review of an Association decision.~~

~~(c) STANDARDS OF REVIEW.—The standards set forth in section 553 of title 5, United States Code, shall be applied whenever a rule or bylaw of the Association is under judicial review, and the standards set forth in section 554 of title 5, United States Code, shall be applied whenever a disciplinary action of the Association is judicially reviewed.~~

**~~SEC. 336. DEFINITIONS.~~**

~~For purposes of this subtitle, the following definitions shall apply:~~

~~(1) INSURANCE.—The term "insurance" means any product defined or regulated as insurance by the appropriate State insurance regulatory authority.~~

~~(2) INSURANCE PRODUCER.—The term "insurance producer" means any insurance agent or broker, surplus lines broker, insurance consultant, limited insurance representative, and any other person that solicits, negotiates, effects, procures, delivers, renews, continues or binds policies of insurance or offers advice, counsel, opinions or services related to insurance.~~

~~(3) STATE LAW.—The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the~~

District of Columbia shall be treated as a State law rather than a law of the United States.

(4) STATE.—The term ''State'' includes any State, the District of Columbia, American Samoa, Guam, Puerto Rico, and the United States Virgin Islands.

(5) HOME STATE.—The term ''home State'' means the State in which the insurance producer maintains its principal place of residence and is licensed to act as an insurance producer.

# TITLE IV—UNITARY SAVINGS AND LOAN HOLDING COMPANIES

## SEC. 401. TERMINATION OF EXPANDED POWERS FOR NEW UNITARY S&L HOLDING COMPANIES.

(a) IN GENERAL.—Section 10(c) of the Home Owners' Loan Act (12 U.S.C. 1467a(c)) is amended by adding at the end the following new paragraph:

''(9) TERMINATION OF EXPANDED POWERS FOR NEW UNITARY S&L HOLDING COMPANY.—

''(A) IN GENERAL.—Subject to subparagraph (B), paragraph (3) shall not apply with respect to any company that becomes a savings and loan holding company pursuant to an application filed after March 31, 1998.

~~"(B) EXISTING UNITARY S&L HOLDING COMPANIES AND THE SUCCESSORS TO SUCH COMPANIES.—Subparagraph (A) shall not apply, and paragraph (3) shall continue to apply, to a company (or any subsidiary of such company) that—~~

~~"(i) either—~~

~~"(I) acquired 1 or more savings associations described in paragraph (3) pursuant to applications at least 1 of which was filed before April 1, 1998; or~~

~~"(II) became a savings and loan holding company by acquiring ownership or control of the company described in subclause (I); and~~

~~"(ii) continues to control the savings associations referred to in clause (i)(I) or the successor to any such savings association.".~~

~~(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 10(c)(3) of the Home Owners' Loan Act (12 U.S.C. 1467a(c)(3)) is amended by striking "Notwithstanding" and inserting "Except as provided in paragraph (9) and notwithstanding".~~

**~~SEC. 402. RETENTION OF "FEDERAL" IN NAME OF CONVERTED FEDERAL SAVINGS ASSOCIATION.~~**

~~Section 2 of the Act entitled "An Act to enable national banking associations to increase their capital stock and to change their names or locations." and approved May 1, 1886 (12 U.S.C. 30) is amended by adding at the end the following new subsection:~~

~~"(d) RETENTION OF 'FEDERAL' IN NAME OF CONVERTED FEDERAL SAVINGS ASSOCIATION.—~~

~~"(1) IN GENERAL.—Notwithstanding subsection (a) or any other provision of law, any depository institution the charter of which is converted from that of a Federal savings association to a national bank or a State bank after the date of the enactment of the Financial Services Act of 1998 may retain the term 'Federal' in the name of such institution so long as such depository institution remains an insured depository institution.~~

~~"(2) DEFINITIONS.—For purposes of this subsection, the terms 'depository institution', 'insured depository institution', 'national bank', and 'State bank' have the same meanings given to such terms in section 3 of the Federal Deposit Insurance Act.".~~

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

*(a) SHORT TITLE.—This Act may be cited as the "Financial Services Act of 1998".*

*(b) PURPOSES.—The purposes of this Act are as follows:*

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

*(2) To ensure the continued safety and soundness of depository institutions.*

*(3) To provide necessary and appropriate protections for investors and ensure fair and honest markets in the delivery of financial services.*

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

*(5) To reduce and, to the maximum extent practicable, to eliminate the legal barriers preventing affiliation among depository institutions, securities firms, insurance companies, and other financial serv-*

*ice providers and to provide a prudential framework for achieving that result.*

*(6) To enhance the availability of financial services to citizens of all economic circumstances and in all geographic areas.*

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

*(8) To ensure compliance by depository institutions with the provisions of the Community Reinvestment Act of 1977 and enhance the ability of depository institutions to meet the capital and credit needs of all citizens and communities, including underserved communities and populations.*

*(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:*

*Sec. 1. Short title; purposes; table of contents.*

*TITLE I—FACILITATING AFFILIATION AMONG SECURITIES FIRMS, INSURANCE COMPANIES, AND DEPOSITORY INSTITUTIONS*

*Subtitle A—Affiliations*

*Sec. 101. Glass-Steagall Act reformed.*
*Sec. 102. Activity restrictions applicable to bank holding companies which are not financial holding companies.*
*Sec. 103. Financial holding companies.*
*Sec. 104. Operation of State law.*
*Sec. 105. Mutual bank holding companies authorized.*
*Sec. 106. Prohibition on deposit production offices.*
*Sec. 107. Clarification of branch closure requirements.*
*Sec. 108. Amendments relating to limited purpose banks.*
*Sec. 109. Reports on ongoing FTC study of consumer privacy issues.*
*Sec. 110. GAO study of economic impact on community banks and other small financial institutions.*

*Subtitle B—Streamlining Supervision of Financial Holding Companies*

*Sec. 111. Streamlining financial holding company supervision.*

*Sec. 112. Elimination of application requirement for financial holding companies.*
*Sec. 113. Authority of State insurance regulator and Securities and Exchange Commission.*
*Sec. 114. Prudential safeguards.*
*Sec. 115. Examination of investment companies.*
*Sec. 116. Limitation on rulemaking, prudential, supervisory, and enforcement authority of the Board.*
*Sec. 117. Interagency consultation.*
*Sec. 118. Equivalent regulation and supervision.*
*Sec. 119. Prohibition on FDIC assistance to affiliates and subsidiaries.*

*Subtitle C—Subsidiaries of National Banks*

*Sec. 121. Permissible activities for subsidiaries of national banks.*
*Sec. 122. Misrepresentations regarding depository institution liability for obligations of affiliates.*
*Sec. 123. Repeal of stock loan limit in Federal Reserve Act.*

*Subtitle D—Wholesale Financial Holding Companies; Wholesale Financial Institutions*

*Chapter 1—Wholesale Financial Holding Companies*

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

*Chapter 2—Wholesale Financial Institutions*

*Sec. 136. Wholesale financial institutions.*

*Subtitle E—Preservation of FTC Authority*

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

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

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

*Subtitle G—Federal Home Loan Bank System Modernization*

*Sec. 161. Short title.*
*Sec. 162. Definitions.*
*Sec. 163. Savings association membership.*
*Sec. 164. Advances to members; collateral.*

*Sec. 165. Eligibility criteria.*
*Sec. 166. Management of banks.*
*Sec. 167. Resolution Funding Corporation.*

*Subtitle H—Direct Activities of Banks*

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

*Subtitle I—Deposit Insurance Funds*

*Sec. 186. Study of safety and soundness of funds.*

*Subtitle J—Effective Date of Title*

*Sec. 191. Effective date.*

*TITLE II—FUNCTIONAL REGULATION*

*Subtitle A—Brokers and Dealers*

*Sec. 201. Definition of broker.*
*Sec. 202. Definition of dealer.*
*Sec. 203. Registration for sales of private securities offerings.*
*Sec. 204. Sales practices and complaint procedures.*
*Sec. 205. Information sharing.*
*Sec. 206. Definition and treatment of banking products.*
*Sec. 207. Derivative instrument and qualified investor defined.*
*Sec. 208. Government securities defined.*
*Sec. 209. Effective date.*
*Sec. 210. Rule of construction.*

*Subtitle B—Bank Investment Company Activities*

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

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

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

*Subtitle D—Studies*

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

*TITLE III—INSURANCE*

*Subtitle A—State Regulation of Insurance*

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

*Subtitle B—National Association of Registered Agents and Brokers*

*Sec. 321. State flexibility in multistate licensing reforms.*
*Sec. 322. National Association of Registered Agents and Brokers.*
*Sec. 323. Purpose.*
*Sec. 324. Relationship to the Federal Government.*
*Sec. 325. Membership.*
*Sec. 326. Board of Directors.*
*Sec. 327. Officers.*
*Sec. 328. Bylaws, rules, and disciplinary action.*
*Sec. 329. Assessments.*
*Sec. 330. Functions of the NAIC.*
*Sec. 331. Liability of the Association and the directors, officers, and employees of the Association.*
*Sec. 332. Elimination of NAIC oversight.*
*Sec. 333. Relationship to State law.*
*Sec. 334. Coordination with other regulators.*
*Sec. 335. Judicial review.*
*Sec. 336. Definitions.*

*TITLE IV—UNITARY SAVINGS AND LOAN HOLDING COMPANIES*

*Sec. 401. Prevention of creation of new savings and loan holding companies with commercial affiliates.*
*Sec. 402. Optional conversion of Federal savings associations to national banks.*
*Sec. 403. Retention of "Federal" in name of converted Federal savings association.*

*TITLE V—FINANCIAL INFORMATION PRIVACY*

*Sec. 501. Financial information privacy.*
*Sec. 502. Report to Congress on financial privacy.*

*TITLE VI—MISCELLANEOUS*

*Sec. 601. Grand jury proceedings.*

*Sec. 602. Sense of the Committee on Banking, Housing, and Urban Affairs of the Senate.*
*Sec. 603. Investments in Government sponsored enterprises.*
*Sec. 604. Repeal of savings bank provisions in the Bank Holding Company Act of 1956.*

# *TITLE I—FACILITATING AFFILIATION AMONG SECURITIES FIRMS, INSURANCE COMPANIES, AND DEPOSITORY INSTITUTIONS*

## *Subtitle A—Affiliations*

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

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

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

### *SEC. 102. ACTIVITY RESTRICTIONS APPLICABLE TO BANK HOLDING COMPANIES WHICH ARE NOT FINANCIAL HOLDING COMPANIES.*

*(a) IN GENERAL.—Section 4(c)(8) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(8)) is amended to read as follows:*

*"(8) shares of any company the activities of which had been determined by the Board by regulation under this paragraph as of the day before the date of the enactment of the Financial Services Act of 1998, to be so closely related to banking as to be a*

*proper incident thereto (subject to such terms and conditions contained in such regulation, unless modified by the Board);".*

*(b) CONFORMING CHANGES TO OTHER STATUTES.—*

*(1) AMENDMENT TO THE BANK HOLDING COMPANY ACT AMENDMENTS OF 1970.—Section 105 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1850) is amended by striking ", to engage directly or indirectly in a nonbanking activity pursuant to section 4 of such Act,".*

*(2) AMENDMENT TO THE BANK SERVICE COMPANY ACT.—Section 4(f) of the Bank Service Company Act (12 U.S.C. 1864(f)) is amended by striking the period and adding at the end the following: "as of the day before the date of enactment of the Financial Services Act of 1998.".*

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

*The Bank Holding Company Act of 1956 is amended by inserting after section 5 (12 U.S.C. 1844) the following new section:*

***"SEC. 6. FINANCIAL HOLDING COMPANIES.***

*"(a) FINANCIAL HOLDING COMPANY DEFINED.—For purposes of this section, the term 'financial holding company' means a bank holding company which meets the requirements of subsection (b).*

*"(b) ELIGIBILITY REQUIREMENTS FOR FINANCIAL HOLDING COMPANIES.—*

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

*"(A) All of the subsidiary depository institutions of the bank holding company are well capitalized.*

*"(B) All of the subsidiary depository institutions of the bank holding company are well managed.*

*"(C) All of the subsidiary depository institutions of the bank holding company have achieved a rating of 'satisfactory record of meeting community credit needs', or better, at the most recent examination of each such institution under the Community Reinvestment Act of 1977.*

*"(D) The company has filed with the Board a declaration that the company elects to be a financial holding company and certifying that the company meets the requirements of subparagraphs (A) through (C).*

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

*"(3) LIMITED EXCLUSIONS FROM COMMUNITY NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DEPOSITORY INSTITUTIONS.—*

*"(A) IN GENERAL.—If the requirements of subparagraph (B) are met, any depository institution acquired by a bank holding company during the 24-month period preceding the submission of a declaration under paragraph (1)(E) and any depository institution acquired after the submission of such declaration may be excluded for purposes of paragraph (1)(C) until the later of—*

*"(i) the end of the 24-month period beginning on the date the acquisition of the depository institution by such company is consummated; or*

*"(ii) the date of completion of the first examination of such depository institution under the Community Reinvestment Act of 1977 which is conducted after the date of the acquisition of the depository institution.*

*"(B) REQUIREMENTS.—The requirements of this subparagraph are met with respect to any bank holding company referred to in subparagraph (A) if—*

*"(i) the bank holding company has submitted an affirmative plan to the appropriate Federal banking agency to take such action as may be necessary in order for such institution to achieve a rating of 'satisfactory record of meeting community credit needs', or better, at the next examination of the institution under the Community Reinvestment Act of 1977; and*

*"(ii) the plan has been approved by such agency.*

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

*"(1) FINANCIAL ACTIVITIES.—*

*"(A) IN GENERAL.—Notwithstanding section 4(a), a financial holding company and a*

*wholesale financial holding company may engage in any activity, and acquire and retain the shares of any company engaged in any activity, that the Board has determined (by regulation or order) to be financial in nature or incidental to such financial activities.*

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

*"(i) PROPOSALS RAISED BEFORE THE BOARD.—*

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

*"(II) TREASURY VIEW.—The Board shall not determine that any activity is financial in nature or incidental to a financial activity under this subsection if the Secretary of the Treasury notifies the Board in writing,*

*not later than 30 days after the date of receipt of the notice described in subclause (I) (or such longer period as the Board determines to be appropriate in light of the circumstances) that the Secretary of the Treasury believes that the activity is not financial in nature or incidental to a financial activity.*

*"(ii) PROPOSALS RAISED BY THE TREASURY.—*

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

*"(II) TIME PERIOD FOR BOARD ACTION.—Not later than 30 days after the date of receipt of a written recommendation from the Secretary of the Treasury under subclause (I) (or such longer period as the Secretary of the Treasury and the Board determine to be appropriate in light of the circumstances), the Board shall determine*

*whether to initiate a public rulemaking proposing that the subject recommended activity be found to be financial in nature or incidental to a financial activity under this subsection, and shall notify the Secretary of the Treasury in writing of the determination of the Board and, in the event that the Board determines not to seek public comment on the proposal, the reasons for that determination.*

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

*"(A) the purposes of this Act and the Financial Services Act of 1998;*

*"(B) changes or reasonably expected changes in the marketplace in which bank holding companies compete;*

*"(C) changes or reasonably expected changes in the technology for delivering financial services; and*

*"(D) whether such activity is necessary or appropriate to allow a bank holding company*

*and the affiliates of a bank holding company to—*

*"(i) compete effectively with any company seeking to provide financial services in the United States;*

*"(ii) use any available or emerging technological means, including any application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions, in providing financial services; and*

*"(iii) offer customers any available or emerging technological means for using financial services.*

*"(3) ACTIVITIES THAT ARE FINANCIAL IN NATURE.—The following activities shall be considered to be financial in nature:*

*"(A) Lending, exchanging, transferring, investing for others, or safeguarding money or securities.*

*"(B) Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or broker for purposes of the foregoing.*

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

*"(D) Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly.*

*"(E) Underwriting, dealing in, or making a market in securities.*

*"(F) Engaging in any activity that the Board has determined, by order or regulation that is in effect on the date of enactment of the Financial Services Act of 1998, to be so closely related to banking or managing or controlling banks as to be a proper incident thereto (subject to the same terms and conditions contained in such order or regulation, unless modified by the Board).*

*"(G) Engaging, in the United States, in any activity that—*

*"(i) a bank holding company may engage in outside the United States; and*

*"(ii) the Board has determined, under regulations issued pursuant to section 4(c)(13) of this Act (as in effect on the day*

*before the date of enactment of the Financial Services Act of 1998) to be usual in connection with the transaction of banking or other financial operations abroad.*

*"(H) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution or subsidiary of a depository institution, that the bank holding company controls) or otherwise, shares, assets, or ownership interests (including without limitation debt or equity securities, partnership interests, trust certificates or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if—*

*"(i) the shares, assets, or ownership interests are not acquired or held by a depository institution or subsidiary of a depository institution;*

*"(ii) such shares, assets, or ownership interests are acquired and held by a securities affiliate or an affiliate thereof as part of a bona fide underwriting or merchant*

*banking activity, including investment activities engaged in for the purpose of appreciation and ultimate resale or disposition of the investment;*

*"(iii) such shares, assets, or ownership interests, are held only for such a period of time as will permit the sale or disposition thereof on a reasonable basis consistent with the nature of the activities described in clause (ii); and*

*"(iv) during the period such shares, assets, or ownership interests are held, the bank holding company does not actively participate in the day to day management or operation of such company or entity, except insofar as necessary to achieve the objectives of clause (ii).*

*"(I) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution or subsidiary of a depository institution, that the bank holding company controls) or otherwise, shares, assets, or ownership interests (including without limitation debt or equity securities, partnership interests, trust cer-*

*tificates or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if—*

*"(i) the shares, assets, or ownership interests are not acquired or held by a depository institution or a subsidiary of a depository institution;*

*"(ii) such shares, assets, or ownership interests are acquired and held by an insurance company that is predominantly engaged in underwriting life, accident and health, or property and casualty insurance (other than credit-related insurance);*

*"(iii) such shares, assets, or ownership interests represent an investment made in the ordinary course of business of such insurance company in accordance with relevant State law governing such investments; and*

*"(iv) during the period such shares, assets, or ownership interests are held, the bank holding company does not directly or indirectly participate in the day-to-day*

*management or operation of the company or entity except insofar as necessary to achieve the objectives of clauses (ii) and (iii).*

*"(4) ACTIONS REQUIRED.—The Board shall, by regulation or order, define, consistent with the purposes of this Act, the following activities as, and the extent to which such activities are, financial in nature or incidental to activities which are financial in nature:*

*"(A) Lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities.*

*"(B) Providing any device or other instrumentality for transferring money or other financial assets.*

*"(C) Arranging, effecting, or facilitating financial transactions for the account of third parties.*

*"(5) POST-CONSUMMATION NOTIFICATION.—*

*"(A) IN GENERAL.—A financial holding company and a wholesale financial holding company that acquires any company, or commences any activity, pursuant to this subsection shall provide written notice to the Board describing*

*the activity commenced or conducted by the company acquired no later than 30 calendar days after commencing the activity or consummating the acquisition.*

*"(B) APPROVAL NOT REQUIRED FOR CERTAIN FINANCIAL ACTIVITIES.—Except as provided in section 4(j) with regard to the acquisition of a savings association or in paragraph (6) of this subsection, a financial holding company and a wholesale financial holding company may commence any activity, or acquire any company, pursuant to paragraph (3) or any regulation prescribed or order issued under paragraph (4), without prior approval of the Board.*

*"(6) NOTICE REQUIRED FOR LARGE COMBINATIONS.—*

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

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

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

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

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

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

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

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

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

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

*"(vi) whether the proposed transaction can reasonably be expected to produce benefits to the public.*

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

*"(D) SOLICITATION OF VIEWS OF OTHER SUPERVISORY AGENCIES.—*

*"(i) IN GENERAL.—Upon receiving a prior notice under this paragraph, in order to provide for the submission of their views*

*and recommendations, the Board shall give notice of the proposal to—*

*"(I) the appropriate Federal banking agency of any bank involved;*

*"(II) the appropriate functional regulator of any functionally regulated nondepository institution (as defined in section 5(c)(1)(C)) involved; and*

*"(III) the Secretary of the Treasury, the Department of Justice, and the Federal Trade Commission.*

*"(ii) TIMING.—The views and recommendations of any agency provided notice under this paragraph shall be submitted to the Board not later than 30 calendar days after the date on which notice to the agency was given, unless the Board determines that another shorter time period is appropriate.*

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

*"(1) IN GENERAL.—If the Board finds that a financial holding company is not in compliance with the requirements of subparagraph (A), (B), (C), or*

*(D) of subsection (b)(1), the Board shall give notice of such finding to the company.*

*"(2) AGREEMENT TO CORRECT CONDITIONS REQUIRED.—*

*"(A) IN GENERAL.—Not later than 45 days after receipt by a financial holding company of a notice given under paragraph (1) (or such additional period as the Board may permit), the company shall execute an agreement acceptable to the Board to comply with the requirements applicable to a financial holding company.*

*"(B) CERTAIN FAILURES TO COMPLY.—A financial holding company shall not be required to divest any company held, or terminate any activity conducted pursuant to, subsection (c) solely because of a failure to comply with subsection (b)(1)(C).*

*"(3) BOARD MAY IMPOSE LIMITATIONS.—Until the conditions described in a notice to a financial holding company under paragraph (1) are corrected, the Board may impose such limitations on the conduct or activities of the company or any affiliate of the company as the Board determines to be appropriate under the circumstances.*

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

*"(A) execute and implement an agreement in accordance with paragraph (2);*

*"(B) comply with any limitations imposed under paragraph (3);*

*"(C) in the case of a notice of failure to comply with subsection (b)(1)(A), restore each depository institution subsidiary to well capitalized status before the end of the 180-day period beginning on the date such notice is received by the company (or such other period permitted by the Board); or*

*"(D) in the case of a notice of failure to comply with subparagraph (B) or (D) of subsection (b)(1), restore compliance with any such subparagraph on or before the date on which the next examination of the depository institution subsidiary is completed or by the end of such other period as the Board determines to be appropriate,*

*the Board may require such company, under such terms and conditions as may be imposed by the Board and subject to such extension of time as may*

*be granted in the Board's discretion, to divest control of any depository institution subsidiary or, at the election of the financial holding company, instead to cease to engage in any activity conducted by such company or its subsidiaries pursuant to this section.*

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

*"(e) SAFEGUARDS FOR BANK SUBSIDIARIES.—A financial holding company shall assure that—*

*"(1) the procedures of the holding company for identifying and managing financial and operational risks within the company, and the subsidiaries of such company, adequately protect the subsidiaries of such company which are insured depository institutions from such risks;*

*"(2) the holding company has reasonable policies and procedures to preserve the separate corporate identity and limited liability of such company and the subsidiaries of such company, for the protection of the company's subsidiary insured depository institutions; and*

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

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

*"(1) IN GENERAL.—Notwithstanding section 4(a), a company that is not a bank holding company or a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978) and becomes a financial holding company after the date of the enactment of the Financial Services Act of 1998 may continue to engage in any activity and retain direct or indirect ownership or control of shares of a company engaged in any activity if—*

*"(A) the holding company lawfully was engaged in the activity or held the shares of such company on September 30, 1997;*

*"(B) the holding company is predominantly engaged in financial activities as defined in paragraph (2); and*

*"(C) the company engaged in such activity continues to engage only in the same activities that such company conducted on September 30, 1997, and other activities permissible under this Act.*

*"(2) PREDOMINANTLY FINANCIAL.—For purposes of this subsection, a company is predominantly engaged in financial activities if the annual gross reve-*

*nues derived by the holding company and all subsidiaries of the holding company (excluding revenues derived from subsidiary depository institutions), on a consolidated basis, from engaging in activities that are financial in nature or are incidental to activities that are financial in nature under subsection (c) represent at least 85 percent of the consolidated annual gross revenues of the company.*

*"(3) NO EXPANSION OF GRANDFATHERED COMMERCIAL ACTIVITIES THROUGH MERGER OR CONSOLIDATION.—A financial holding company that engages in activities or holds shares pursuant to this subsection, or a subsidiary of such financial holding company, may not acquire, in any merger, consolidation, or other type of business combination, assets of any other company which is engaged in any activity which the Board has not determined to be financial in nature or incidental to activities that are financial in nature under subsection (c).*

*"(4) CONTINUING REVENUE LIMITATION ON GRANDFATHERED COMMERCIAL ACTIVITIES.—Notwithstanding any other provision of this subsection, a financial holding company may continue to engage in activities or hold shares in companies pursuant to this subsection only to the extent that the aggregate*

*annual gross revenues derived from all such activities and all such companies does not exceed 15 percent of the consolidated annual gross revenues of the financial holding company (excluding revenues derived from subsidiary depository institutions).*

*"(5) CROSS MARKETING RESTRICTIONS APPLICABLE TO COMMERCIAL ACTIVITIES.—A depository institution controlled by a financial holding company shall not—*

*"(A) offer or market, directly or through any arrangement, any product or service of a company whose activities are conducted or whose shares are owned or controlled by the financial holding company pursuant to this subsection or subparagraph (H) or (I) of subsection (c)(3); or*

*"(B) permit any of its products or services to be offered or marketed, directly or through any arrangement, by or through any company described in subparagraph (A).*

*"(6) TRANSACTIONS WITH NONFINANCIAL AFFILIATES.—An insured depository institution controlled by a financial holding company or wholesale financial holding company may not engage in a covered transaction (as defined by section 23A(b)(7) of the Federal Reserve Act) with any affiliate controlled by*

*the company pursuant to section 10(c), this subsection, or subparagraph (H) or (I) of subsection (c)(3).*

*"(7) SUNSET OF GRANDFATHER.—A financial holding company engaged in any activity, or retaining direct or indirect ownership or control of shares of a company, pursuant to this subsection, shall terminate such activity and divest ownership or control of the shares of such company before the end of the 10-year period beginning on the date of the enactment of the Financial Services Act of 1998. The Board may, upon application by a financial holding company, extend such 10-year period by not to exceed an additional 5 years if such extension would not be detrimental to the public interest.*

*"(g) DEVELOPING ACTIVITIES.—A financial holding company and a wholesale financial holding company may engage directly or indirectly, or acquire shares of any company engaged, in any activity that the Board has not determined to be financial in nature or incidental to financial activities under subsection (c) if—*

*"(1) the holding company reasonably concludes that the activity is financial in nature or incidental to financial activities;*

*"(2) the gross revenues from all activities conducted under this subsection represent less than 5 percent of the consolidated gross revenues of the holding company;*

*"(3) the aggregate total assets of all companies the shares of which are held under this subsection do not exceed 5 percent of the holding company's consolidated total assets;*

*"(4) the total capital invested in activities conducted under this subsection represents less than 5 percent of the consolidated total capital of the holding company;*

*"(5) the Board has not determined that the activity is not financial in nature or incidental to financial activities under subsection (c);*

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

*"(7) the holding company provides written notification to the Board describing the activity commenced or conducted by the company acquired no later than 10 business days after commencing the activity or consummating the acquisition.".*

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

*(a) AFFILIATIONS.—*

*(1) IN GENERAL.—Except as provided in paragraph (2), no State may, by statute, regulation, order, interpretation, or other action, prevent or restrict an insured depository institution or wholesale financial institution, or a subsidiary or affiliate thereof, from being affiliated directly or indirectly or associated with any person or entity, as authorized or permitted by this Act or any other provision of Federal law.*

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

*(A) requiring any person or entity that proposes to acquire control of an entity that is engaged in the business of insurance and domiciled in that State (hereafter in this subparagraph referred to as the "insurer") to furnish to the insurance regulatory authority of that State, on or before the date on which notification is given under section 7(a) of the Clayton Act (15 U.S.C. 18(a))—*

*(i) the name and address of each person by whom, or on whose behalf, the affili-*

*ation referred to in this subparagraph is to be effected (hereafter in this subparagraph referred to as the "acquiring party");*

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

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

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

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

*(III) a list of all individuals who are, or who have been selected to become, directors or executive officers of*

*the acquiring party or who perform, or will perform, functions appropriate to such positions, including, for each such individual, the information required by clause (ii);*

*(iv) the source, nature, and amount of the consideration used, or to be used, in effecting the merger or other acquisition of control, a description of any transaction wherein funds were, or are to be, obtained for any such purpose, and the identity of persons furnishing such consideration, except that, if a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential if the person filing such statement so requests;*

*(v) fully audited financial information as to the earnings and financial condition of each acquiring party for the 5 fiscal years preceding the date of notification of each such acquiring party, or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, and similar unaudited information as*

*of a date not earlier than 90 days before the date of notification, except that, in the case of an acquiring party that is an insurer actively engaged in the business of insurance, the financial statements of such insurer need not be audited, but such audit may be required if the need therefor is determined by the insurance regulatory authority of the State;*

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

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

*(viii) the amount of each class of any security of the insurer that is beneficially owned or concerning which there is a right*

*to acquire beneficial ownership by each acquiring party;*

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

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

*(xi) a description of any recommendations to purchase any security of the insurer made during the 12-month period preceding*

*the date of notification by any acquiring party or by any person based upon interviews or at the suggestion of such acquiring party;*

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

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

*(B) requiring an entity that is acquiring control of an entity that is engaged in the business of insurance and domiciled in that State to maintain or restore the capital requirements of that insurance entity to the level required under the capital regulations of general applicability in that State to avoid the requirement of preparing and filing with the insurance regulatory au-*

*thority of that State a plan to increase the capital of the entity, except that any determination by the State insurance regulatory authority with respect to such requirement shall be made not later than 60 days after the date of notification under subparagraph (A); or*

*(C) taking actions with respect to the receivership or conservatorship of any insurance company.*

*(b) ACTIVITIES.—*

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

*(2) INSURANCE SALES.—*

*(A) IN GENERAL.—No State may, by statute, regulation, order, interpretation, or other action, prevent or significantly interfere with the*

*ability of an insured depository institution or wholesale financial institution, or a subsidiary or affiliate thereof, to engage, directly or indirectly, either by itself or in conjunction with a subsidiary, affiliate, or any other party, in any insurance sales, solicitation, or cross-marketing activity.*

*(B) CERTAIN STATE LAWS PRESERVED.—Notwithstanding subparagraph (A), a State may impose—*

*(i) restrictions prohibiting the rejection of an insurance policy solely because the policy has been issued or underwritten by any person who is not associated with such insured depository institution or wholesale financial institution, or any subsidiary or affiliate thereof, when such insurance is required in connection with a loan or extension of credit;*

*(ii) restrictions prohibiting a requirement for any debtor, insurer, or insurance agent or broker to pay a separate charge in connection with the handling of insurance that is required in connection with a loan or other extension of credit or the provision*

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

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

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

*(II) a State, or the Federal Government guarantees any returns on insurance products, or is a source of payment on any insurance obligation of or sold by the institution, affiliate, or subsidiary;*

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

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

*(vi) restrictions prohibiting the release of the insurance information of a customer*

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

*(I) a transfer of insurance information to an unaffiliated insurance company, agent, or broker in connection with transferring insurance in force on existing insureds of the insured depository institution or wholesale financial institution, or subsidiary or affiliate thereof, or in connection with a merger with or acquisition*

*of an unaffiliated insurance company, agent, or broker; or*

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

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

*(viii) restrictions prohibiting the extension of credit or any product or service that is equivalent to an extension of credit, or fixing or varying the consideration for any such extension of credit, on the condition or requirement that the customer obtain insurance from the insured depository institution, wholesale financial institution, a subsidiary or affiliate thereof, or a particular insurer, agent, or broker, other than a prohibition that would prevent any insured depository institution or wholesale financial institution, or any subsidiary or affiliate thereof—*

*(I) from engaging in any activity that would not violate section 106 of the Bank Holding Company Act Amendments of 1970, as interpreted by the Board of Governors of the Federal Reserve System; or*

*(II) from informing a customer or prospective customer that insurance is required in order to obtain a loan or credit, that loan or credit approval is contingent upon the procurement by the customer of acceptable insurance, or that insurance is available from the insured depository institution or wholesale financial institution, or any subsidiary or affiliate thereof;*

*(ix) restrictions requiring, when an application by a consumer for a loan or other extension of credit from an insured depository institution or wholesale financial institution is pending, and insurance is offered to the consumer or is required in connection with the loan or extension of credit by the insured depository institution or wholesale financial institution, that a writ-*

*ten disclosure be provided to the consumer indicating that his or her choice of an insurance provider will not affect the credit decision or credit terms in any way, except that the insured depository institution or wholesale financial institution, or subsidiary or affiliate thereof, may impose reasonable requirements concerning the creditworthiness of the insurance provider and scope of coverage chosen;*

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

*(I) is not a deposit;*

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

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

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

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

*(xii) restrictions prohibiting, when a customer obtains insurance (other than credit insurance or flood insurance) and credit from an insured depository institution or wholesale financial institution or its subsidiaries or affiliates, or any person soliciting the purchase of or selling insurance on the premises thereof, inclusion of the expense of insurance premiums in the primary credit transaction without the express written consent of the customer; and*

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

*(C) LIMITATIONS.—*

*(i) OCC DEFERENCE.—Section 307(e) does not apply with respect to any State statute, regulation, order, interpretation, or other action regarding insurance sales, solicitation, or cross marketing activities described in subparagraph (A) that was issued, adopted, or enacted before September 3, 1998, and that is not described in subparagraph (B).*

*(ii) NONDISCRIMINATION.—Subsection (c) does not apply with respect to any State statute, regulation, order, interpretation, or other action regarding insurance sales, solicitation, or cross marketing activities described in subparagraph (A) that was*

*issued, adopted, or enacted before September 3, 1998, and that is not described in subparagraph (B).*

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

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

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

*(A) relate to, or are issued, adopted, or enacted for the purpose of regulating the business of insurance in accordance with the Act of March*

*9, 1945 (commonly known as the "McCarran-Ferguson Act");*

*(B) apply only to entities that are not insured depository institutions or wholesale financial institutions, but that are directly engaged in the business of insurance (except that they may apply to depository institutions engaged in providing savings bank life insurance as principal to the extent of regulating such insurance);*

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

*(D) are not prohibited under subsection (c).*

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

*(1) distinguishes by its terms between insured depository institutions or wholesale financial institutions, or subsidiaries or affiliates thereof, and other*

*persons or entities engaged in such activities, in a manner that is in any way adverse to any such insured depository institution or wholesale financial institution, or subsidiary or affiliate thereof;*

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

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

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

*(d) DEFINITION.—For purposes of this section, the term "State" means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.*

***SEC. 105. MUTUAL BANK HOLDING COMPANIES AUTHORIZED.***

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

*"(2) REGULATIONS.—A bank holding company organized as a mutual holding company shall be regulated on terms, and shall be subject to limitations, comparable to those applicable to any other bank holding company.".*

***SEC. 106. PROHIBITION ON DEPOSIT PRODUCTION OFFICES.***

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

*(1) by inserting ", the Financial Services Act of 1998," after "pursuant to this title"; and*

*(2) by inserting "or such Act" after "made by this title".*

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

***SEC. 107. CLARIFICATION OF BRANCH CLOSURE REQUIREMENTS.***

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

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

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

*(1) in paragraph (2)(A)(ii)—*

*(A) by striking "and" at the end of subclause (IX);*

*(B) by inserting "and" after the semicolon at the end of subclause (X); and*

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

*"(XI) consumer loan assets that are derived from or incidental to activities in which institutions described in subparagraph (F) or (H) of section 2(c)(2) are permitted to engage;";*

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

*"(B) any bank subsidiary of such company engages in any activity in which the bank was not lawfully engaged as of March 5, 1987, unless the bank is well managed and well capitalized;*

*"(C) any bank subsidiary of such company both—*

*"(i) accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties; and*

*"(ii) engages in the business of making commercial loans (and, for purposes of this clause, loans made in the ordinary course of a credit card operation shall not be treated as commercial loans); or*

*"(D) after the date of the enactment of the Competitive Equality Amendments of 1987, any bank subsidiary of such company permits any*

*overdraft (including any intraday overdraft), or incurs any such overdraft in such bank's account at a Federal reserve bank, on behalf of an affiliate, other than an overdraft described in paragraph (3).''; and*

*(3) by striking paragraphs (3) and (4) and inserting the following new paragraphs:*

*''(3) PERMISSIBLE OVERDRAFTS DESCRIBED.—For purposes of paragraph (2)(D), an overdraft is described in this paragraph if—*

*''(A) such overdraft results from an inadvertent computer or accounting error that is beyond the control of both the bank and the affiliate; or*

*''(B) such overdraft—*

*''(i) is permitted or incurred on behalf of an affiliate which is monitored by, reports to, and is recognized as a primary dealer by the Federal Reserve Bank of New York; and*

*''(ii) is fully secured, as required by the Board, by bonds, notes, or other obligations which are direct obligations of the United States or on which the principal and interest are fully guaranteed by the*

*United States or by securities and obligations eligible for settlement on the Federal Reserve book entry system.*

*"(4) DIVESTITURE IN CASE OF LOSS OF EXEMPTION.—If any company described in paragraph (1) fails to qualify for the exemption provided under such paragraph by operation of paragraph (2), such exemption shall cease to apply to such company and such company shall divest control of each bank it controls before the end of the 180-day period beginning on the date that the company receives notice from the Board that the company has failed to continue to qualify for such exemption, unless before the end of such 180-day period, the company has—*

*"(A) corrected the condition or ceased the activity that caused the company to fail to continue to qualify for the exemption; and*

*"(B) implemented procedures that are reasonably adapted to avoid the reoccurrence of such condition or activity.".*

*(b) INDUSTRIAL LOAN COMPANIES AFFILIATE OVERDRAFTS.—Section 2(c)(2)(H) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(H)) is amended by inserting before the period at the end ", or that is other-*

*wise permissible for a bank controlled by a company described in section 4(f)(1)".*

***SEC. 109. REPORTS ON ONGOING FTC STUDY OF CONSUMER PRIVACY ISSUES.***

*With respect to the ongoing multistage study being conducted by the Federal Trade Commission on consumer privacy issues, the Commission shall submit to the Congress an interim report on the findings and conclusions of the Commission, together with such recommendations for legislative and administrative action as the Commission determines to be appropriate, at the conclusion of each stage of such study and a final report at the conclusion of the study.*

***SEC. 110. GAO STUDY OF ECONOMIC IMPACT ON COMMUNITY BANKS AND OTHER SMALL FINANCIAL INSTITUTIONS.***

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

*(b) REPORT TO THE CONGRESS.—The Comptroller General of the United States shall submit a report to the Congress before the end of the 6-month period beginning on the date of the date of the enactment of this Act containing the findings and conclusions of the Comptroller General*

*with regard to the study required under subsection (a) and such recommendations for legislative or administrative action as the Comptroller General may determine to be appropriate.*

## *Subtitle B—Streamlining Supervision of Financial Holding Companies*

### *SEC. 111. STREAMLINING FINANCIAL HOLDING COMPANY SUPERVISION.*

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

*"(c) REPORTS AND EXAMINATIONS.—*

*"(1) REPORTS.—*

*"(A) IN GENERAL.—The Board from time to time may require any bank holding company and any subsidiary of such company to submit reports under oath to keep the Board informed as to—*

*"(i) its financial condition, systems for monitoring and controlling financial and operating risks, and transactions with depository institution subsidiaries of the holding company; and*

*"(ii) compliance by the company or subsidiary with applicable provisions of this Act.*

*"(B) USE OF EXISTING REPORTS.—*

*"(i) IN GENERAL.—The Board shall, to the fullest extent possible, accept reports in fulfillment of the Board's reporting requirements under this paragraph that a bank holding company or any subsidiary of such company has provided or been required to provide to other Federal and State supervisors or to appropriate self-regulatory organizations.*

*"(ii) AVAILABILITY.—A bank holding company or a subsidiary of such company shall provide to the Board, at the request of the Board, a report referred to in clause (i).*

*"(iii) REQUIRED USE OF PUBLICLY REPORTED INFORMATION.—The Board shall, to the fullest extent possible, accept in fulfillment of any reporting or recordkeeping requirements under this Act information that is otherwise required to be reported publicly and externally audited financial statements.*

*"(iv) REPORTS FILED WITH OTHER AGENCIES.—In the event the Board requires a report from a functionally regulated non-depository institution subsidiary of a bank holding company of a kind that is not required by another Federal or State regulator or appropriate self-regulatory organization, the Board shall request that the appropriate regulator or self-regulatory organization obtain such report. If the report is not made available to the Board, and the report is necessary to assess a material risk to the bank holding company or its subsidiary depository institution or compliance with this Act, the Board may require such subsidiary to provide such a report to the Board.*

*"(C) DEFINITION.—For purposes of this subsection, the term 'functionally regulated non-depository institution' means—*

*"(i) a broker or dealer registered under the Securities Exchange Act of 1934;*

*"(ii) an investment adviser registered under the Investment Advisers Act of 1940, or with any State, with respect to the in-*

*vestment advisory activities of such investment adviser and activities incidental to such investment advisory activities;*

*"(iii) an insurance company subject to supervision by a State insurance commission, agency, or similar authority; and*

*"(iv) an entity subject to regulation by the Commodity Futures Trading Commission, with respect to the commodities activities of such entity and activities incidental to such commodities activities.*

*"(2) EXAMINATIONS.—*

*"(A) EXAMINATION AUTHORITY.—*

*"(i) IN GENERAL.—The Board may make examinations of each bank holding company and each subsidiary of a bank holding company.*

*"(ii) FUNCTIONALLY REGULATED NONDEPOSITORY INSTITUTION SUBSIDIARIES.—Notwithstanding clause (i), the Board may make examinations of a functionally regulated nondepository institution subsidiary of a bank holding company only if—*

*"(I) the Board has reasonable cause to believe that such subsidiary is*

*engaged in activities that pose a material risk to an affiliated depository institution, or*

*"(II) based on reports and other available information, the Board has reasonable cause to believe that a subsidiary is not in compliance with this Act or with provisions relating to transactions with an affiliated depository institution and the Board cannot make such determination through examination of the affiliated depository institution or bank holding company.*

*"(B) LIMITATIONS ON EXAMINATION AUTHORITY FOR BANK HOLDING COMPANIES AND SUBSIDIARIES.—Subject to subparagraph (A)(ii), the Board may make examinations under subparagraph (A)(i) of each bank holding company and each subsidiary of such holding company in order to—*

*"(i) inform the Board of the nature of the operations and financial condition of the holding company and such subsidiaries;*

*"(ii) inform the Board of—*

*"(I) the financial and operational risks within the holding company system that may pose a threat to the safety and soundness of any subsidiary depository institution of such holding company; and*

*"(II) the systems for monitoring and controlling such risks; and*

*"(iii) monitor compliance with the provisions of this Act and those governing transactions and relationships between any subsidiary depository institution and its affiliates.*

*"(C) RESTRICTED FOCUS OF EXAMINATIONS.—The Board shall, to the fullest extent possible, limit the focus and scope of any examination of a bank holding company to—*

*"(i) the bank holding company; and*

*"(ii) any subsidiary of the holding company that, because of—*

*"(I) the size, condition, or activities of the subsidiary;*

*"(II) the nature or size of transactions between such subsidiary and any depository institution which is*

*also a subsidiary of such holding company; or*

*"(III) the centralization of functions within the holding company system,*

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

*"(D) DEFERENCE TO BANK EXAMINATIONS.—The Board shall, to the fullest extent possible, use, for the purposes of this paragraph, the reports of examinations of depository institutions made by the appropriate Federal and State depository institution supervisory authority.*

*"(E) DEFERENCE TO OTHER EXAMINATIONS.—The Board shall, to the fullest extent possible, address the circumstances which might otherwise permit or require an examination by the Board by forgoing an examination and instead reviewing the reports of examination made of—*

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

*"(ii) any registered investment adviser properly registered by or on behalf of either the Securities and Exchange Commission or any State;*

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

*"(iv) any other subsidiary that the Board finds to be comprehensively supervised by a Federal or State authority.*

*"(3) CAPITAL.—*

*"(A) IN GENERAL.—The Board shall not, by regulation, guideline, order or otherwise, prescribe or impose any capital or capital adequacy rules, guidelines, standards, or requirements on any subsidiary of a financial holding company that is not a depository institution and—*

*"(i) is in compliance with applicable capital requirements of another Federal regulatory authority (including the Securities and Exchange Commission) or State insurance authority; or*

*"(ii) is properly registered as an investment adviser under the Investment Advisers Act of 1940, or with any State.*

*"(B) RULE OF CONSTRUCTION.—Subparagraph (A) shall not be construed as preventing the Board from imposing capital or capital adequacy rules, guidelines, standards, or requirements with respect to activities of a registered investment adviser other than investment advisory activities or activities incidental to investment advisory activities.*

*"(C) LIMITATIONS ON INDIRECT ACTION.—In developing, establishing, or assessing holding company capital or capital adequacy rules, guidelines, standards, or requirements for purposes of this paragraph, the Board shall not take into account the activities, operations, or investments of an affiliated investment company registered under the Investment Company Act of 1940, if the investment company is not—*

*"(i) a bank holding company; or*

*"(ii) controlled by a bank holding company by reason of ownership by the bank holding company (including through all of its affiliates) of 25 percent or more of the*

*shares of the investment company, where the shares owned by the bank holding company have a market value equal to more than $1,000,000.*

*"(4) TRANSFER OF BOARD AUTHORITY TO APPROPRIATE FEDERAL BANKING AGENCY.—*

*"(A) IN GENERAL.—In the case of any bank holding company which is not significantly engaged in nonbanking activities, the Board, in consultation with the appropriate Federal banking agency, may designate the appropriate Federal banking agency of the lead insured depository institution subsidiary of such holding company as the appropriate Federal banking agency for the bank holding company.*

*"(B) AUTHORITY TRANSFERRED.—An agency designated by the Board under subparagraph (A) shall have the same authority as the Board under this Act to—*

*"(i) examine and require reports from the bank holding company and any affiliate of such company (other than a depository institution) under section 5;*

*"(ii) approve or disapprove applications or transactions under section 3;*

*"(iii) take actions and impose penalties under subsections (e) and (f) of section 5 and section 8; and*

*"(iv) take actions regarding the holding company, any affiliate of the holding company (other than a depository institution), or any institution-affiliated party of such company or affiliate under the Federal Deposit Insurance Act and any other statute which the Board may designate.*

*"(C) AGENCY ORDERS.—Section 9 (of this Act) and section 105 of the Bank Holding Company Act Amendments of 1970 shall apply to orders issued by an agency designated under subparagraph (A) in the same manner such sections apply to orders issued by the Board.*

*"(5) FUNCTIONAL REGULATION OF SECURITIES AND INSURANCE ACTIVITIES.—The Board shall defer to—*

*"(A) the Securities and Exchange Commission with regard to all interpretations of, and the enforcement of, applicable Federal securities laws (and rules, regulations, orders, and other directives issued thereunder) relating to the activities, conduct, and operations of registered*

*brokers, dealers, investment advisers, and investment companies;*

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

*"(C) the relevant State insurance authorities with regard to all interpretations of, and the enforcement of, applicable State insurance laws (and rules, regulations, orders, and other directives issued thereunder) relating to the activities, conduct, and operations of insurance companies and insurance agents.".*

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

*(a) PREVENTION OF DUPLICATIVE FILINGS.—Section 5(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(a)) is amended by adding the following new sentence at the end: "A declaration filed in accordance with section 6(b)(1)(E) shall satisfy the requirements of this subsection with regard to the registration of a bank holding company*

*but not any requirement to file an application to acquire a bank pursuant to section 3.".*

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

*(1) by striking "Financial Institutions Supervisory Act of 1966, order" and inserting "Financial Institutions Supervisory Act of 1966, at the election of the bank holding company—*

*"(A) order"; and*

*(2) by striking "shareholders of the bank holding company. Such distribution" and inserting "shareholders of the bank holding company; or*

*"(B) order the bank holding company, after due notice and opportunity for hearing, and after consultation with the primary supervisor for the bank, which shall be the Comptroller of the Currency in the case of a national bank, and the Federal Deposit Insurance Corporation and the appropriate State supervisor in the case of an insured nonmember bank, to terminate (within 120 days or such longer period as the Board may direct) the ownership or control of any such bank by such company.*

*"The distribution referred to in subparagraph (A)".*

***SEC. 113. AUTHORITY OF STATE INSURANCE REGULATOR AND SECURITIES AND EXCHANGE COMMISSION.***

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

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

*"(1) IN GENERAL.—Notwithstanding any other provision of law, any regulation, order, or other action of the Board which requires a bank holding company to provide funds or other assets to a subsidiary insured depository institution shall not be effective nor enforceable if—*

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

*"(i) a bank holding company that is an insurance company or is a broker or dealer registered under the Securities Exchange Act of 1934; or*

*"(ii) an affiliate of the depository institution which is an insurance company or a broker or dealer registered under such Act; and*

*"(B) the State insurance authority for the insurance company or the Securities and Ex-*

*change Commission for the registered broker or dealer, as the case may be, determines in writing sent to the holding company and the Board that the holding company shall not provide such funds or assets because such action would have a material adverse effect on the financial condition of the insurance company or the broker or dealer, as the case may be.*

*"(2) NOTICE TO STATE INSURANCE AUTHORITY OR SEC REQUIRED.—If the Board requires a bank holding company, or an affiliate of a bank holding company, which is an insurance company or a broker or dealer described in paragraph (1)(A) to provide funds or assets to an insured depository institution subsidiary of the holding company pursuant to any regulation, order, or other action of the Board referred to in paragraph (1), the Board shall promptly notify the State insurance authority for the insurance company or the Securities and Exchange Commission, as the case may be, of such requirement.*

*"(3) DIVESTITURE IN LIEU OF OTHER ACTION.—If the Board receives a notice described in paragraph (1)(B) from a State insurance authority or the Securities and Exchange Commission with regard to a bank holding company or affiliate referred to in that*

*paragraph, the Board may order the bank holding company to divest the insured depository institution not later than 180 days after receiving the notice, or such longer period as the Board determines consistent with the safe and sound operation of the insured depository institution.*

*"(4) CONDITIONS BEFORE DIVESTITURE.—During the period beginning on the date an order to divest is issued by the Board under paragraph (3) to a bank holding company and ending on the date the divestiture is completed, the Board may impose any conditions or restrictions on the holding company's ownership or operation of the insured depository institution, including restricting or prohibiting transactions between the insured depository institution and any affiliate of the institution, as are appropriate under the circumstances.".*

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

*Section 5 of the Bank Holding Company Act of 1956 (12 U.S.C. 1844) is amended by inserting after subsection (g) (as added by section 113 of this subtitle) the following new subsection:*

*"(h) PRUDENTIAL SAFEGUARDS.—*

*"(1) IN GENERAL.—The Board may, by regulation or order, impose restrictions or requirements on*

*relationships or transactions between a depository institution subsidiary of a bank holding company and any affiliate of such depository institution (other than a subsidiary of such institution) which the Board finds is consistent with the public interest, the purposes of this Act, the Financial Services Act of 1998, the Federal Reserve Act, and other Federal law applicable to depository institution subsidiaries of bank holding companies and the standards in paragraph (2).*

*"(2) STANDARDS.—The Board may exercise authority under paragraph (1) if the Board finds that such action would—*

*"(A) avoid any significant risk to the safety and soundness of depository institutions or any Federal deposit insurance fund;*

*"(B) enhance the financial stability of bank holding companies;*

*"(C) avoid conflicts of interest or other abuses;*

*"(D) enhance the privacy of customers of depository institutions; or*

*"(E) promote the application of national treatment and equality of competitive opportunity between nonbank affiliates owned or con-*

*trolled by domestic bank holding companies and nonbank affiliates owned or controlled by foreign banks operating in the United States.*

*"(3) REVIEW.—The Board shall regularly—*

*"(A) review all restrictions or requirements established pursuant to paragraph (1) to determine whether there is a continuing need for any such restriction or requirement to carry out the purposes of the Act, including any purpose described in paragraph (2); and*

*"(B) modify or eliminate any restriction or requirement the Board finds is no longer required for such purposes.*

*"(4) FOREIGN BANKS.—The Board may, by regulation or order, impose restrictions or requirements on relationships or transactions between a foreign bank and any affiliate in the United States of such foreign bank that the Board finds are consistent with the public interest, the purposes of this Act, the Financial Services Act of 1998, the Federal Reserve Act, and other Federal law applicable to foreign banks and their affiliates in the United States, and the standards in paragraphs (2) and (3).".*

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

*(a) EXCLUSIVE COMMISSION AUTHORITY.—*

*(1) IN GENERAL.—The Commission shall be the sole Federal agency with authority to inspect and examine any registered investment company that is not a bank holding company.*

*(2) PROHIBITION ON BANKING AGENCIES.—A Federal banking agency may not inspect or examine any registered investment company that is not a bank holding company.*

*(b) EXAMINATION RESULTS AND OTHER INFORMATION.—The Commission shall provide to any Federal banking agency, upon request, the results of any examination, reports, records, or other information with respect to any registered investment company to the extent necessary for the agency to carry out its statutory responsibilities.*

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

*(1) BANK HOLDING COMPANY.—The term "bank holding company" has the same meaning as in section 2 of the Bank Holding Company Act of 1956.*

*(2) COMMISSION.—The term "Commission" means the Securities and Exchange Commission.*

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

*(4) REGISTERED INVESTMENT COMPANY.—The term "registered investment company" means an investment company which is registered with the Commission under the Investment Company Act of 1940.*

***SEC. 116. LIMITATION ON RULEMAKING, PRUDENTIAL, SUPERVISORY, AND ENFORCEMENT AUTHORITY OF THE BOARD.***

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

***"SEC. 10A. LIMITATION ON RULEMAKING, PRUDENTIAL, SUPERVISORY, AND ENFORCEMENT AUTHORITY OF THE BOARD.***

*"(a) LIMITATION ON DIRECT ACTION.—*

*"(1) IN GENERAL.—The Board may not prescribe regulations, issue or seek entry of orders, impose restraints, restrictions, guidelines, requirements, safeguards, or standards, or otherwise take any action under or pursuant to any provision of this Act or section 8 of the Federal Deposit Insurance Act against or with respect to a regulated subsidiary of a bank holding company unless the action is necessary to prevent or redress an unsafe or unsound practice or breach of fiduciary duty by such subsidiary that poses a material risk to—*

*"(A) the financial safety, soundness, or stability of an affiliated depository institution; or*

*"(B) the domestic or international payment system.*

*"(2) CRITERIA FOR BOARD ACTION.—The Board shall not take action otherwise permitted under paragraph (1) unless the Board finds that it is not reasonably possible to effectively protect against the material risk at issue through action directed at or against the affiliated depository institution or against depository institutions generally.*

*"(b) LIMITATION ON INDIRECT ACTION.—The Board may not prescribe regulations, issue or seek entry of orders, impose restraints, restrictions, guidelines, requirements, safeguards, or standards, or otherwise take any action under or pursuant to any provision of this Act or section 8 of the Federal Deposit Insurance Act against or with respect to a financial holding company or a wholesale financial holding company where the purpose or effect of doing so would be to take action indirectly against or with respect to a regulated subsidiary that may not be taken directly against or with respect to such subsidiary in accordance with subsection (a).*

*"(c) ACTIONS SPECIFICALLY AUTHORIZED.—Notwithstanding subsection (a), the Board may take action under*

*this Act or section 8 of the Federal Deposit Insurance Act to enforce compliance by a regulated subsidiary with Federal law that the Board has specific jurisdiction to enforce against such subsidiary.*

*"(d) REGULATED SUBSIDIARY DEFINED.—For purposes of this section, the term 'regulated subsidiary' means any company that is not a bank holding company and is—*

*"(1) a broker or dealer registered under the Securities Exchange Act of 1934;*

*"(2) a registered investment adviser, properly registered by or on behalf of either the Securities and Exchange Commission or any State, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities;*

*"(3) an investment company registered under the Investment Company Act of 1940;*

*"(4) an insurance company or an insurance agency subject to supervision by a State insurance commission, agency, or similar authority; or*

*"(5) an entity subject to regulation by the Commodity Futures Trading Commission, with respect to the commodities activities of such entity and activities incidental to such commodities activities.".*

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

*(a) PURPOSE.—It is the intention of Congress that the Board of Governors of the Federal Reserve System, as the umbrella supervisor for financial holding companies, and the State insurance regulators, as the functional regulators of companies engaged in insurance activities, coordinate efforts to supervise companies that control both a depository institution and a company engaged in insurance activities regulated under State law. In particular, Congress believes that the Board and the State insurance regulators should share, on a confidential basis, information relevant to the supervision of companies that control both a depository institution and a company engaged in insurance activities, including information regarding the financial health of the consolidated organization and information regarding transactions and relationships between insurance companies and affiliated depository institutions. The appropriate Federal banking agencies for depository institutions should also share, on a confidential basis, information with the relevant State insurance regulators regarding transactions and relationships between depository institutions and affiliated companies engaged in insurance activities. The purpose of this section is to encourage this coordination and confidential sharing of information, and to thereby improve both the efficiency and the quality of the supervision of financial*

*holding companies and their affiliated depository institutions and companies engaged in insurance activities.*

*(b) EXAMINATION RESULTS AND OTHER INFORMATION.—*

*(1) INFORMATION OF THE BOARD.—Upon the request of the appropriate insurance regulator of any State, the Board may provide any information of the Board regarding the financial condition, risk management policies, and operations of any financial holding company that controls a company that is engaged in insurance activities and is regulated by such State insurance regulator, and regarding any transaction or relationship between such an insurance company and any affiliated depository institution. The Board may provide any other information to the appropriate State insurance regulator that the Board believes is necessary or appropriate to permit the State insurance regulator to administer and enforce applicable State insurance laws.*

*(2) BANKING AGENCY INFORMATION.—Upon the request of the appropriate insurance regulator of any State, the appropriate Federal banking agency may provide any information of the agency regarding any transaction or relationship between a depository institution supervised by such Federal banking agency*

*and any affiliated company that is engaged in insurance activities regulated by such State insurance regulator. The appropriate Federal banking agency may provide any other information to the appropriate State insurance regulator that the agency believes is necessary or appropriate to permit the State insurance regulator to administer and enforce applicable State insurance laws.*

*(3) STATE INSURANCE REGULATOR INFORMATION.—Upon the request of the Board or the appropriate Federal banking agency, a State insurance regulator may provide any examination or other reports, records, or other information to which such insurance regulator may have access with respect to a company which—*

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

*(B) is an affiliate of an insured depository institution, wholesale financial institution, or financial holding company.*

*(c) CONSULTATION.—Before making any determination relating to the initial affiliation of, or the continuing affiliation of, an insured depository institution, wholesale financial institution, or financial holding company with a company engaged in insurance activities, the appropriate*

*Federal banking agency shall consult with the appropriate State insurance regulator of such company and take the views of such insurance regulator into account in making such determination.*

*(d) EFFECT ON OTHER AUTHORITY.—Nothing in this section shall limit in any respect the authority of the appropriate Federal banking agency with respect to an insured depository institution, wholesale financial institution, or bank holding company or any affiliate thereof under any provision of law.*

*(e) CONFIDENTIALITY AND PRIVILEGE.—*

*(1) CONFIDENTIALITY.—The appropriate Federal banking agency shall not provide any information or material that is entitled to confidential treatment under applicable Federal banking agency regulations, or other applicable law, to a State insurance regulator unless such regulator agrees to maintain the information or material in confidence and to take all reasonable steps to oppose any effort to secure disclosure of the information or material by the regulator. The appropriate Federal banking agency shall treat as confidential any information or material obtained from a State insurance regulator that is entitled to confidential treatment under applicable State regulations, or other applicable law, and take all reasonable*

*steps to oppose any effort to secure disclosure of the information or material by the Federal banking agency.*

*(2) PRIVILEGE.—The provision pursuant to this section of information or material by a Federal banking agency or State insurance regulator shall not constitute a waiver of, or otherwise affect, any privilege to which the information or material is otherwise subject.*

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

*(1) APPROPRIATE FEDERAL BANKING AGENCY; INSURED DEPOSITORY INSTITUTION.—The terms "appropriate Federal banking agency" and "insured depository institution" have the same meanings as in section 3 of the Federal Deposit Insurance Act.*

*(2) BOARD; FINANCIAL HOLDING COMPANY; AND WHOLESALE FINANCIAL INSTITUTION.—The terms "Board", "financial holding company", and "wholesale financial institution" have the same meanings as in section 2 of the Bank Holding Company Act of 1956.*

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

*Notwithstanding any other provision of law, the provisions of—*

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

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

*shall also limit whatever authority that the Comptroller of the Currency and the Director of the Office of Thrift Supervision might otherwise have under any statute to require reports, make examinations, impose capital requirements or take any other direct or indirect action with respect to bank holding companies and their nonbank subsidiaries (including nonbank subsidiaries of depository institutions), subject to the same standards and requirements as are applicable to the Board under such provisions.*

***SEC. 119. PROHIBITION ON FDIC ASSISTANCE TO AFFILIATES AND SUBSIDIARIES.***

*Section 11(a)(4)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(4)(B)) is amended by striking "to*

*benefit any shareholder of" and inserting "to benefit any shareholder, affiliate (other than an insured depository institution that receives assistance in accordance with the provision of this Act), or subsidiary of".*

## *Subtitle C—Subsidiaries of National Banks*

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

*(a) FINANCIAL SUBSIDIARIES OF NATIONAL BANKS.—Chapter one of title LXII of the Revised Statutes of United States (12 U.S.C. 21 et seq.) is amended—*

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

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

### *"SEC. 5136A. SUBSIDIARIES OF NATIONAL BANKS.*

*"(a) SUBSIDIARIES OF NATIONAL BANKS AUTHORIZED TO ENGAGE IN FINANCIAL ACTIVITIES.—*

*"(1) EXCLUSIVE AUTHORITY.—No provision of section 5136 or any other provision of this title LXII of the Revised Statutes shall be construed as authorizing a subsidiary of a national bank to engage in, or own any share of or any other interest in any company engaged in, any activity that—*

*"(A) is not permissible for a national bank to engage in directly; or*

*"(B) is conducted under terms or conditions other than those that would govern the conduct of such activity by a national bank,*

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

*"(2) SPECIFIC AUTHORIZATION TO CONDUCT AGENCY ACTIVITIES WHICH ARE FINANCIAL IN NATURE.—A national bank may control a company that engages in agency activities that have been determined to be financial in nature or incidental to such financial activities pursuant to and in accordance with section 6(c) of the Bank Holding Company Act of 1956 if—*

*"(A) the company engages in such activities solely as agent and not directly or indirectly as principal;*

*"(B) the national bank is well capitalized and well managed, and has achieved a rating of satisfactory or better at the most recent examina-*

*tion of the bank under the Community Reinvestment Act of 1977;*

*"(C) all depository institution affiliates of the national bank are well capitalized and well managed, and have achieved a rating of satisfactory or better at the most recent examination of each such depository institution under the Community Reinvestment Act of 1977; and*

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

*"(3) RATING DOES NOT REQUIRE DIVESTITURE.—A national bank shall not be required to divest any subsidiary held pursuant to paragraph (2) solely based on a rating described in subparagraph (B) or (C) of paragraph (2), other than a rating described in paragraph (4)(C).*

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

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

*"(B) WELL CAPITALIZED.—The term 'well capitalized' has the same meaning as in section*

*38 of the Federal Deposit Insurance Act and, for purposes of this section, the Comptroller shall have exclusive jurisdiction to determine whether a national bank is well capitalized.*

*"(C) WELL MANAGED.—The term 'well managed' means—*

*"(i) in the case of a depository institution that has been examined, unless otherwise determined in writing by the appropriate Federal banking agency—*

*"(I) the achievement of a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under an equivalent rating system) in connection with the most recent examination or subsequent review of the depository institution; and*

*"(II) at least a rating of 2 for management, if that rating is given; or*

*"(ii) in the case of any depository institution that has not been examined, the existence and use of managerial resources that the appropriate Federal banking agency determines are satisfactory.*

*"(D) INCORPORATED DEFINITIONS.—The terms 'appropriate Federal banking agency' and 'depository institution' have the same meanings as in section 3 of the Federal Deposit Insurance Act.*

*"(b) LIMITED EXCLUSIONS FROM COMMUNITY NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DEPOSITORY INSTITUTIONS.—Any depository institution which becomes affiliated with a national bank during the 24-month period preceding the submission of an application to acquire a subsidiary under subsection (a)(2), and any depository institution which becomes so affiliated after the approval of such application, may be excluded for purposes of subsection (a)(2)(C) during the 24-month period beginning on the date of such acquisition if—*

*"(1) the depository institution has submitted an affirmative plan to the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) to take such action as may be necessary in order for such institution to achieve a 'satisfactory record of meeting community credit needs', or better, at the next examination of the institution under the Community Reinvestment Act of 1977; and*

*"(2) the plan has been approved by the appropriate Federal banking agency.".*

*(b) LIMITATION ON CERTAIN ACTIVITIES IN SUBSIDIARIES.—Section 21(a)(1) of the Banking Act of 1933 (12 U.S.C. 378(a)(1)) is amended—*

*(1) by inserting ", or to be a subsidiary of any person, firm, corporation, association, business trust, or similar organization engaged (unless such subsidiary (A) was engaged in such securities activities as of September 15, 1997, or (B) is a nondepository subsidiary of (i) a foreign bank and is not also a subsidiary of a domestic depository institution, or (ii) an unincorporated private bank that is not insured under the Federal Deposit Insurance Act)," after "to engage at the same time"; and*

*(2) by inserting "or any subsidiary of such bank, company, or institution" after "or private bankers".*

*(c) TECHNICAL AND CONFORMING AMENDMENTS.—*

*(1) ANTITYING.—Section 106(a) of the Bank Holding Company Act Amendments of 1970 is amended by adding at the end the following new sentence: "For purposes of this section, a subsidiary of a national bank which engages in activities as an agent pursuant to section 5136A(a)(2) shall be deemed to be a subsidiary of a bank holding company, and not a subsidiary of a bank.".*

*(2) SECTION 23B.—Section 23B(a) of the Federal Reserve Act (12 U.S.C. 371c–1(a)) is amended by adding at the end the following new paragraph:*

*"(4) SUBSIDIARY OF NATIONAL BANK.—For purposes of this section, a subsidiary of a national bank which engages in activities as an agent pursuant to section 5136A(a)(2) shall be deemed to be an affiliate of the national bank and not a subsidiary of the bank.".*

*(d) CLERICAL AMENDMENT.—The table of sections for chapter one of title LXII of the Revised Statutes of the United States is amended—*

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

*(2) by inserting after the item relating to section 5136 the following new item:*

*"5136A. Financial subsidiaries of national banks.".*

***SEC. 122. MISREPRESENTATIONS REGARDING DEPOSITORY INSTITUTION LIABILITY FOR OBLIGATIONS OF AFFILIATES.***

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

***"§ 1008. Misrepresentations regarding financial institution liability for obligations of affiliates***

*"(a) IN GENERAL.—No institution-affiliated party of an insured depository institution or institution-affiliated party of a subsidiary or affiliate of an insured depository institution shall fraudulently represent that the institution is or will be liable for any obligation of a subsidiary or other affiliate of the institution.*

*"(b) CRIMINAL PENALTY.—Whoever violates subsection (a) shall be fined under this title, imprisoned for not more than 1 year, or both.*

*"(c) INSTITUTION-AFFILIATED PARTY DEFINED.—For purposes of this section, the term 'institution-affiliated party' with respect to a subsidiary or affiliate has the same meaning as in section 3 of the Federal Deposit Insurance Act, except that references to an insured depository institution shall be deemed to be references to a subsidiary or affiliate of an insured depository institution.*

*"(d) OTHER DEFINITIONS.—For purposes of this section, the terms 'affiliate', 'insured depository institution', and 'subsidiary' have same meanings as in section 3 of the Federal Deposit Insurance Act.".*

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

*"1008. Misrepresentations regarding financial institution liability for obligations of affiliates.".*

***SEC. 123. REPEAL OF STOCK LOAN LIMIT IN FEDERAL RESERVE ACT.***

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

# *Subtitle D—Wholesale Financial Holding Companies; Wholesale Financial Institutions*

## *CHAPTER 1—WHOLESALE FINANCIAL HOLDING COMPANIES*

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

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

***"SEC. 10. WHOLESALE FINANCIAL HOLDING COMPANIES.***

*"(a) COMPANIES THAT CONTROL WHOLESALE FINANCIAL INSTITUTIONS.—*

*"(1) WHOLESALE FINANCIAL HOLDING COMPANY DEFINED.—The term 'wholesale financial holding company' means any company that—*

*"(A) is registered as a bank holding company;*

*"(B) is predominantly engaged in financial activities as defined in section 6(g)(2);*

*"(C) controls 1 or more wholesale financial institutions;*

*"(D) does not control—*

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

*"(ii) an insured bank other than an institution permitted under subparagraph (D), (F), or (G) of section 2(c)(2); or*

*"(iii) a savings association; and*

*"(E) is not a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978).*

*"(2) SAVINGS ASSOCIATION TRANSITION PERIOD.—Notwithstanding paragraph (1)(D)(iii), the Board may permit a company that controls a savings association and that otherwise meets the requirements of paragraph (1) to become supervised under paragraph (1), if the company divests control of any such savings association within such period, not to exceed 5 years after becoming supervised under paragraph (1), as permitted by the Board.*

*"(b) SUPERVISION BY THE BOARD.—*

*"(1) IN GENERAL.—The provisions of this section shall govern the reporting, examination, and capital requirements of wholesale financial holding companies.*

*"(2) REPORTS.—*

*"(A) IN GENERAL.—The Board from time to time may require any wholesale financial holding company and any subsidiary of such company to submit reports under oath to keep the Board informed as to—*

*"(i) the company's or subsidiary's activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and transactions with depository institution subsidiaries of the holding company; and*

*"(ii) the extent to which the company or subsidiary has complied with the provisions of this Act and regulations prescribed and orders issued under this Act.*

*"(B) USE OF EXISTING REPORTS.—*

*"(i) IN GENERAL.—The Board shall, to the fullest extent possible, accept reports in fulfillment of the Board's reporting requirements under this paragraph that the whole-*

*sale financial holding company or any subsidiary of such company has provided or been required to provide to other Federal and State supervisors or to appropriate self-regulatory organizations.*

*"(ii) AVAILABILITY.—A wholesale financial holding company or a subsidiary of such company shall provide to the Board, at the request of the Board, a report referred to in clause (i).*

*"(C) EXEMPTIONS FROM REPORTING REQUIREMENTS.—*

*"(i) IN GENERAL.—The Board may, by regulation or order, exempt any company or class of companies, under such terms and conditions and for such periods as the Board shall provide in such regulation or order, from the provisions of this paragraph and any regulation prescribed under this paragraph.*

*"(ii) CRITERIA FOR CONSIDERATION.—In making any determination under clause (i) with regard to any exemption under such clause, the Board shall consider, among such other factors as the Board may*

*determine to be appropriate, the following factors:*

*"(I) Whether information of the type required under this paragraph is available from a supervisory agency (as defined in section 1101(7) of the Right to Financial Privacy Act of 1978) or a foreign regulatory authority of a similar type.*

*"(II) The primary business of the company.*

*"(III) The nature and extent of the domestic and foreign regulation of the activities of the company.*

*"(3) EXAMINATIONS.—*

*"(A) LIMITED USE OF EXAMINATION AUTHORITY.—The Board may make examinations of each wholesale financial holding company and each subsidiary of such company in order to—*

*"(i) inform the Board regarding the nature of the operations and financial condition of the wholesale financial holding company and its subsidiaries;*

*"(ii) inform the Board regarding—*

*"(I) the financial and operational risks within the wholesale financial holding company system that may affect any depository institution owned by such holding company; and*

*"(II) the systems of the holding company and its subsidiaries for monitoring and controlling those risks; and*

*"(iii) monitor compliance with the provisions of this Act and those governing transactions and relationships between any depository institution controlled by the wholesale financial holding company and any of the company's other subsidiaries.*

*"(B) RESTRICTED FOCUS OF EXAMINATIONS.—The Board shall, to the fullest extent possible, limit the focus and scope of any examination of a wholesale financial holding company under this paragraph to—*

*"(i) the holding company; and*

*"(ii) any subsidiary (other than an insured depository institution subsidiary) of the holding company that, because of the size, condition, or activities of the subsidiary, the nature or size of transactions be-*

*tween such subsidiary and any affiliated depository institution, or the centralization of functions within the holding company system, could have a materially adverse effect on the safety and soundness of any depository institution affiliate of the holding company.*

*"(C) DEFERENCE TO BANK EXAMINATIONS.—The Board shall, to the fullest extent possible, use the reports of examination of depository institutions made by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision or the appropriate State depository institution supervisory authority for the purposes of this section.*

*"(D) DEFERENCE TO OTHER EXAMINATIONS.—The Board shall, to the fullest extent possible, address the circumstances which might otherwise permit or require an examination by the Board by forgoing an examination and by instead reviewing the reports of examination made of—*

*"(i) any registered broker or dealer or any registered investment adviser by or on behalf of the Commission; and*

*"(ii) any licensed insurance company by or on behalf of any State government insurance agency responsible for the supervision of the insurance company.*

*"(E) CONFIDENTIALITY OF REPORTED INFORMATION.—*

*"(i) IN GENERAL.—Notwithstanding any other provision of law, the Board shall not be compelled to disclose any nonpublic information required to be reported under this paragraph, or any information supplied to the Board by any domestic or foreign regulatory agency, that relates to the financial or operational condition of any wholesale financial holding company or any subsidiary of such company.*

*"(ii) COMPLIANCE WITH REQUESTS FOR INFORMATION.—No provision of this subparagraph shall be construed as authorizing the Board to withhold information from the Congress, or preventing the Board from complying with a request for informa-*

*tion from any other Federal department or agency for purposes within the scope of such department's or agency's jurisdiction, or from complying with any order of a court of competent jurisdiction in an action brought by the United States or the Board.*

*"(iii) COORDINATION WITH OTHER LAW.—For purposes of section 552 of title 5, United States Code, this subparagraph shall be considered to be a statute described in subsection (b)(3)(B) of such section.*

*"(iv) DESIGNATION OF CONFIDENTIAL INFORMATION.—In prescribing regulations to carry out the requirements of this subsection, the Board shall designate information described in or obtained pursuant to this paragraph as confidential information.*

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

*"(4) CAPITAL ADEQUACY GUIDELINES.—*

*"(A) CAPITAL ADEQUACY PROVISIONS.—Subject to the requirements of, and solely in accordance with, the terms of this paragraph, the*

*Board may adopt capital adequacy rules or guidelines for wholesale financial holding companies.*

*"(B) METHOD OF CALCULATION.—In developing rules or guidelines under this paragraph, the following provisions shall apply:*

*"(i) FOCUS ON DOUBLE LEVERAGE.—The Board shall focus on the use by wholesale financial holding companies of debt and other liabilities to fund capital investments in subsidiaries.*

*"(ii) NO UNWEIGHTED CAPITAL RATIO.—The Board shall not, by regulation, guideline, order, or otherwise, impose under this section a capital ratio that is not based on appropriate risk-weighting considerations.*

*"(iii) NO CAPITAL REQUIREMENT ON REGULATED ENTITIES.—The Board shall not, by regulation, guideline, order or otherwise, prescribe or impose any capital or capital adequacy rules, standards, guidelines, or requirements upon any subsidiary that—*

*"(I) is not a depository institution; and*

*"(II) is in compliance with applicable capital requirements of another Federal regulatory authority (including the Securities and Exchange Commission) or State insurance authority.*

*"(iv) CERTAIN SUBSIDIARIES.—The Board shall not, by regulation, guideline, order or otherwise, prescribe or impose any capital or capital adequacy rules, standards, guidelines, or requirements upon any subsidiary that is not a depository institution and that is registered as an investment adviser under the Investment Advisers Act of 1940, except that this clause shall not be construed as preventing the Board from imposing capital or capital adequacy rules, guidelines, standards, or requirements with respect to activities of a registered investment adviser other than investment advisory activities or activities incidental to investment advisory activities.*

*"(v) LIMITATIONS ON INDIRECT ACTION.—In developing, establishing, or as-*

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

*"(I) a bank holding company; or*

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

*"(vi) APPROPRIATE EXCLUSIONS.—The Board shall take full account of—*

*"(I) the capital requirements made applicable to any subsidiary that is not a depository institution by another Federal regulatory authority or State insurance authority; and*

*"(II) industry norms for capitalization of a company's unregulated subsidiaries and activities.*

*"(vii) INTERNAL RISK MANAGEMENT MODELS.—The Board may incorporate internal risk management models of wholesale financial holding companies into its capital adequacy guidelines or rules and may take account of the extent to which resources of a subsidiary depository institution may be used to service the debt or other liabilities of the wholesale financial holding company.*

*"(c) NONFINANCIAL ACTIVITIES AND INVESTMENTS.—*

*"(1) GRANDFATHERED ACTIVITIES.—*

*"(A) IN GENERAL.—Notwithstanding section 4(a), a company that becomes a wholesale financial holding company may continue to engage, directly or indirectly, in any activity and may retain ownership and control of shares of a company engaged in any activity if—*

*"(i) on the date of the enactment of the Financial Services Act of 1998, such wholesale financial holding company was lawfully engaged in that nonfinancial activity, held the shares of such company, or had en-*

*tered into a contract to acquire shares of any company engaged in such activity; and*

*"(ii) the company engaged in such activity continues to engage only in the same activities that such company conducted on the date of the enactment of the Financial Services Act of 1998, and other activities permissible under this Act.*

*"(B) NO EXPANSION OF GRANDFATHERED COMMERCIAL ACTIVITIES THROUGH MERGER OR CONSOLIDATION.—A wholesale financial holding company that engages in activities or holds shares pursuant to this paragraph, or a subsidiary of such wholesale financial holding company, may not acquire, in any merger, consolidation, or other type of business combination, assets of any other company which is engaged in any activity which the Board has not determined to be financial in nature or incidental to activities that are financial in nature under section 6(c).*

*"(C) LIMITATION TO SINGLE EXEMPTION.—No company that engages in any activity or controls any shares under subsection (f) of section 6 may engage in any activity or own any shares pursuant to this paragraph.*

*"(2) COMMODITIES.—*

*"(A) IN GENERAL.—Notwithstanding section 4(a), a wholesale financial holding company which was predominately engaged as of January 1, 1997, in financial activities in the United States (or any successor to any such company) may engage in, or directly or indirectly own or control shares of a company engaged in, activities related to the trading, sale, or investment in commodities and underlying physical properties that were not permissible for bank holding companies to conduct in the United States as of January 1, 1997, if such wholesale financial holding company, or any subsidiary of such holding company, was engaged directly, indirectly, or through any such company in any of such activities as of January 1, 1997, in the United States.*

*"(B) LIMITATION.—The attributed aggregate consolidated assets of a wholesale financial holding company held under the authority granted under this paragraph and not otherwise permitted to be held by all wholesale financial holding companies under this section may not exceed 5 percent of the total consolidated assets of the*

*wholesale financial holding company, except that the Board may increase such percentage of total consolidated assets by such amounts and under such circumstances as the Board considers appropriate, consistent with the purposes of this Act.*

*"(3) CROSS MARKETING RESTRICTIONS.—A wholesale financial holding company shall not permit—*

*"(A) any company whose shares it owns or controls pursuant to paragraph (1) or (2) to offer or market any product or service of an affiliated wholesale financial institution; or*

*"(B) any affiliated wholesale financial institution to offer or market any product or service of any company whose shares are owned or controlled by such wholesale financial holding company pursuant to such paragraphs.*

*"(d) QUALIFICATION OF FOREIGN BANK AS WHOLESALE FINANCIAL HOLDING COMPANY.—*

*"(1) IN GENERAL.—Any foreign bank, or any company that owns or controls a foreign bank, that operates a branch, agency, or commercial lending company in the United States, including a foreign bank or company that owns or controls a wholesale*

*financial institution, may request a determination from the Board that such bank or company be treated as a wholesale financial holding company (other than for purposes of subsection (c)), subject to such conditions as the Board deems appropriate, giving due regard to the principle of national treatment and equality of competitive opportunity and the requirements imposed on domestic banks and companies.*

*"(2) CONDITIONS FOR TREATMENT AS A WHOLESALE FINANCIAL HOLDING COMPANY.—A foreign bank and a company that owns or controls a foreign bank may not be treated as a wholesale financial holding company unless the bank and company meet and continue to meet the following criteria:*

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

*"(B) CAPITAL STANDARDS.—The foreign bank meets risk-based capital standards comparable to the capital standards required for a wholesale financial institution, giving due re-*

*gard to the principle of national treatment and equality of competitive opportunity.*

*"(C) TRANSACTION WITH AFFILIATES.—Transactions between a branch, agency, or commercial lending company subsidiary of the foreign bank in the United States, and any securities affiliate or company in which the foreign bank (or any company that owns or controls such foreign bank), that engages in any activity authorized only as a result of the application of subsection (c) or (g) of section 6, comply with the provisions of sections 23A and 23B of the Federal Reserve Act in the same manner and to the same extent as such transactions would be required to comply with such sections if the foreign bank were a member bank.*

*"(3) TREATMENT AS A WHOLESALE FINANCIAL INSTITUTION.—Any foreign bank which is, or is affiliated with a company which is, treated as a wholesale financial holding company under this subsection shall be treated as a wholesale financial institution for purposes of paragraphs (1)(C) and (3) of section 9B(c) of the Federal Reserve Act, and any such foreign bank or company shall be subject to paragraphs (3), (4), and (5) of section 9B(d) of the Federal Re-*

*serve Act, except that the Board may adopt such modifications, conditions, or exemptions as the Board deems appropriate, giving due regard to the principle of national treatment and equality of competitive opportunity.*

*"(4) SUPERVISION OF FOREIGN BANK WHICH MAINTAINS NO BANKING PRESENCE OTHER THAN CONTROL OF A WHOLESALE FINANCIAL INSTITUTION.—A foreign bank that owns or controls a wholesale financial institution but does not operate a branch, agency, or commercial lending company in the United States (and any company that owns or controls such foreign bank) may request a determination from the Board that such bank or company be treated as a wholesale financial holding company, except that such bank or company shall be subject to the restrictions of paragraphs (2)(A) and (3) of this subsection.*

*"(5) NO EFFECT ON OTHER PROVISIONS.—This section shall not be construed as limiting the authority of the Board under the International Banking Act of 1978 with respect to the regulation, supervision, or examination of foreign banks and their offices and affiliates in the United States.".*

*(b) UNINSURED STATE BANKS.—Section 9 of the Federal Reserve Act (U.S.C. 321 et seq.) is amended by adding at the end the following new paragraph:*

*"(24) ENFORCEMENT AUTHORITY OVER UNINSURED STATE MEMBER BANKS.—Section 3(u) of the Federal Deposit Insurance Act, subsections (j) and (k) of section 7 of such Act, and subsections (b) through (n), (s), (u), and (v) of section 8 of such Act shall apply to an uninsured State member bank in the same manner and to the same extent such provisions apply to an insured State member bank and any reference in any such provision to 'insured depository institution' shall be deemed to be a reference to 'uninsured State member bank' for purposes of this paragraph.".*

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

*(a) FEDERAL RESERVE ACT.—The last sentence of the eighth undesignated paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 326) is amended to read as follows: "The Board of Governors of the Federal Reserve System, at its discretion, may furnish reports of examination or other confidential supervisory information concerning State member banks or any other entities examined under any other authority of the Board to any Federal or State authorities with supervisory or regulatory authority over the*

*examined entity, to officers, directors, or receivers of the examined entity, and to any other person that the Board determines to be proper.".*

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

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

*(A) by redesignating subparagraphs (G) and (H) as subparagraphs (H) and (I), respectively; and*

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

*"(G) the Commodity Futures Trading Commission; or"; and*

*(2) in section 1112(e) (12 U.S.C. 3412(e)), by striking "and the Securities and Exchange Commission" and inserting ", the Securities and Exchange Commission, and the Commodity Futures Trading Commission".*

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

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

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

*"(p) WHOLESALE FINANCIAL INSTITUTION.—The term 'wholesale financial institution' means a wholesale financial institution subject to section 9B of the Federal Reserve Act.*

*"(q) COMMISSION.—The term 'Commission' means the Securities and Exchange Commission.*

*"(r) DEPOSITORY INSTITUTION.—The term 'depository institution'—*

*"(1) has the same meaning as in section 3 of the Federal Deposit Insurance Act; and*

*"(2) includes a wholesale financial institution.".*

*(2) DEFINITION OF BANK INCLUDES WHOLESALE FINANCIAL INSTITUTION.—Section 2(c)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(1)) is amended by adding at the end the following new subparagraph:*

*"(C) A wholesale financial institution.".*

*(3) INCORPORATED DEFINITIONS.—Section 2(n) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(n)) is amended by inserting "'insured bank'," after "'in danger of default',".*

*(4) EXCEPTION TO DEPOSIT INSURANCE REQUIREMENT.—Section 3(e) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(e)) is amended by*

*adding at the end the following: "This subsection shall not apply to a wholesale financial institution.".*

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

*"(A) any State member insured bank (except a District bank) and any wholesale financial institution as authorized pursuant to section 9B of the Federal Reserve Act;".*

## *CHAPTER 2—WHOLESALE FINANCIAL INSTITUTIONS*

### *SEC. 136. WHOLESALE FINANCIAL INSTITUTIONS.*

*(a) NATIONAL WHOLESALE FINANCIAL INSTITUTIONS.—*

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

### *"SEC. 5136B. NATIONAL WHOLESALE FINANCIAL INSTITUTIONS.*

*"(a) AUTHORIZATION OF THE COMPTROLLER REQUIRED.—A national bank may apply to the Comptroller on such forms and in accordance with such regulations as*

*the Comptroller may prescribe, for permission to operate as a national wholesale financial institution.*

*"(b) REGULATION.—A national wholesale financial institution may exercise, in accordance with such institution's articles of incorporation and regulations issued by the Comptroller, all the powers and privileges of a national bank formed in accordance with section 5133 of the Revised Statutes of the United States, subject to section 9B of the Federal Reserve Act and the limitations and restrictions contained therein.*

*"(c) COMMUNITY REINVESTMENT ACT OF 1977.—A national wholesale financial institution shall be subject to the Community Reinvestment Act of 1977, only if the wholesale financial institution has an affiliate that is an insured depository institution or that operates an insured branch, as those terms are defined in section 3 of the Federal Deposit Insurance Act.".*

*(2) CLERICAL AMENDMENT.—The table of sections for chapter one of title LXII of the Revised Statutes of the United States is amended by inserting after the item relating to section 5136A (as added by section 121(d) of this title) the following new item:*

*"5136B. National wholesale financial institutions.".*

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

***"SEC. 9B. WHOLESALE FINANCIAL INSTITUTIONS.***

*"(a) APPLICATION FOR MEMBERSHIP AS WHOLESALE FINANCIAL INSTITUTION.—*

*"(1) APPLICATION REQUIRED.—*

*"(A) IN GENERAL.—Any bank may apply to the Board of Governors of the Federal Reserve System to become a wholesale financial institution and, as a wholesale financial institution, to subscribe to the stock of the Federal reserve bank organized within the district where the applying bank is located.*

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

*"(2) INSURANCE TERMINATION.—No bank the deposits of which are insured under the Federal Deposit Insurance Act may become a wholesale financial institution unless it has met all requirements under that Act for voluntary termination of deposit insurance.*

*"(b) GENERAL REQUIREMENTS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—*

*"(1) FEDERAL RESERVE ACT.—Except as otherwise provided in this section, wholesale financial institutions shall be member banks and shall be subject*

*to the provisions of this Act that apply to member banks to the same extent and in the same manner as State member insured banks, except that a wholesale financial institution may terminate membership under this Act only with the prior written approval of the Board and on terms and conditions that the Board determines are appropriate to carry out the purposes of this Act.*

*"(2) PROMPT CORRECTIVE ACTION.—A wholesale financial institution shall be deemed to be an insured depository institution for purposes of section 38 of the Federal Deposit Insurance Act except that—*

*"(A) the relevant capital levels and capital measures for each capital category shall be the levels specified by the Board for wholesale financial institutions; and*

*"(B) all references to the appropriate Federal banking agency or to the Corporation in that section shall be deemed to be references to the Board.*

*"(3) ENFORCEMENT AUTHORITY.—Subsections (j) and (k) of section 7, subsections (b) through (n), (s), and (v) of section 8, and section 19 of the Federal Deposit Insurance Act shall apply to a wholesale financial institution in the same manner and to the*

*same extent as such provisions apply to State member insured banks and any reference in such sections to an insured depository institution shall be deemed to include a reference to a wholesale financial institution.*

*"(4) CERTAIN OTHER STATUTES APPLICABLE.—A wholesale financial institution shall be deemed to be a banking institution, and the Board shall be the appropriate Federal banking agency for such bank and all such bank's affiliates, for purposes of the International Lending Supervision Act.*

*"(5) BANK MERGER ACT.—A wholesale financial institution shall be subject to sections 18(c) and 44 of the Federal Deposit Insurance Act in the same manner and to the same extent the wholesale financial institution would be subject to such sections if the institution were a State member insured bank.*

*"(6) BRANCHING.—Notwithstanding any other provision of law, a wholesale financial institution may establish and operate a branch at any location on such terms and conditions as established by the Board and, in the case of a State-chartered wholesale financial institution, with the approval of the Board, and, in the case of a national bank wholesale finan-*

*cial institution, with the approval of the Comptroller of the Currency.*

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

*"(A) GENERAL.—A State-chartered wholesale financial institution shall be deemed to be a State bank and an insured State bank for purposes of paragraphs (1), (2), and (3) of section 24(j) of the Federal Deposit Insurance Act, and a national wholesale financial institution shall be deemed to be a national bank for purposes of section 5155(f) of the Revised Statutes of the United States.*

*"(B) DEFINITIONS.—The following definitions shall apply solely for purposes of applying paragraph (1):*

*"(i) HOME STATE.—The term 'home State' means—*

*"(I) with respect to a national wholesale financial institution, the State in which the main office of the institution is located; and*

*"(II) with respect to a State-chartered wholesale financial institution,*

*the State by which the institution is chartered.*

*"(ii) HOST STATE.—The term 'host State' means a State, other than the home State of the wholesale financial institution, in which the institution maintains, or seeks to establish and maintain, a branch.*

*"(iii) OUT-OF-STATE BANK.—The term 'out-of-State bank' means, with respect to any State, a wholesale financial institution whose home State is another State.*

*"(8) DISCRIMINATION REGARDING INTEREST RATES.—Section 27 of the Federal Deposit Insurance Act shall apply to State-chartered wholesale financial institutions in the same manner and to the same extent as such provisions apply to State member insured banks and any reference in such section to a State-chartered insured depository institution shall be deemed to include a reference to a State-chartered wholesale financial institution.*

*"(9) PREEMPTION OF STATE LAWS REQUIRING DEPOSIT INSURANCE FOR WHOLESALE FINANCIAL INSTITUTIONS.—The appropriate State banking authority may grant a charter to a wholesale financial institution notwithstanding any State constitution or*

*statute requiring that the institution obtain insurance of its deposits and any such State constitution or statute is hereby preempted solely for purposes of this paragraph.*

*"(10) PARITY FOR WHOLESALE FINANCIAL INSTITUTIONS.—A State bank that is a wholesale financial institution under this section shall have all of the rights, powers, privileges, and immunities (including those derived from status as a federally chartered institution) of and as if it were a national bank, subject to such terms and conditions as established by the Board.*

*"(11) COMMUNITY REINVESTMENT ACT OF 1977.—A State wholesale financial institution shall be subject to the Community Reinvestment Act of 1977, only if the wholesale financial institution has an affiliate that is an insured depository institution or that operates an insured branch, as those terms are defined in section 3 of the Federal Deposit Insurance Act.*

*"(c) SPECIFIC REQUIREMENTS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—*

*"(1) LIMITATIONS ON DEPOSITS.—*

*"(A) MINIMUM AMOUNT.—*

*"(i) IN GENERAL.—No wholesale financial institution may receive initial deposits of $100,000 or less, other than on an incidental and occasional basis.*

*"(ii) LIMITATION ON DEPOSITS OF LESS THAN $100,000.—No wholesale financial institution may receive initial deposits of $100,000 or less if such deposits constitute more than 5 percent of the institution's total deposits.*

*"(B) NO DEPOSIT INSURANCE.—Except as otherwise provided in section 8A(f) of the Federal Deposit Insurance Act, no deposits held by a wholesale financial institution shall be insured deposits under the Federal Deposit Insurance Act.*

*"(C) ADVERTISING AND DISCLOSURE.—The Board shall prescribe regulations pertaining to advertising and disclosure by wholesale financial institutions to ensure that each depositor is notified that deposits at the wholesale financial institution are not federally insured or otherwise guaranteed by the United States Government.*

*"(2) MINIMUM CAPITAL LEVELS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—The Board*

*shall, by regulation, adopt capital requirements for wholesale financial institutions—*

*"(A) to account for the status of wholesale financial institutions as institutions that accept deposits that are not insured under the Federal Deposit Insurance Act; and*

*"(B) to provide for the safe and sound operation of the wholesale financial institution without undue risk to creditors or other persons, including Federal reserve banks, engaged in transactions with the bank.*

*"(3) ADDITIONAL REQUIREMENTS APPLICABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—In addition to any requirement otherwise applicable to State member insured banks or applicable, under this section, to wholesale financial institutions, the Board may impose, by regulation or order, upon wholesale financial institutions—*

*"(A) limitations on transactions, direct or indirect, with affiliates to prevent—*

*"(i) the transfer of risk to the deposit insurance funds; or*

*"(ii) an affiliate from gaining access to, or the benefits of, credit from a Federal*

*reserve bank, including overdrafts at a Federal reserve bank;*

*"(B) special clearing balance requirements; and*

*"(C) any additional requirements that the Board determines to be appropriate or necessary to—*

*"(i) promote the safety and soundness of the wholesale financial institution or any insured depository institution affiliate of the wholesale financial institution;*

*"(ii) prevent the transfer of risk to the deposit insurance funds; or*

*"(iii) protect creditors and other persons, including Federal reserve banks, engaged in transactions with the wholesale financial institution.*

*"(4) EXEMPTIONS FOR WHOLESALE FINANCIAL INSTITUTIONS.—The Board may, by regulation or order, exempt any wholesale financial institution from any provision applicable to a member bank that is not a wholesale financial institution, if the Board finds that such exemption is not inconsistent with—*

*"(A) the promotion of the safety and soundness of the wholesale financial institution or any*

*insured depository institution affiliate of the wholesale financial institution;*

*"(B) the protection of the deposit insurance funds; and*

*"(C) the protection of creditors and other persons, including Federal reserve banks, engaged in transactions with the wholesale financial institution.*

*"(5) LIMITATION ON TRANSACTIONS BETWEEN A WHOLESALE FINANCIAL INSTITUTION AND AN INSURED BANK.—For purposes of section 23A(d)(1) of the Federal Reserve Act, a wholesale financial institution that is affiliated with an insured bank shall not be a bank.*

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

*"(d) CAPITAL AND MANAGERIAL REQUIREMENTS.—*

*"(1) IN GENERAL.—A wholesale financial institution shall be well capitalized and well managed.*

*"(2) NOTICE TO COMPANY.—The Board shall promptly provide notice to a company that controls a wholesale financial institution whenever such wholesale financial institution is not well capitalized or well managed.*

*"(3) AGREEMENT TO RESTORE INSTITUTION.—Not later than 45 days after the date of receipt of a notice under paragraph (2) (or such additional period not to exceed 90 days as the Board may permit), the company shall execute an agreement acceptable to the Board to restore the wholesale financial institution to compliance with all of the requirements of paragraph (1).*

*"(4) LIMITATIONS UNTIL INSTITUTION RESTORED.—Until the wholesale financial institution is restored to compliance with all of the requirements of paragraph (1), the Board may impose such limitations on the conduct or activities of the company or any affiliate of the company as the Board determines to be appropriate under the circumstances.*

*"(5) FAILURE TO RESTORE.—If the company does not execute and implement an agreement in accordance with paragraph (3), comply with any limitation imposed under paragraph (4), restore the wholesale financial institution to well capitalized sta-*

*tus not later than 180 days after the date of receipt by the company of the notice described in paragraph (2), or restore the wholesale financial institution to well managed status within such period as the Board may permit, the company shall, under such terms and conditions as may be imposed by the Board and subject to such extension of time as may be granted in the Board's discretion, divest control of its subsidiary depository institutions.*

*"(6) WELL MANAGED DEFINED.—For purposes of this subsection, the term 'well managed' has the same meaning as in section 2 of the Bank Holding Company Act of 1956.*

*"(e) RESOLUTION OF WHOLESALE FINANCIAL INSTITUTIONS.—*

*"(1) CONSERVATORSHIP OR RECEIVERSHIP.—*

*"(A) APPOINTMENT.—The Board may appoint a conservator or receiver for a wholesale financial institution to the same extent and in the same manner as the Comptroller of the Currency may appoint a conservator or receiver for a national bank.*

*"(B) POWERS.—The conservator or receiver for a wholesale financial institution shall exercise the same powers, functions, and duties, sub-*

*ject to the same limitations, as a conservator or receiver for a national bank.*

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

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

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

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

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

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

*(B) by redesignating paragraphs (2) through (10) as paragraphs (1) through (9), respectively.*

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

***"SEC. 8A. VOLUNTARY TERMINATION OF STATUS AS INSURED DEPOSITORY INSTITUTION.***

*"(a) IN GENERAL.—Except as provided in subsection (b), an insured State bank or a national bank may voluntarily terminate such bank's status as an insured depository institution in accordance with regulations of the Corporation if—*

*"(1) the bank provides written notice of the bank's intent to terminate such insured status—*

*"(A) to the Corporation and the Board of Governors of the Federal Reserve System not less than 6 months before the effective date of such termination; and*

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

*"(2) either—*

*"(A) the deposit insurance fund of which such bank is a member equals or exceeds the fund's designated reserve ratio as of the date the bank provides a written notice under paragraph (1) and the Corporation determines that the fund will equal or exceed the applicable designated reserve ratio for the 2 semiannual assessment periods immediately following such date; or*

*"(B) the Corporation and the Board of Governors of the Federal Reserve System approved the termination of the bank's insured status and the bank pays an exit fee in accordance with subsection (e).*

*"(b) EXCEPTION.—Subsection (a) shall not apply with respect to—*

*"(1) an insured savings association; or*

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

*"(c) ELIGIBILITY FOR INSURANCE TERMINATED.—Any bank that voluntarily elects to terminate the bank's*

*insured status under subsection (a) shall not be eligible for insurance on any deposits or any assistance authorized under this Act after the period specified in subsection (f)(1).*

*"(d) INSTITUTION MUST BECOME WHOLESALE FINANCIAL INSTITUTION OR TERMINATE DEPOSIT-TAKING ACTIVITIES.—Any depository institution which voluntarily terminates such institution's status as an insured depository institution under this section may not, upon termination of insurance, accept any deposits unless the institution is a wholesale financial institution subject to section 9B of the Federal Reserve Act.*

*"(e) EXIT FEES.—*

*"(1) IN GENERAL.—Any bank that voluntarily terminates such bank's status as an insured depository institution under this section shall pay an exit fee in an amount that the Corporation determines is sufficient to account for the institution's pro rata share of the amount (if any) which would be required to restore the relevant deposit insurance fund to the fund's designated reserve ratio as of the date the bank provides a written notice under subsection (a)(1).*

*"(2) PROCEDURES.—The Corporation shall prescribe, by regulation, procedures for assessing any exit fee under this subsection.*

*"(f) TEMPORARY INSURANCE OF DEPOSITS INSURED AS OF TERMINATION.—*

*"(1) TRANSITION PERIOD.—The insured deposits of each depositor in a State bank or a national bank on the effective date of the voluntary termination of the bank's insured status, less all subsequent withdrawals from any deposits of such depositor, shall continue to be insured for a period of not less than 6 months and not more than 2 years, as determined by the Corporation. During such period, no additions to any such deposits, and no new deposits in the depository institution made after the effective date of such termination shall be insured by the Corporation.*

*"(2) TEMPORARY ASSESSMENTS; OBLIGATIONS AND DUTIES.—During the period specified in paragraph (1) with respect to any bank, the bank shall continue to pay assessments under section 7 as if the bank were an insured depository institution. The bank shall, in all other respects, be subject to the authority of the Corporation and the duties and obligations of an insured depository institution under this Act during such period, and in the event that the bank is closed due to an inability to meet the demands of the bank's depositors during such period, the Corporation shall have the same powers and*

*rights with respect to such bank as in the case of an insured depository institution.*

*"(g) ADVERTISEMENTS.—*

*"(1) IN GENERAL.—A bank that voluntarily terminates the bank's insured status under this section shall not advertise or hold itself out as having insured deposits, except that the bank may advertise the temporary insurance of deposits under subsection (f) if, in connection with any such advertisement, the advertisement also states with equal prominence that additions to deposits and new deposits made after the effective date of the termination are not insured.*

*"(2) CERTIFICATES OF DEPOSIT, OBLIGATIONS, AND SECURITIES.—Any certificate of deposit or other obligation or security issued by a State bank or a national bank after the effective date of the voluntary termination of the bank's insured status under this section shall be accompanied by a conspicuous, prominently displayed notice that such certificate of deposit or other obligation or security is not insured under this Act.*

*"(h) NOTICE REQUIREMENTS.—*

*"(1) NOTICE TO THE CORPORATION.—The notice required under subsection (a)(1)(A) shall be in such form as the Corporation may require.*

*"(2) NOTICE TO DEPOSITORS.—The notice required under subsection (a)(1)(B) shall be—*

*"(A) sent to each depositor's last address of record with the bank; and*

*"(B) in such manner and form as the Corporation finds to be necessary and appropriate for the protection of depositors.".*

*(3) DEFINITION.—Section 19(b)(1)(A)(i) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i)) is amended by inserting ", or any wholesale financial institution subject to section 9B of this Act" after "such Act".*

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

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

*"(A) a wholesale financial institution established under section 5136B of the Revised Statutes of the United States or section 9B of the Federal Reserve Act may be a debtor if a petition is filed at the direction of the Comptroller of the Currency (in the case of a wholesale financial institution established under section 5136B*

*of the Revised Statutes of the United States) or the Board of Governors of the Federal Reserve System (in the case of any wholesale financial institution); and*

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

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

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

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

*"(22) 'financial institution' means a person that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, wholesale financial institution established under sec-*

*tion 5136B of the Revised Statutes of the United States or section 9B of the Federal Reserve Act, or corporation organized under section 25A of the Federal Reserve Act and, when any such person is acting as agent or custodian for a customer in connection with a securities contract, as defined in section 741 of this title, such customer,".*

*(4) SUBCHAPTER V OF CHAPTER 7.—*

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

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

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

*"(e) Subchapter V of chapter 7 of this title applies only in a case under such chapter concerning the liquidation of a wholesale financial institution established under section 5136B of the Revised Statutes of the United States or section 9B of the Federal Reserve Act, or a corporation organized under section 25A of the Federal Reserve Act.".*

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

*"SUBCHAPTER V—WHOLESALE BANK LIQUIDATION*

***"§ 781. Definitions for subchapter***

*"In this subchapter—*

*"(1) the term 'Board' means the Board of Governors of the Federal Reserve System;*

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

*"(3) the term 'national wholesale financial institution' means a wholesale financial institution established under section 5136B of the Revised Statutes of the United States; and*

*"(4) the term 'wholesale bank' means a national wholesale financial institution, a wholesale financial institution established under section 9B of the Federal Reserve Act, or a corporation organized under section 25A of the Federal Reserve Act.*

***"§ 782. Selection of trustee***

*"Notwithstanding any other provision of this title, the conservator or receiver who files the petition shall be the trustee under this chapter, unless the Comptroller of the Currency (in the case of a national wholesale financial institution for which it appointed the conservator or receiver) or the Board (in the case of any wholesale bank for which*

*it appointed the conservator or receiver) designates an alternative trustee. The Comptroller of the Currency or the Board (as applicable) may designate a successor trustee, if required.*

***"§ 783. Additional powers of trustee***

*"(a) The trustee under this subchapter has power, with permission of the court—*

*"(1) to sell the wholesale bank to a depository institution or consortium of depository institutions (which consortium may agree on the allocation of the wholesale bank among the consortium);*

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

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

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

*"(5) to distribute property not of the estate, including distributions to customers that are mandated by subchapters III and IV of this chapter; or*

*"(6) to transfer assets and liabilities to a bridge bank as provided in paragraphs (1), (3)(A), (5), (6), and (9) through (13), and subparagraphs (A) through*

*(H) and (K) of paragraph (4) of section 11(n) of the Federal Deposit Insurance Act, except that—*

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

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

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

***"§ 784. Right to be heard***

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

***"§ 785. Expedited transfers***

*"The trustee may make a transfer pursuant to section 783 without prior judicial approval, if the Comptroller of the Currency (in the case of a national wholesale financial institution for which it appointed the conservator or re-*

*ceiver) or the Board (in the case of any wholesale bank for which it appointed the conservator or receiver) determines that the transfer would be necessary to avert serious adverse effects on economic conditions or financial stability.".*

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

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

*(e) RESOLUTION OF EDGE CORPORATIONS.—Section 25A(16) of the Federal Reserve Act (12 U.S.C. 624(16)) is amended to read as follows:*

*"(16) APPOINTMENT OF RECEIVER OR CONSERVATOR.—*

*"(A) IN GENERAL.—The Board may appoint a conservator or receiver for a corporation organized under the provisions of this section to the same extent and in the same manner as the Comptroller of the Currency may appoint a conservator or receiver for a national bank, and the conservator or receiver for such corporation shall exercise the same powers, functions, and duties, subject to the same limitations, as a conservator or receiver for a national bank.*

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

*"(C) TITLE 11 PETITIONS.—The Board may direct the conservator or receiver of a corporation organized under the provisions of this section to file a petition pursuant to title 11, United States Code, in which case, title 11, United States Code, shall apply to the corporation in lieu of otherwise applicable Federal or State insolvency law.".*

## *Subtitle E—Preservation of FTC Authority*

### *SEC. 141. AMENDMENT TO THE BANK HOLDING COMPANY ACT OF 1956 TO MODIFY NOTIFICATION AND POST-APPROVAL WAITING PERIOD FOR SECTION 3 TRANSACTIONS.*

*Section 11(b)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1849(b)(1)) is amended by inserting*

*"and, if the transaction also involves an acquisition under section 4 or section 6, the Board shall also notify the Federal Trade Commission of such approval" before the period at the end of the first sentence.*

***SEC. 142. INTERAGENCY DATA SHARING.***

*To the extent not prohibited by other law, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the Board of Governors of the Federal Reserve System shall make available to the Attorney General and the Federal Trade Commission any data in the possession of any such banking agency that the antitrust agency deems necessary for antitrust review of any transaction requiring notice to any such antitrust agency or the approval of such agency under section 3, 4, or 6 of the Bank Holding Company Act of 1956, section 18(c) of the Federal Deposit Insurance Act, the National Bank Consolidation and Merger Act, section 10 of the Home Owners' Loan Act, or the antitrust laws.*

***SEC. 143. CLARIFICATION OF STATUS OF SUBSIDIARIES AND AFFILIATES.***

*(a) CLARIFICATION OF FEDERAL TRADE COMMISSION JURISDICTION.—Any person which directly or indirectly controls, is controlled directly or indirectly by, or is directly or indirectly under common control with, any bank or sav-*

*ings association (as such terms are defined in section 3 of the Federal Deposit Insurance Act) and is not itself a bank or savings association shall not be deemed to be a bank or savings association for purposes of the Federal Trade Commission Act or any other law enforced by the Federal Trade Commission.*

*(b) SAVINGS PROVISION.—No provision of this section shall be construed as restricting the authority of any Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) under any Federal banking law, including section 8 of the Federal Deposit Insurance Act.*

*(c) HART-SCOTT-RODINO AMENDMENT.—Section 7A(c)(7) of the Clayton Act (15 U.S.C. 18a(c)(7)) is amended by inserting before the semicolon at the end thereof the following: ", except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) requires notice under section 6 of the Bank Holding Company Act of 1956; and (B) does not require approval under section 3 or 4 of the Bank Holding Company Act of 1956".*

***SEC. 144. ANNUAL GAO REPORT.***

*(a) IN GENERAL.—By the end of the 1-year period beginning on the date of the enactment of this Act and annually thereafter, the Comptroller General of the United States shall submit a report to the Congress on market concentra-*

*tion in the financial services industry and its impact on consumers.*

*(b) ANALYSIS.—Each report submitted under subsection (a) shall contain an analysis of—*

*(1) the positive and negative effects of affiliations between various types of financial companies, and of acquisitions pursuant to this Act and the amendments made by this Act to other provisions of law, including any positive or negative effects on consumers, area markets, and submarkets thereof or on registered securities brokers and dealers which have been purchased by depository institutions or depository institution holding companies;*

*(2) the changes in business practices and the effects of any such changes on the availability of venture capital, consumer credit, and other financial services or products and the availability of capital and credit for small businesses; and*

*(3) the acquisition patterns among depository institutions, depository institution holding companies, securities firms, and insurance companies including acquisitions among the largest 20 percent of firms and acquisitions within regions or other limited geographical areas.*

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

***SEC. 151. APPLYING THE PRINCIPLES OF NATIONAL TREATMENT AND EQUALITY OF COMPETITIVE OPPORTUNITY TO FOREIGN BANKS THAT ARE FINANCIAL HOLDING COMPANIES.***

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

*"(3) TERMINATION OF GRANDFATHERED RIGHTS.—*

*"(A) IN GENERAL.—If any foreign bank or foreign company files a declaration under section 6(b)(1)(E) or which receives a determination under section 10(d)(1) of the Bank Holding Company Act of 1956, any authority conferred by this subsection on any foreign bank or company to engage in any activity which the Board has determined to be permissible for financial holding companies under section 6 of such Act shall terminate immediately.*

*"(B) RESTRICTIONS AND REQUIREMENTS AUTHORIZED.—If a foreign bank or company that engages, directly or through an affiliate pursuant to paragraph (1), in an activity which the Board has determined to be permissible for financial holding companies under section 6 of the Bank Holding Company Act of 1956 has not filed a declaration with the Board of its status as a financial holding company under such section or received a determination under section 10(d)(1) by the end of the 2-year period beginning on the date of enactment of the Financial Services Act of 1998, the Board, giving due regard to the principle of national treatment and equality of competitive opportunity, may impose such restrictions and requirements on the conduct of such activities by such foreign bank or company as are comparable to those imposed on a financial holding company organized under the laws of the United States, including a requirement to conduct such activities in compliance with any prudential safeguards established under section 5(h) of the Bank Holding Company Act of 1956.".*

***SEC. 152. APPLYING THE PRINCIPLES OF NATIONAL TREATMENT AND EQUALITY OF COMPETITIVE OPPORTUNITY TO FOREIGN BANKS AND FOREIGN FINANCIAL INSTITUTIONS THAT ARE WHOLESALE FINANCIAL INSTITUTIONS.***

*Section 8A of the Federal Deposit Insurance Act (as added by section 136(c)(2) of this Act) is amended by adding at the end the following new subsection:*

*"(i) VOLUNTARY TERMINATION OF DEPOSIT INSURANCE.—The provisions on voluntary termination of insurance in this section shall apply to an insured branch of a foreign bank (including a Federal branch) in the same manner and to the same extent as they apply to an insured State bank or a national bank.".*

***SEC. 153. REPRESENTATIVE OFFICES.***

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

*(b) EXAMINATIONS.—Section 10(c) of the International Banking Act of 1978 (12 U.S.C. 3107(c)) is amended by adding at the end the following: "The Board may also make examinations of any affiliate of a foreign bank conducting business in any State in which the Board deems it necessary to determine and enforce compliance*

*with this Act, the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or other applicable Federal banking law.".*

## *Subtitle G—Federal Home Loan Bank System Modernization*

***SEC. 161. SHORT TITLE.***

*This subtitle may be cited as the "Federal Home Loan Bank System Modernization Act of 1998".*

***SEC. 162. DEFINITIONS.***

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

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

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

*"(3) STATE.—The term 'State', in addition to the States of the United States, includes the District of Columbia, Guam, Puerto Rico, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands."; and*

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

*"(13) COMMUNITY FINANCIAL INSTITUTION.—*

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

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

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

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

***SEC. 163. SAVINGS ASSOCIATION MEMBERSHIP.***

*(a) FEDERAL HOME LOAN BANK MEMBERSHIP.—Section 5(f) of the Home Owners' Loan Act (12 U.S.C. 1464(f)) is amended to read as follows:*

*"(f) FEDERAL HOME LOAN BANK MEMBERSHIP.—On and after January 1, 1999, a Federal savings association may become a member of the Federal Home Loan Bank System, and shall qualify for such membership in the manner provided by the Federal Home Loan Bank Act.".*

*(b) WITHDRAWAL.—Section 6(e) of the Federal Home Loan Bank Act (12 U.S.C. 1426(e)) is amended by striking "Any member other than a Federal savings and loan association may withdraw" and inserting "Any member may withdraw".*

***SEC. 164. ADVANCES TO MEMBERS; COLLATERAL.***

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

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

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

*"(a) IN GENERAL.—*

*"(1) ALL ADVANCES.—Each";*

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

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

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

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

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

*"(3) COLLATERAL.—A Bank";*

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

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

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

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

*"(E) Secured loans for small business, agriculture, rural development, or low-income community development, or securities representing a whole interest in such secured loans, in the case of any community financial institution.";*

*(6) in paragraph (5)—*

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

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

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

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

*(7) by adding at the end the following:*

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

*"(6) DEFINITIONS.—For purposes of this subsection, the terms 'small business', 'agriculture', 'rural development', and 'low-income community development' shall have the meanings given those terms by rule or regulation of the Finance Board.".*

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

***"SEC. 10. ADVANCES TO MEMBERS.".***

***SEC. 165. ELIGIBILITY CRITERIA.***

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

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

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

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

***SEC. 166. MANAGEMENT OF BANKS.***

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

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

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

*(2) by striking "shall be two years".*

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

*(c) REPEAL OF SECTIONS 22A AND 27.—The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended*

*by striking sections 22A (12 U.S.C. 1442a) and 27 (12 U.S.C. 1447).*

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

*(1) in subsection (a)—*

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

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

*(C) by striking "and, by its Board of directors," and all that follows through "agent of such bank," and inserting "and, by the board of directors of the bank, to prescribe, amend, and repeal by-laws governing the manner in which its affairs may be administered, consistent with applicable laws and regulations, as administered by the Finance Board. No officer, employee, attorney, or agent of a Federal home loan bank"; and*

*(D) by striking "Board of directors" each place that term appears and inserting "board of directors"; and*

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

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

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

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

*or director of a bank as appropriate Federal banking agencies have to take with respect to insured depository institutions under paragraphs (6) and (7) of section 8(b) of the Federal Deposit Insurance Act, and to have all other powers, rights, and duties to enforce this Act with respect to the Federal home loan banks and their executive officers and directors as the Office of Federal Housing Enterprise Oversight has to enforce the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, the Federal National Mortgage Association Charter Act, or the Federal Home Loan Mortgage Corporation Act with respect to the Federal housing enterprises under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.*

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

*"(7) To sue and be sued, by and through its own attorneys.".*

*(2) TECHNICAL AMENDMENT.—Section 111 of Public Law 93–495 (12 U.S.C. 250) is amended by inserting "Federal Housing Finance Board," after "Director of the Office of Thrift Supervision,".*

*(f) ELIGIBILITY TO SECURE ADVANCES.—*

*(1) SECTION 9.—Section 9 of the Federal Home Loan Bank Act (12 U.S.C. 1429) is amended—*

*(A) in the second sentence, by striking "with the approval of the Board"; and*

*(B) in the third sentence, by striking ", subject to the approval of the Board,".*

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

*(A) in subsection (c)—*

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

*(ii) in the second sentence, by striking "held by" and all that follows before the period;*

*(B) in subsection (d)—*

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

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

*(C) in subsection (j)(1)—*

*(i) by striking "to subsidize the interest rate on advances" and inserting "to provide*

*subsidies, including subsidized interest rates on advances";*

*(ii) by striking "Pursuant" and inserting the following:*

*"(A) ESTABLISHMENT.—Pursuant"; and*

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

*"(B) NONDELEGATION OF APPROVAL AUTHORITY.—Subject to such regulations as the Finance Board may prescribe, the board of directors of each Federal home loan bank may approve or disapprove requests from members for Affordable Housing Program subsidies, and may not delegate such authority.".*

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

*(1) in the third sentence—*

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

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

*(2) by striking the fourth sentence.*

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

***SEC. 167. RESOLUTION FUNDING CORPORATION.***

*(a) IN GENERAL.—Section 21B(f)(2)(C) of the Federal Home Loan Bank Act (12 U.S.C. 1441b(f)(2)(C)) is amended to read as follows:*

*"(C) PAYMENTS BY FEDERAL HOME LOAN BANKS.—*

*"(i) IN GENERAL.—To the extent that the amounts available pursuant to subparagraphs (A) and (B) are insufficient to cover the amount of interest payments, each Federal home loan bank shall pay to the Funding Corporation in each calendar year, 20.75 percent of the net earnings of that bank (after deducting expenses relating to section 10(j) and operating expenses).*

*"(ii) ANNUAL DETERMINATION.—The Board annually shall determine the extent to which the value of the aggregate amounts paid by the Federal home loan banks exceeds or falls short of the value of an annuity of $300,000,000 per year that commences on the issuance date and ends on the*

*final scheduled maturity date of the obligations, and shall select appropriate present value factors for making such determinations.*

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

*"(iv) TERM BEYOND MATURITY.—If the Board extends the term of payments beyond the final scheduled maturity date for the obligations, each Federal home loan bank shall continue to pay 20.75 percent of its net earnings (after deducting expenses relating to section 10(j) and operating expenses) to the Treasury of the United States until the value of all such payments by the Federal home loan banks is equivalent to the value of an annuity referred to in clause (ii). In the final year in which the Federal home loan banks are required to make any pay-*

*ment to the Treasury under this subparagraph, if the dollar amount represented by 20.75 percent of the net earnings of the Federal home loan banks exceeds the remaining obligation of the banks to the Treasury, the Finance Board shall reduce the percentage pro rata to a level sufficient to pay the remaining obligation.".*

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

# *Subtitle H—Direct Activities of Banks*

### *SEC. 181. AUTHORITY OF NATIONAL BANKS TO UNDERWRITE CERTAIN MUNICIPAL BONDS.*

*The paragraph designated the Seventh of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24(7)) is amended by adding at the end the following new sentence: "In addition to the provisions in this paragraph for dealing in, underwriting or purchasing securities, the limitations and restrictions contained in this paragraph as to dealing in, underwriting, and purchasing investment se-*

*curities for the national bank's own account shall not apply to obligations (including limited obligation bonds, revenue bonds, and obligations that satisfy the requirements of section 142(b)(1) of the Internal Revenue Code of 1986) issued by or on behalf of any state or political subdivision of a state, including any municipal corporate instrumentality of 1 or more states, or any public agency or authority of any state or political subdivision of a state, if the national banking association is well capitalized (as defined in section 38 of the Federal Deposit Insurance Act).".*

## *Subtitle I—Deposit Insurance Funds*

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

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

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

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

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

*(2) CONCENTRATION LEVELS.—The concentration levels of the funds, taking into account the number of members of each fund and the geographic distribution of such members, and the extent to which either fund is exposed to higher risks due to a regional concentration of members or an insufficient membership base relative to the size of member institutions.*

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

*(b) REPORT REQUIRED.—*

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

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

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

*(B) a description of the plans developed by the Board of Directors for merging the Bank Insurance Fund and the Savings Association Insurance Fund, including an estimate of the amount of the cost of such merger which would be borne by Savings Association Insurance Fund members; and*

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

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

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

*(2) BIF AND SAIF MEMBERS.—The terms "Bank Insurance Fund member" and "Savings Association*

*Insurance Fund member" have the same meanings as in section 7(l) of the Federal Deposit Insurance Act.*

## *Subtitle J—Effective Date of Title*

***SEC. 191. EFFECTIVE DATE.***

*Except with regard to any subtitle or other provision of this title for which a specific effective date is provided, this title and the amendments made by this title shall take effect at the end of the 270-day period beginning on the date of the enactment of this Act.*

# *TITLE II—FUNCTIONAL REGULATION*

## *Subtitle A—Brokers and Dealers*

***SEC. 201. DEFINITION OF BROKER.***

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

*"(4) BROKER.—*

*"(A) IN GENERAL.—The term 'broker' means any person engaged in the business of effecting transactions in securities for the account of others.*

*"(B) EXCEPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a broker because the bank engages in any of the following activities under the conditions described:*

*"(i) THIRD PARTY BROKERAGE ARRANGEMENTS.—The bank enters into a contractual or other arrangement with a broker or dealer registered under this title under which the broker or dealer offers brokerage services on or off the premises of the bank if—*

*"(I) such broker or dealer is clearly identified as the person performing the brokerage services;*

*"(II) the broker or dealer performs brokerage services in an area that is clearly marked and, to the extent practicable, physically separate from the routine deposit-taking activities of the bank;*

*"(III) any materials used by the bank to advertise or promote generally the availability of brokerage services under the contractual or other arrangement clearly indicate that the brokerage services are being provided by the broker or dealer and not by the bank;*

*"(IV) any materials used by the bank to advertise or promote generally*

*the availability of brokerage services under the contractual or other arrangement are in compliance with the Federal securities laws before distribution;*

*"(V) bank employees (other than associated persons of a broker or dealer who are qualified pursuant to the rules of a self-regulatory organization) perform only clerical or ministerial functions in connection with brokerage transactions including scheduling appointments with the associated persons of a broker or dealer, except that bank employees may forward customer funds or securities and may describe in general terms the range of investment vehicles available from the bank and the broker or dealer under the contractual or other arrangement;*

*"(VI) bank employees do not directly receive incentive compensation for any brokerage transaction unless such employees are associated persons of a broker or dealer and are qualified pursuant to the rules of a self-regu-*

*latory organization, except that the bank employees may receive compensation for the referral of any customer if the compensation is a nominal one-time cash fee of a fixed dollar amount and the payment of the fee is not contingent on whether the referral results in a transaction;*

*"(VII) such services are provided by the broker or dealer on a basis in which all customers which receive any services are fully disclosed to the broker or dealer;*

*"(VIII) the bank does not carry a securities account of the customer except in a customary custodian or trustee capacity; and*

*"(IX) the bank, broker, or dealer informs each customer that the brokerage services are provided by the broker or dealer and not by the bank and that the securities are not deposits or other obligations of the bank, are not guaranteed by the bank, and are not in-*

*sured by the Federal Deposit Insurance Corporation.*

*"(ii) TRUST ACTIVITIES.—The bank effects transactions in a trustee capacity, or effects transactions in a fiduciary capacity in its trust department or other department that is regularly examined by bank examiners for compliance with fiduciary principles and standards, and (in either case)—*

*"(I) is primarily compensated for such transactions on the basis of an administration or annual fee (payable on a monthly, quarterly, or other basis), a percentage of assets under management, or a flat or capped per order processing fee equal to not more than the cost incurred by the bank in connection with executing securities transactions for trustee and fiduciary customers, or any combination of such fees, consistent with fiduciary principles and standards; and*

*"(II) does not publicly solicit brokerage business, other than by advertising that it effects transactions in secu-*

*rities in conjunction with advertising its other trust activities.*

*"(iii) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank effects transactions in—*

*"(I) commercial paper, bankers acceptances, or commercial bills;*

*"(II) exempted securities;*

*"(III) qualified Canadian government obligations as defined in section 5136 of the Revised Statutes, in conformity with section 15C of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or*

*"(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.*

*"(iv) CERTAIN STOCK PURCHASE PLANS.—*

*"(I) EMPLOYEE BENEFIT PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of any pension, retirement, profit-sharing, bonus, thrift, savings, incentive, or other similar benefit plan for the employees of that issuer or its subsidiaries, if—*

*(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan; and*

*"(bb) the bank's compensation for such plan or program consists primarily of administration fees, or flat or capped per order processing fees, or both.*

*"(II) DIVIDEND REINVESTMENT PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of that issuer's dividend reinvestment plan, if—*

*"(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan;*

*"(bb) the bank does not net shareholders' buy and sell orders, other than for programs for odd-lot holders or plans registered with the Commission; and*

*"(cc) the bank's compensation for such plan or program consists primarily of administration fees, or flat or capped per order processing fees, or both.*

*"(III) ISSUER PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of a plan or program for the purchase or sale of that issuer's shares, if—*

*"(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities*

*in connection with the plan or program;*

*"(bb) the bank does not net shareholders' buy and sell orders, other than for programs for odd-lot holders or plans registered with the Commission; and*

*"(cc) the bank's compensation for such plan or program consists primarily of administration fees, or flat or capped per order processing fees, or both.*

*"(IV) PERMISSIBLE DELIVERY OF MATERIALS.—The exception to being considered a broker for a bank engaged in activities described in subclauses (I), (II), and (III) will not be affected by a bank's delivery of written or electronic plan materials to employees of the issuer, shareholders of the issuer, or members of affinity groups of the issuer, so long as such materials are—*

*"(aa) comparable in scope or nature to that permitted by the Commission as of the date of the*

*enactment of the Financial Services Act of 1998; or*

*"(bb) otherwise permitted by the Commission.*

*"(v) SWEEP ACCOUNTS.—The bank effects transactions as part of a program for the investment or reinvestment of bank deposit funds into any no-load, open-end management investment company registered under the Investment Company Act of 1940 that holds itself out as a money market fund.*

*"(vi) AFFILIATE TRANSACTIONS.—The bank effects transactions for the account of any affiliate of the bank (as defined in section 2 of the Bank Holding Company Act of 1956) other than—*

*"(I) a registered broker or dealer; or*

*"(II) an affiliate that is engaged in merchant banking, as described in section 6(c)(3)(H) of the Bank Holding Company Act of 1956.*

*"(vii) PRIVATE SECURITIES OFFERINGS.—The bank—*

*"(I) effects sales as part of a primary offering of securities not involving a public offering, pursuant to section 3(b), 4(2), or 4(6) of the Securities Act of 1933 or the rules and regulations issued thereunder; and*

*"(II) effects transactions exclusively with qualified investors.*

*"(viii) SAFEKEEPING AND CUSTODY ACTIVITIES.—*

*"(I) IN GENERAL.—The bank, as part of customary banking activities—*

*"(aa) provides safekeeping or custody services with respect to securities, including the exercise of warrants and other rights on behalf of customers;*

*"(bb) facilitates the transfer of funds or securities, as a custodian or a clearing agency, in connection with the clearance and settlement of its customers' transactions in securities;*

*"(cc) effects securities lending or borrowing transactions with or*

*on behalf of customers as part of services provided to customers pursuant to division (aa) or (bb) or invests cash collateral pledged in connection with such transactions; or*

*"(dd) holds securities pledged by a customer to another person or securities subject to purchase or resale agreements involving a customer, or facilitates the pledging or transfer of such securities by book entry or as otherwise provided under applicable law.*

*"(II) EXCEPTION FOR CARRYING BROKER ACTIVITIES.—The exception to being considered a broker for a bank engaged in activities described in subclause (I) shall not apply if the bank, in connection with such activities, acts in the United States as a carrying broker (as such term, and different formulations thereof, are used in section 15(c)(3) and the rules and regulations thereunder) for any broker or dealer,*

*unless such carrying broker activities are engaged in with respect to government securities (as defined in paragraph (42) of this subsection).*

*"(ix) BANKING PRODUCTS.—The bank effects transactions in traditional banking products, as defined in section 206(a) of the Financial Services Act of 1998.*

*"(x) DE MINIMIS EXCEPTION.—The bank effects, other than in transactions referred to in clauses (i) through (ix), not more than 500 transactions in securities in any calendar year, and such transactions are not effected by an employee of the bank who is also an employee of a broker or dealer.*

*"(C) BROKER DEALER EXECUTION.—The exception to being considered a broker for a bank engaged in activities described in clauses (ii), (iv), and (viii) of subparagraph (B) shall not apply if the activities described in such provisions result in the trade in the United States of any security that is a publicly traded security in the United States, unless—*

*"(i) the bank directs such trade to a registered or broker dealer for execution;*

*"(ii) the trade is a cross trade or other substantially similar trade of a security that—*

*"(I) is made by the bank or between the bank and an affiliated fiduciary; and*

*"(II) is not in contravention of fiduciary principles established under applicable Federal or State law; or*

*"(iii) the trade is conducted in some other manner permitted under rules, regulations, or orders as the Commission may prescribe or issue.*

*"(D) NO EFFECT OF BANK EXEMPTIONS ON OTHER COMMISSION AUTHORITY.—The exception to being considered a broker for a bank engaged in activities described in subparagraphs (B) and (C) shall not affect the commission's authority under any other provision of this Act or any other securities law.*

*"(E) FIDUCIARY CAPACITY.—For purposes of subparagraph (B)(ii), the term 'fiduciary capacity' means—*

*"(i) in the capacity as trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, or custodian under a uniform gift to minor act, or as an investment adviser if the bank receives a fee for its investment advice;*

*"(ii) in any capacity in which the bank possesses investment discretion on behalf of another; or*

*"(iii) in any other similar capacity.*

*"(F) EXCEPTION FOR ENTITIES SUBJECT TO SECTION 15(e).—The term 'broker' does not include a bank that—*

*"(i) was, immediately prior to the enactment of the Financial Services Act of 1998, subject to section 15(e); and*

*"(ii) is subject to such restrictions and requirements as the Commission considers appropriate.".*

***SEC. 202. DEFINITION OF DEALER.***

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

*"(5) DEALER.—*

*"(A) IN GENERAL.—The term 'dealer' means any person engaged in the business of buying and selling securities for such person's own account through a broker or otherwise.*

*"(B) EXCEPTION FOR PERSON NOT ENGAGED IN THE BUSINESS OF DEALING.—The term 'dealer' does not include a person that buys or sells securities for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.*

*"(C) EXCEPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a dealer because the bank engages in any of the following activities under the conditions described:*

*"(i) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank buys or sells—*

*"(I) commercial paper, bankers acceptances, or commercial bills;*

*"(II) exempted securities;*

*"(III) qualified Canadian government obligations as defined in section 5136 of the Revised Statutes of the United States, in conformity with section 15C of this title and the rules and*

*regulations thereunder, or obligations of the North American Development Bank; or*

*"(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.*

*"(ii) INVESTMENT, TRUSTEE, AND FIDUCIARY TRANSACTIONS.—The bank buys or sells securities for investment purposes—*

*"(I) for the bank; or*

*"(II) for accounts for which the bank acts as a trustee or fiduciary.*

*"(iii) ASSET-BACKED TRANSACTIONS.—The bank engages in the issuance or sale to qualified investors, through a grantor trust or otherwise, of securities backed by or representing an interest in notes, drafts, acceptances, loans, leases, receivables, other obligations, or pools of any such obligations predominantly originated by the bank, or a syndicate of banks of*

*which the bank is a member, or an affiliate of any such bank other than a broker or dealer.*

*"(iv) BANKING PRODUCTS.—The bank buys or sells traditional banking products, as defined in section 206(a) of the Financial Services Act of 1998.*

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

*"(I) to or from a qualified investor, except that if the instrument provides for the delivery of one or more securities (other than a derivative instrument or government security), the transaction shall be effected with or through a registered broker or dealer;*

*"(II) to or from other persons, except that if the derivative instrument provides for the delivery of one or more securities (other than a derivative instrument or government security), or is a security (other than a government security), the transaction shall be effected*

*with or through a registered broker or dealer; or*

*"(III) to or from any person if the instrument is neither a security nor provides for the delivery of one or more securities (other than a derivative instrument).".*

***SEC. 203. REGISTRATION FOR SALES OF PRIVATE SECURITIES OFFERINGS.***

*Section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3) is amended by inserting after subsection (i) the following new subsection:*

*"(j) REGISTRATION FOR SALES OF PRIVATE SECURITIES OFFERINGS.—A registered securities association shall create a limited qualification category for any associated person of a member who effects sales as part of a primary offering of securities not involving a public offering, pursuant to section 3(b), 4(2), or 4(6) of the Securities Act of 1933 and the rules and regulations thereunder, and shall deem qualified in such limited qualification category, without testing, any bank employee who, in the six month period preceding the date of enactment of this Act, engaged in effecting such sales.".*

***SEC. 204. SALES PRACTICES AND COMPLAINT PROCEDURES.***

*Section 18 of the Federal Deposit Insurance Act is amended by adding at the end the following new subsection:*

*"(s) SALES PRACTICES AND COMPLAINT PROCEDURES WITH RESPECT TO BANK SECURITIES ACTIVITIES.—*

*"(1) REGULATIONS REQUIRED.—Each Federal banking agency shall prescribe and publish in final form, not later than 6 months after the date of enactment of the Financial Services Act of 1998, regulations which apply to retail transactions, solicitations, advertising, or offers of any security by any insured depository institution or any affiliate thereof other than a registered broker or dealer or an individual acting on behalf of such a broker or dealer who is an associated person of such broker or dealer. Such regulations shall include—*

*"(A) requirements that sales practices comply with just and equitable principles of trade that are substantially similar to the Rules of Fair Practice of the National Association of Securities Dealers; and*

*"(B) requirements prohibiting (i) conditioning an extension of credit on the purchase or sale of a security; and (ii) any conduct leading a customer to believe that an extension of credit*

*is conditioned upon the purchase or sale of a security.*

*"(2) PROCEDURES REQUIRED.—The appropriate Federal banking agencies shall jointly establish procedures and facilities for receiving and expeditiously processing complaints against any bank or employee of a bank arising in connection with the purchase or sale of a security by a customer, including a complaint alleging a violation of the regulations prescribed under paragraph (1), but excluding a complaint involving an individual acting on behalf of such a broker or dealer who is an associated person of such broker or dealer. The use of any such procedures and facilities by such a customer shall be at the election of the customer. Such procedures shall include provisions to refer a complaint alleging fraud to the Securities and Exchange Commission and appropriate State securities commissions.*

*"(3) REQUIRED ACTIONS.—The actions required by the Federal banking agencies under paragraph (2) shall include the following:*

*"(A) establishing a group, unit, or bureau within each such agency to receive such complaints;*

*"(B) developing and establishing procedures for investigating, and permitting customers to investigate, such complaints;*

*"(C) developing and establishing procedures for informing customers of the rights they may have in connection with such complaints;*

*"(D) developing and establishing procedures that allow customers a period of at least 6 years to make complaints and that do not require customers to pay the costs of the proceeding; and*

*"(E) developing and establishing procedures for resolving such complaints, including procedures for the recovery of losses to the extent appropriate.*

*"(4) CONSULTATION AND JOINT REGULATIONS.—The Federal banking agencies shall consult with each other and prescribe joint regulations pursuant to paragraphs (1) and (2), after consultation with the Securities and Exchange Commission.*

*"(5) PROCEDURES IN ADDITION TO OTHER REMEDIES.—The procedures and remedies provided under this subsection shall be in addition to, and not in lieu of, any other remedies available under law.*

*"(6) DEFINITION.—As used in this subsection—*

*"(A) the term 'security' has the same meaning as in section 3(a)(10) of the Securities Exchange Act of 1934;*

*"(B) the term 'registered broker or dealer' has the same meaning as in section 3(a)(48) of the Securities Exchange Act of 1934; and*

*"(C) the term 'associated person' has the same meaning as in section 3(a)(18) of the Securities Exchange Act of 1934.".*

***SEC. 205. INFORMATION SHARING.***

*Section 18 of the Federal Deposit Insurance Act is amended by adding at the end the following new subsection:*

*"(t) RECORDKEEPING REQUIREMENTS.—*

*"(1) REQUIREMENTS.—Each appropriate Federal banking agency, after consultation with and consideration of the views of the Commission, shall establish recordkeeping requirements for banks relying on exceptions contained in paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934. Such recordkeeping requirements shall be sufficient to demonstrate compliance with the terms of such exceptions and be designed to facilitate compliance with such exceptions. Each appropriate Federal banking agency shall make any such information available to the Commission upon request.*

*"(2) DEFINITIONS.—As used in this subsection the term 'Commission' means the Securities and Exchange Commission.".*

***SEC. 206. DEFINITION AND TREATMENT OF BANKING PRODUCTS.***

*(a) DEFINITION OF TRADITIONAL BANKING PRODUCT.—For purposes of paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a) (4), (5)), the term "traditional banking product" means—*

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

*(2) a banker's acceptance;*

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

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

*(5) a participation in a loan which the bank or an affiliate of the bank (other than a broker or dealer) funds, participates in, or owns that is sold—*

*(A) to qualified investors; or*

*(B) to other persons that—*

*(i) have the opportunity to review and assess any material information, including*

*information regarding the borrower's credit-worthiness; and*

*(ii) based on such factors as financial sophistication, net worth, and knowledge and experience in financial matters, have the capability to evaluate the information available, as determined under generally applicable banking standards or guidelines;*

*(6) any derivative instrument, whether or not individually negotiated, involving or relating to—*

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

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

*(i) are based on a security or a group or index of securities (other than government securities or a group or index of government securities);*

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

*(iii) trade on a national securities exchange; or*

*(C) commodities, other rates, indices, or other assets, except derivative instruments that—*

*(i) are securities or that are based on a group or index of securities (other than government securities or a group or index of government securities);*

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

*(iii) trade on a national securities exchange; or*

*(7) any product or instrument that the Board of Governors of the Federal Reserve System (hereafter in this subsection referred to as the "Board"), after consultation with the Securities and Exchange Commission (hereafter in this section referred to as the "Commission") determines to be a new banking product, by regulation or order published in the Federal Register.*

*(b) OBJECTION BY THE SEC.—*

*(1) FILING OF PETITION FOR REVIEW.—The Commission may obtain review of any regulation or order described in subsection (a)(7) in the United States Court of Appeals for the District of Columbia Circuit by filing in such court, not later than 60 days after the date of publication of the regulation or*

*order, a written petition requesting that the regulation or order be set aside.*

*(2) TRANSMITTAL OF PETITION AND RECORD.—A copy of a petition described in paragraph (1) shall be transmitted as soon as possible by the Clerk of the Court, to an officer or employee of the Board designated for that purpose. Upon receipt of the petition, the Board shall file in the court the regulation or order under review and any documents referred to therein, and any other relevant materials prescribed by the court.*

*(3) EXCLUSIVE JURISDICTION.—On the date of the filing of the petition under paragraph (1), the court has jurisdiction, which becomes exclusive on the filing of the materials set forth in paragraph (2), to affirm and enforce or to set aside the regulation or order.*

*(4) STANDARD OF REVIEW.—*

*(A) IN GENERAL.—The court shall determine to affirm and enforce or set aside the regulation or order of the Board, based on the determination of the court as to whether the subject product or instrument would be more appropriately regulated under the Federal banking laws or the Federal securities laws, giving equal*

*deference to the views of the Board and the Commission.*

*(B) CONSIDERATIONS.—In making a determination under subparagraph (A), the court shall consider—*

*(i) the nature of the subject product or instrument;*

*(ii) the history, purpose, extent, and appropriateness of the regulation of the product or instrument under the Federal banking laws; and*

*(iii) the history, purpose, extent, and appropriateness of the regulation of the product or instrument under the Federal securities laws.*

*(5) JUDICIAL STAY.—The filing of a petition pursuant to paragraph (1) shall operate as a judicial stay of—*

*(A) any Commission requirement that a bank register as a broker or dealer under section 15 of the Securities Exchange Act of 1934, because the bank engages in any transaction in, or buys or sells, the product or instrument that is the subject of the petition; and*

*(B) any Commission action against a bank for a failure to comply with a requirement described in subparagraph (A).*

*(c) CLASSIFICATION LIMITED.—Classification of a particular product as a traditional banking product pursuant to this section shall not be construed as finding or implying that such product is or is not a security for any purpose under the securities laws, or is or is not an account, agreement, contract, or transaction for any purpose under the Commodity Exchange Act.*

*(d) NO LIMITATION ON OTHER AUTHORITY TO CHALLENGE.—Nothing in this section shall affect the right or authority that the Securities and Exchange Commission, any appropriate Federal banking agency, or any interested party has under any other provision of law to object to or seek judicial review as to whether a product or instrument is or is not appropriately classified as a "traditional banking product" under paragraphs (1) through (7) of subsection (a).*

*(e) DEFINITIONS.—For purposes of this section—*

*(1) the term "bank" has the same meaning as in section 3(a)(6) of the Securities Exchange Act of 1934;*

*(2) the term "qualified investor" has the same meaning as in section 3(a)(55) of the Securities Exchange Act of 1934;*

*(3) the term "government securities" has the same meaning as in section 3(a)(42) of the Securities Exchange Act of 1934, and, for purposes of this subsection, commercial paper, bankers acceptances, and commercial bills shall be treated in the same manner as government securities;*

*(4) the term "Federal banking agency" has the same meaning as in section 3(z) of the Federal Deposit Insurance Act; and*

*(5) the term "new banking product" means a product or instrument that—*

*(A) was not subject to regulation by the Securities and Exchange Commission as a security under the Securities Exchange Act of 1934, before the date of enactment of this Act; and*

*(B) is not a traditional banking product, as defined in subparagraphs (A) through (F) of paragraph (1).*

***SEC. 207. DERIVATIVE INSTRUMENT AND QUALIFIED INVESTOR DEFINED.***

*Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end the following new paragraphs:*

*"(54) DERIVATIVE INSTRUMENT.—*

*"(A) DEFINITION.—The term 'derivative instrument' means any individually negotiated contract, agreement, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets, but does not include a traditional banking product, as defined in section 206(a) of the Financial Services Act of 1998.*

*"(B) CLASSIFICATION LIMITED.— Classification of a particular contract as a derivative instrument pursuant to this paragraph shall not be construed as finding or implying that such instrument is or is not a security for any purpose under the securities laws, or is or is not an account, agreement, contract, or transaction for any purpose under the Commodity Exchange Act.*

*"(55) QUALIFIED INVESTOR.—*

*"(A) DEFINITION.—For purposes of this title and section 206(a)(1)(E) of the Financial Services Act of 1998, the term 'qualified investor' means—*

*"(i) any investment company registered with the Commission under section 8 of the Investment Company Act of 1940;*

*"(ii) any issuer eligible for an exclusion from the definition of investment company pursuant to section 3(c)(7) of the Investment Company Act of 1940;*

*"(iii) any bank (as defined in paragraph (6) of this subsection), savings and loan association (as defined in section 3(b) of the Federal Deposit Insurance Act), broker, dealer, insurance company (as defined in section 2(a)(13) of the Securities Act of 1933), or business development company (as defined in section 2(a)(48) of the Investment Company Act of 1940);*

*"(iv) any small business investment company licensed by the United States Small Business Administration under sec-*

*tion 301(c) or (d) of the Small Business Investment Act of 1958;*

*"(v) any State sponsored employee benefit plan, or any other employee benefit plan, within the meaning of the Employee Retirement Income Security Act of 1974, other than an individual retirement account, if the investment decisions are made by a plan fiduciary, as defined in section 3(21) of that Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser;*

*"(vi) any trust whose purchases of securities are directed by a person described in clauses (i) through (v) of this subparagraph;*

*"(vii) any market intermediary exempt under section 3(c)(2) of the Investment Company Act of 1940;*

*"(viii) any associated person of a broker or dealer other than a natural person;*

*"(ix) any foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978);*

*"(x) the government of any foreign country;*

*"(xi) any corporation, company, or partnership that owns and invests on a discretionary basis, not less than $10,000,000 in investments;*

*"(xii) any natural person who owns and invests on a discretionary basis, not less than $10,000,000 in investments;*

*"(xiii) any government or political subdivision, agency, or instrumentality of a government who owns and invests on a discretionary basis not less than $50,000,000 in investments; or*

*"(xiv) any multinational or supranational entity or any agency or instrumentality thereof.*

*"(B) ADDITIONAL AUTHORITY.—The Commission may, by rule or order, define a 'qualified investor' as any other person, taking into consideration such factors as the financial sophistication of the person, net worth, and knowledge and experience in financial matters.".*

***SEC. 208. GOVERNMENT SECURITIES DEFINED.***

*Section 3(a)(42) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(42)) is amended—*

*(1) by striking "or" at the end of subparagraph (C);*

*(2) by striking the period at the end of subparagraph (D) and inserting "; or"; and*

*(3) by adding at the end the following new subparagraph:*

*"(E) for purposes of section 15C as applied to a bank, a qualified Canadian government obligation as defined in section 5136 of the Revised Statutes.".*

***SEC. 209. EFFECTIVE DATE.***

*This subtitle shall take effect at the end of the 270-day period beginning on the date of the enactment of this Act.*

***SEC. 210. RULE OF CONSTRUCTION.***

*Nothing in this Act shall supersede, affect, or otherwise limit the scope and applicability of the Commodity Exchange Act (7 U.S.C. 1 et seq.).*

# *Subtitle B—Bank Investment Company Activities*

***SEC. 211. CUSTODY OF INVESTMENT COMPANY ASSETS BY AFFILIATED BANK.***

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

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

*(2) by striking "(f) Every registered" and inserting the following:*

*"(f) CUSTODY OF SECURITIES.—*

*"(1) Every registered";*

*(3) by redesignating the second, third, fourth, and fifth sentences of such subsection as paragraphs (2) through (5), respectively, and indenting the left margin of such paragraphs appropriately; and*

*(4) by adding at the end the following new paragraph:*

*"(6) SERVICES AS TRUSTEE OR CUSTODIAN.—The Commission may adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the conditions under which a bank, or an affiliated person of a bank, either of which is an affiliated person, promoter, organizer, or*

*sponsor of, or principal underwriter for, a registered management company may serve as custodian of that registered management company.".*

*(b) UNIT INVESTMENT TRUSTS.—Section 26 of the Investment Company Act of 1940 (15 U.S.C. 80a–26) is amended—*

*(1) by redesignating subsections (b) through (e) as subsections (c) through (f), respectively; and*

*(2) by inserting after subsection (a) the following new subsection:*

*"(b) The Commission may adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the conditions under which a bank, or an affiliated person of a bank, either of which is an affiliated person of a principal underwriter for, or depositor of, a registered unit investment trust, may serve as trustee or custodian under subsection (a)(1).".*

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

*(1) in paragraph (1), by striking "or" at the end;*

*(2) in paragraph (2), by striking the period at the end and inserting "; or"; and*

*(3) by inserting after paragraph (2) the following:*

*"(3) as custodian.".*

***SEC. 212. LENDING TO AN AFFILIATED INVESTMENT COMPANY.***

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

*(1) by striking "or" at the end of paragraph (2);*

*(2) by striking the period at the end of paragraph (3) and inserting "; or"; and*

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

*"(4) to loan money or other property to such registered company, or to any company controlled by such registered company, in contravention of such rules, regulations, or orders as the Commission may prescribe or issue consistent with the protection of investors.".*

***SEC. 213. INDEPENDENT DIRECTORS.***

*(a) IN GENERAL.—Section 2(a)(19)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)(A)) is amended—*

*(1) by striking clause (v) and inserting the following new clause:*

*"(v) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—*

*"(I) the investment company;*

*"(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services; or*

*"(III) any account over which the investment company's investment adviser has brokerage placement discretion,";*

*(2) by redesignating clause (vi) as clause (vii); and*

*(3) by inserting after clause (v) the following new clause:*

*"(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to—*

*"(I) the investment company;*

*"(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services; or*

*"(III) any account for which the investment company's investment adviser has borrowing authority,".*

*(b) CONFORMING AMENDMENT.—Section 2(a)(19)(B) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)(B)) is amended—*

*(1) by striking clause (v) and inserting the following new clause:*

*"(v) any person or any affiliated person of a person (other than a registered investment company) that, at any time dur-*

*ing the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—*

*"(I) any investment company for which the investment adviser or principal underwriter serves as such;*

*"(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such; or*

*"(III) any account over which the investment adviser has brokerage placement discretion,";*

*(2) by redesignating clause (vi) as clause (vii); and*

*(3) by inserting after clause (v) the following new clause:*

*"(vi) any person or any affiliated person of a person (other than a registered in-*

*vestment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to—*

*"(I) any investment company for which the investment adviser or principal underwriter serves as such;*

*"(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such; or*

*"(III) any account for which the investment adviser has borrowing authority,".*

*(c) AFFILIATION OF DIRECTORS.—Section 10(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–10(c)) is amended by striking "bank, except" and inserting "bank (together with its affiliates and subsidiaries) or any one bank holding company (together with its affiliates and subsidiaries) (as such terms are defined in section 2 of the Bank Holding Company Act of 1956), except".*

*(d) EFFECTIVE DATE.—The amendments made by this section shall take effect at the end of the 1-year period beginning on the date of enactment of this subtitle.*

***SEC. 214. ADDITIONAL SEC DISCLOSURE AUTHORITY.***

*Section 35(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–34(a)) is amended to read as follows:*

*"(a) MISREPRESENTATION OF GUARANTEES.—*

*"(1) IN GENERAL.—It shall be unlawful for any person, issuing or selling any security of which a registered investment company is the issuer, to represent or imply in any manner whatsoever that such security or company—*

*"(A) has been guaranteed, sponsored, recommended, or approved by the United States, or any agency, instrumentality or officer of the United States;*

*"(B) has been insured by the Federal Deposit Insurance Corporation; or*

*"(C) is guaranteed by or is otherwise an obligation of any bank or insured depository institution.*

*"(2) DISCLOSURES.—Any person issuing or selling the securities of a registered investment company that is advised by, or sold through, a bank shall prominently disclose that an investment in the com-*

*pany is not insured by the Federal Deposit Insurance Corporation or any other government agency. The Commission may adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the manner in which the disclosure under this paragraph shall be provided.*

*"(3) DEFINITIONS.—The terms 'insured depository institution' and 'appropriate Federal banking agency' have the same meanings as in section 3 of the Federal Deposit Insurance Act.".*

***SEC. 215. DEFINITION OF BROKER UNDER THE INVESTMENT COMPANY ACT OF 1940.***

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

*"(6) The term 'broker' has the same meaning as in section 3 of the Securities Exchange Act of 1934, except that such term does not include any person solely by reason of the fact that such person is an underwriter for one or more investment companies.".*

***SEC. 216. DEFINITION OF DEALER UNDER THE INVESTMENT COMPANY ACT OF 1940.***

*Section 2(a)(11) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(11)) is amended to read as follows:*

*"(11) The term 'dealer' has the same meaning as in section 3 of the Securities Exchange Act of 1934, but does not include an insurance company or investment company.".*

***SEC. 217. REMOVAL OF THE EXCLUSION FROM THE DEFINITION OF INVESTMENT ADVISER FOR BANKS THAT ADVISE INVESTMENT COMPANIES.***

*(a) INVESTMENT ADVISER.—Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)) is amended in subparagraph (A), by striking "investment company" and inserting "investment company, except that the term 'investment adviser' includes any bank or bank holding company to the extent that such bank or bank holding company serves or acts as an investment adviser to a registered investment company, but if, in the case of a bank, such services or actions are performed through a separately identifiable department or division, the department or division, and not the bank itself, shall be deemed to be the investment adviser".*

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

*"(26) The term 'separately identifiable department or division' of a bank means a unit—*

*"(A) that is under the direct supervision of an officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's investment adviser activities for one or more investment companies, including the supervision of all bank employees engaged in the performance of such activities; and*

*"(B) for which all of the records relating to its investment adviser activities are separately maintained in or extractable from such unit's own facilities or the facilities of the bank, and such records are so maintained or otherwise accessible as to permit independent examination and enforcement by the Commission of this Act or the Investment Company Act of 1940 and rules and regulations promulgated under this Act or the Investment Company Act of 1940.".*

***SEC. 218. DEFINITION OF BROKER UNDER THE INVESTMENT ADVISERS ACT OF 1940.***

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

*"(3) The term 'broker' has the same meaning as in section 3 of the Securities Exchange Act of 1934.".*

***SEC. 219. DEFINITION OF DEALER UNDER THE INVESTMENT ADVISERS ACT OF 1940.***

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

*"(7) The term 'dealer' has the same meaning as in section 3 of the Securities Exchange Act of 1934, but does not include an insurance company or investment company.".*

***SEC. 220. INTERAGENCY CONSULTATION.***

*The Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) is amended by inserting after section 210 the following new section:*

***"SEC. 210A. CONSULTATION.***

*"(a) EXAMINATION RESULTS AND OTHER INFORMATION.—*

*"(1) The appropriate Federal banking agency shall provide the Commission upon request the results of any examination, reports, records, or other information to which such agency may have access with respect to the investment advisory activities—*

*"(A) of any—*

*"(i) bank holding company;*

*"(ii) bank; or*

*"(iii) separately identifiable department or division of a bank, that is registered under section 203 of this title; and*

*"(B) in the case of a bank holding company or bank that has a subsidiary or a separately identifiable department or division registered under that section, of such bank or bank holding company.*

*"(2) The Commission shall provide to the appropriate Federal banking agency upon request the results of any examination, reports, records, or other information with respect to the investment advisory activities of any bank holding company, bank, or separately identifiable department or division of a bank, any of which is registered under section 203 of this title.*

*"(b) EFFECT ON OTHER AUTHORITY.—Nothing in this section shall limit in any respect the authority of the appropriate Federal banking agency with respect to such bank holding company, bank, or department or division under any provision of law.*

*"(c) DEFINITION.—For purposes of this section, the term 'appropriate Federal banking agency' has the same meaning as in section 3 of the Federal Deposit Insurance Act.".*

***SEC. 221. TREATMENT OF BANK COMMON TRUST FUNDS.***

*(a) SECURITIES ACT OF 1933.—Section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is amended*

*by striking "or any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian" and inserting "or any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term 'investment company' under section 3(c)(3) of the Investment Company Act of 1940".*

*(b) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a)(12)(A)(iii) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)(A)(iii)) is amended to read as follows:*

> *"(iii) any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term 'investment company' under section 3(c)(3) of the Investment Company Act of 1940;".*

*(c) INVESTMENT COMPANY ACT OF 1940.—Section 3(c)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(3)) is amended by inserting before the period the following: ", if—*

> *"(A) such fund is employed by the bank solely as an aid to the administration of trusts, estates, or other accounts created and maintained for a fiduciary purpose;*

*"(B) except in connection with the ordinary advertising of the bank's fiduciary services, interests in such fund are not—*

*"(i) advertised; or*

*"(ii) offered for sale to the general public; and*

*"(C) fees and expenses charged by such fund are not in contravention of fiduciary principles established under applicable Federal or State law".*

***SEC. 222. INVESTMENT ADVISERS PROHIBITED FROM HAVING CONTROLLING INTEREST IN REGISTERED INVESTMENT COMPANY.***

*Section 15 of the Investment Company Act of 1940 (15 U.S.C. 80a–15) is amended by adding at the end the following new subsection:*

*"(g) CONTROLLING INTEREST IN INVESTMENT COMPANY PROHIBITED.—*

*"(1) IN GENERAL.—If an investment adviser to a registered investment company, or an affiliated person of that investment adviser, holds a controlling interest in that registered investment company in a trustee or fiduciary capacity, such person shall—*

*"(A) if it holds the shares in a trustee or fiduciary capacity with respect to any employee*

*benefit plan subject to the Employee Retirement Income Security Act of 1974, transfer the power to vote the shares of the investment company through to another person acting in a fiduciary capacity with respect to the plan who is not an affiliated person of that investment adviser or any affiliated person thereof; or*

*"(B) if it holds the shares in a trustee or fiduciary capacity with respect to any person or entity other than an employee benefit plan subject to the Employee Retirement Income Security Act of 1974—*

*"(i) transfer the power to vote the shares of the investment company through to—*

*"(I) the beneficial owners of the shares;*

*"(II) another person acting in a fiduciary capacity who is not an affiliated person of that investment adviser or any affiliated person thereof; or*

*"(III) any person authorized to receive statements and information with respect to the trust who is not an*

*affiliated person of that investment adviser or any affiliated person thereof;*

*"(ii) vote the shares of the investment company held by it in the same proportion as shares held by all other shareholders of the investment company; or*

*"(iii) vote the shares of the investment company as otherwise permitted under such rules, regulations, or orders as the Commission may prescribe or issue consistent with the protection of investors.*

*"(2) EXEMPTION.—Paragraph (1) shall not apply to any investment adviser to a registered investment company, or any affiliated person of that investment adviser, that holds shares of the investment company in a trustee or fiduciary capacity if that registered investment company consists solely of assets held in such capacities.*

*"(3) SAFE HARBOR.—No investment adviser to a registered investment company or any affiliated person of such investment adviser shall be deemed to have acted unlawfully or to have breached a fiduciary duty under State or Federal law solely by reason of acting in accordance with clause (i), (ii), or (iii) of paragraph (1)(B).".*

***SEC. 223. CONFORMING CHANGE IN DEFINITION.***

*Section 2(a)(5) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(5)) is amended by striking "(A) a banking institution organized under the laws of the United States" and inserting "(A) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or a branch or agency of a foreign bank (as such terms are defined in section 1(b) of the International Banking Act of 1978)".*

***SEC. 224. CONFORMING AMENDMENT.***

*Section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2) is amended by adding at the end the following new subsection:*

*"(c) CONSIDERATION OF PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION.—Whenever pursuant to this title the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.".*

***SEC. 225. EFFECTIVE DATE.***

*This subtitle shall take effect 90 days after the date of the enactment of this Act.*

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

### *SEC. 231. SUPERVISION OF INVESTMENT BANK HOLDING COMPANIES BY THE SECURITIES AND EXCHANGE COMMISSION.*

*(a) AMENDMENT.—Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended—*

*(1) by redesignating subsection (i) as subsection (l); and*

*(2) by inserting after subsection (h) the following new subsections:*

*"(i) INVESTMENT BANK HOLDING COMPANIES.—*

*"(1) ELECTIVE SUPERVISION OF AN INVESTMENT BANK HOLDING COMPANY NOT HAVING A BANK OR SAVINGS ASSOCIATION AFFILIATE.—*

*"(A) IN GENERAL.—An investment bank holding company that is not—*

*"(i) an affiliate of a wholesale financial institution, an insured bank (other than an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding*

*Company Act of 1956), or a savings association;*

*"(ii) a foreign bank, foreign company, or company that is described in section 8(a) of the International Banking Act of 1978; or*

*"(iii) a foreign bank that controls, directly or indirectly, a corporation chartered under section 25A of the Federal Reserve Act,*

*may elect to become supervised by filing with the Commission a notice of intention to become supervised, pursuant to subparagraph (B) of this paragraph. Any investment bank holding company filing such a notice shall be supervised in accordance with this section and comply with the rules promulgated by the Commission applicable to supervised investment bank holding companies.*

*"(B) NOTIFICATION OF STATUS AS A SUPERVISED INVESTMENT BANK HOLDING COMPANY.—An investment bank holding company that elects under subparagraph (A) to become supervised by the Commission shall file with the Commission a written notice of intention to become supervised*

*by the Commission in such form and containing such information and documents concerning such investment bank holding company as the Commission, by rule, may prescribe as necessary or appropriate in furtherance of the purposes of this section. Unless the Commission finds that such supervision is not necessary or appropriate in furtherance of the purposes of this section, such supervision shall become effective 45 days after the date of receipt of such written notice by the Commission, or within such shorter time period as the Commission, by rule or order, may determine.*

*"(2) ELECTION NOT TO BE SUPERVISED BY THE COMMISSION AS AN INVESTMENT BANK HOLDING COMPANY.—*

*"(A) VOLUNTARY WITHDRAWAL.—A supervised investment bank holding company that is supervised pursuant to paragraph (1) may, upon such terms and conditions as the Commission deems necessary or appropriate, elect not to be supervised by the Commission by filing a written notice of withdrawal from Commission supervision. Such notice shall not become effective until one year after receipt by the Commission,*

*or such shorter or longer period as the Commission deems necessary or appropriate to ensure effective supervision of the material risks to the supervised investment bank holding company and to the affiliated broker or dealer, or to prevent evasion of the purposes of this section.*

*"(B) DISCONTINUATION OF COMMISSION SUPERVISION.—If the Commission finds that any supervised investment bank holding company that is supervised pursuant to paragraph (1) is no longer in existence or has ceased to be an investment bank holding company, or if the Commission finds that continued supervision of such a supervised investment bank holding company is not consistent with the purposes of this section, the Commission may discontinue the supervision pursuant to a rule or order, if any, promulgated by the Commission under this section.*

*"(3) SUPERVISION OF INVESTMENT BANK HOLDING COMPANIES.—*

*"(A) RECORDKEEPING AND REPORTING.—*

*"(i) IN GENERAL.—Every supervised investment bank holding company and each affiliate thereof shall make and keep for prescribed periods such records, furnish copies*

*thereof, and make such reports, as the Commission may require by rule, in order to keep the Commission informed as to—*

*"(I) the company's or affiliate's activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and transactions and relationships between any broker or dealer affiliate of the supervised investment bank holding company; and*

*"(II) the extent to which the company or affiliate has complied with the provisions of this Act and regulations prescribed and orders issued under this Act.*

*"(ii) FORM AND CONTENTS.—Such records and reports shall be prepared in such form and according to such specifications (including certification by an independent public accountant), as the Commission may require and shall be provided promptly at any time upon request by the Commission. Such records and reports may include—*

*"(I) a balance sheet and income statement;*

*"(II) an assessment of the consolidated capital of the supervised investment bank holding company;*

*"(III) an independent auditor's report attesting to the supervised investment bank holding company's compliance with its internal risk management and internal control objectives; and*

*"(IV) reports concerning the extent to which the company or affiliate has complied with the provisions of this title and any regulations prescribed and orders issued under this title.*

*"(B) USE OF EXISTING REPORTS.—*

*"(i) IN GENERAL.—The Commission shall, to the fullest extent possible, accept reports in fulfillment of the requirements under this paragraph that the supervised investment bank holding company or its affiliates have been required to provide to an-*

*other appropriate regulatory agency or self-regulatory organization.*

*"(ii) AVAILABILITY.—A supervised investment bank holding company or an affiliate of such company shall provide to the Commission, at the request of the Commission, any report referred to in clause (i).*

*"(C) EXAMINATION AUTHORITY.—*

*"(i) FOCUS OF EXAMINATION AUTHORITY.—The Commission may make examinations of any supervised investment bank holding company and any affiliate of such company in order to—*

*"(I) inform the Commission regarding—*

*"(aa) the nature of the operations and financial condition of the supervised investment bank holding company and its affiliates;*

*"(bb) the financial and operational risks within the supervised investment bank holding company that may affect any broker or dealer controlled by such*

*supervised investment bank holding company; and*

*"(cc) the systems of the supervised investment bank holding company and its affiliates for monitoring and controlling those risks; and*

*"(II) monitor compliance with the provisions of this subsection, provisions governing transactions and relationships between any broker or dealer affiliated with the supervised investment bank holding company and any of the company's other affiliates, and applicable provisions of subchapter II of chapter 53, title 31, United States Code (commonly referred to as the 'Bank Secrecy Act') and regulations thereunder.*

*"(ii) RESTRICTED FOCUS OF EXAMINATIONS.—The Commission shall limit the focus and scope of any examination of a supervised investment bank holding company to—*

*"(I) the company; and*

*"(II) any affiliate of the company that, because of its size, condition, or activities, the nature or size of the transactions between such affiliate and any affiliated broker or dealer, or the centralization of functions within the holding company system, could, in the discretion of the Commission, have a materially adverse effect on the operational or financial condition of the broker or dealer.*

*"(iii) DEFERENCE TO OTHER EXAMINATIONS.—For purposes of this subparagraph, the Commission shall, to the fullest extent possible, use the reports of examination of an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956 made by the appropriate regulatory agency, or of a licensed insurance company made by the appropriate State insurance regulator.*

*"(4) HOLDING COMPANY CAPITAL.—*

*"(A) AUTHORITY.—If the Commission finds that it is necessary to adequately supervise in-*

*vestment bank holding companies and their broker or dealer affiliates consistent with the purposes of this subsection, the Commission may adopt capital adequacy rules for supervised investment bank holding companies.*

*"(B) METHOD OF CALCULATION.—In developing rules under this paragraph:*

*"(i) DOUBLE LEVERAGE.—The Commission shall consider the use by the supervised investment bank holding company of debt and other liabilities to fund capital investments in affiliates.*

*"(ii) NO UNWEIGHTED CAPITAL RATIO.—The Commission shall not impose under this section a capital ratio that is not based on appropriate risk-weighting considerations.*

*"(iii) NO CAPITAL REQUIREMENT ON REGULATED ENTITIES.—The Commission shall not, by rule, regulation, guideline, order or otherwise, impose any capital adequacy provision on a nonbanking affiliate (other than a broker or dealer) that is in compliance with applicable capital require-*

*ments of another Federal regulatory authority or State insurance authority.*

*"(iv) APPROPRIATE EXCLUSIONS.—The Commission shall take full account of the applicable capital requirements of another Federal regulatory authority or State insurance regulator.*

*"(C) INTERNAL RISK MANAGEMENT MODELS.—The Commission may incorporate internal risk management models into its capital adequacy rules for supervised investment bank holding companies.*

*"(5) FUNCTIONAL REGULATION OF BANKING AND INSURANCE ACTIVITIES OF SUPERVISED INVESTMENT BANK HOLDING COMPANIES.—The Commission shall defer to—*

*"(A) the appropriate regulatory agency with regard to all interpretations of, and the enforcement of, applicable banking laws relating to the activities, conduct, ownership, and operations of banks, and institutions described in subparagraph (D), (F), and (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956; and*

*"(B) the appropriate State insurance regulators with regard to all interpretations of, and the enforcement of, applicable State insurance laws relating to the activities, conduct, and operations of insurance companies and insurance agents.*

*"(6) DEFINITIONS.—For purposes of this subsection and subsection (j)—*

*"(A) the term 'investment bank holding company' means—*

*"(i) any person other than a natural person that owns or controls one or more brokers or dealers; and*

*"(ii) the associated persons of the investment bank holding company;*

*"(B) the term 'supervised investment bank holding company' means any investment bank holding company that is supervised by the Commission pursuant to this subsection;*

*"(C) the terms 'affiliate', 'bank', 'bank holding company', 'company', 'control', and 'savings association' have the same meanings as in section 2 of the Bank Holding Company Act of 1956;*

*"(D) the term 'insured bank' has the same meaning as in section 3 of the Federal Deposit Insurance Act;*

*"(E) the term 'foreign bank' has the same meaning as in section 1(b)(7) of the International Banking Act of 1978; and*

*"(F) the terms 'person associated with an investment bank holding company' and 'associated person of an investment bank holding company' mean any person directly or indirectly controlling, controlled by, or under common control with, an investment bank holding company.*

*"(j) COMMISSION BACKUP AUTHORITY.—*

*"(1) AUTHORITY.—The Commission may make inspections of any wholesale financial holding company that—*

*"(A) controls a wholesale financial institution;*

*"(B) is not a foreign bank; and*

*"(C) does not control an insured bank (other than an institution permitted under subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956) or a savings association,*

*and any affiliate of such company, for the purpose of monitoring and enforcing compliance by the wholesale financial holding company with the Federal securities laws.*

*"(2) LIMITATION.—The Commission shall limit the focus and scope of any inspection under paragraph (1) to those transactions, policies, procedures, or records that are reasonably necessary to monitor and enforce compliance by the wholesale financial holding company or any affiliate with the Federal securities laws.*

*"(3) DEFERENCE TO EXAMINATIONS.—To the fullest extent possible, the Commission shall use, for the purposes of this subsection, the reports of examinations—*

*"(A) made by the Board of Governors of the Federal Reserve System of any wholesale financial holding company that is supervised by the Board;*

*"(B) made by or on behalf of any State regulatory agency responsible for the supervision of an insurance company of any licensed insurance company; and*

*"(C) made by any Federal or State banking agency of any bank or institution described in*

*subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956.*

*"(4) NOTICE.—To the fullest extent possible, the Commission shall notify the appropriate regulatory agency prior to conducting an inspection of a wholesale financial institution or institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956.*

*"(k) AUTHORITY TO LIMIT DISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be reported under subsection (h) or (i) or any information supplied to the Commission by any domestic or foreign regulatory agency that relates to the financial or operational condition of any associated person of a broker or dealer, investment bank holding company, or any affiliate of an investment bank holding company. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or complying with an order*

*of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. In prescribing regulations to carry out the requirements of this subsection, the Commission shall designate information described in or obtained pursuant to subparagraphs (A), (B), and (C) of subsection (i)(5) as confidential information for purposes of section 24(b)(2) of this title.".*

*(b) CONFORMING AMENDMENTS.—*

*(1) Section 3(a)(34) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34)) is amended by adding at the end the following new subparagraphs:*

*"(H) When used with respect to an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956—*

*"(i) the Comptroller of the Currency, in the case of a national bank or a bank in the District of Columbia examined by the Comptroller of the Currency;*

*"(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve*

*System or any corporation chartered under section 25A of the Federal Reserve Act;*

*"(iii) the Federal Deposit Insurance Corporation, in the case of any other bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act; or*

*"(iv) the Commission in the case of all other such institutions.".*

*(2) Section 1112(e) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3412(e)) is amended—*

*(A) by striking "this title" and inserting "law"; and*

*(B) by inserting ", examination reports" after "financial records".*

# *Subtitle D—Studies*

### *SEC. 241. STUDY OF METHODS TO INFORM INVESTORS AND CONSUMERS OF UNINSURED PRODUCTS.*

*Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to the Congress regarding the efficacy, costs, and benefits of requiring that any depository institution that accepts federally insured deposits and that, directly or through a contractual or other arrangement with a broker,*

*dealer, or agent, buys from, sells to, or effects transactions for retail investors in securities or consumers of insurance to inform such investors and consumers through the use of a logo or seal that the security or insurance is not insured by the Federal Deposit Insurance Corporation.*

***SEC. 242. STUDY OF LIMITATION ON FEES ASSOCIATED WITH ACQUIRING FINANCIAL PRODUCTS.***

*Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to the Congress regarding the efficacy and benefits of uniformly limiting any commissions, fees, mark-ups, or other costs incurred by customers in the acquisition of financial products.*

# *TITLE III—INSURANCE*

## *Subtitle A—State Regulation of Insurance*

***SEC. 301. STATE REGULATION OF THE BUSINESS OF INSURANCE.***

*The Act entitled "An Act to express the intent of the Congress with reference to the regulation of the business of insurance" and approved March 9, 1945 (15 U.S.C. 1011 et seq.), commonly referred to as the "McCarran-Ferguson Act") remains the law of the United States.*

***SEC. 302. MANDATORY INSURANCE LICENSING REQUIREMENTS.***

*No person or entity shall provide insurance in a State as principal or agent unless such person or entity is licensed as required by the appropriate insurance regulator of such State in accordance with the relevant State insurance law, subject to section 104 of this Act.*

***SEC. 303. FUNCTIONAL REGULATION OF INSURANCE.***

*The insurance sales activity of any person or entity shall be functionally regulated by the States, subject to section 104 of this Act.*

***SEC. 304. INSURANCE UNDERWRITING IN NATIONAL BANKS.***

*(a) IN GENERAL.—Except as provided in section 306, a national bank and the subsidiaries of a national bank may not provide insurance in a State as principal except that this prohibition shall not apply to authorized products.*

*(b) AUTHORIZED PRODUCTS.—For the purposes of this section, a product is authorized if—*

*(1) as of January 1, 1997, the Comptroller of the Currency had determined in writing that national banks may provide such product as principal, or national banks were in fact lawfully providing such product as principal;*

*(2) no court of relevant jurisdiction had, by final judgment, overturned a determination of the Comp-*

*troller of the Currency that national banks may provide such product as principal; and*

*(3) the product is not title insurance, or an annuity contract the income of which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986.*

*(c) DEFINITION.—For purposes of this section, the term "insurance" means—*

*(1) any product regulated as insurance as of January 1, 1997, in accordance with the relevant State insurance law, in the State in which the product is provided;*

*(2) any product first offered after January 1, 1997, which—*

*(A) a State insurance regulator determines shall be regulated as insurance in the State in which the product is provided because the product insures, guarantees, or indemnifies against liability, loss of life, loss of health, or loss through damage to or destruction of property, including, but not limited to, surety bonds, life insurance, health insurance, title insurance, and property and casualty insurance (such as private passenger or commercial automobile, homeowners, mortgage, commercial multiperil, general*

*liability, professional liability, workers' compensation, fire and allied lines, farm owners multiperil, aircraft, fidelity, surety, medical malpractice, ocean marine, inland marine, and boiler and machinery insurance); and*

*(B) is not a product or service of a bank that is—*

*(i) a deposit product;*

*(ii) a loan, discount, letter of credit, or other extension of credit;*

*(iii) a trust or other fiduciary service;*

*(iv) a qualified financial contract (as defined in or determined pursuant to section 11(e)(8)(D)(i) of the Federal Deposit Insurance Act); or*

*(v) a financial guaranty, except that this subparagraph (B) shall not apply to a product that includes an insurance component such that if the product is offered or proposed to be offered by the bank as principal—*

*(I) it would be treated as a life insurance contract under section 7702 of the Internal Revenue Code of 1986; or*

*(II) in the event that the product is not a letter of credit or other similar extension of credit, a qualified financial contract, or a financial guaranty, it would qualify for treatment for losses incurred with respect to such product under section 832(b)(5) of the Internal Revenue Code of 1986, if the bank were subject to tax as an insurance company under section 831 of that Code; or*

*(3) any annuity contract, the income on which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986.*

***SEC. 305. TITLE INSURANCE ACTIVITIES OF NATIONAL BANKS AND THEIR AFFILIATES.***

*(a) AUTHORITY.—Notwithstanding any other provision of this Act or any other law, no national bank, and no subsidiary of a national bank, may engage in any activity involving the underwriting of title insurance, other than title insurance underwriting activities in which such national bank or subsidiary was actively and lawfully engaged before the date of the enactment of this Act.*

*(b) INSURANCE AFFILIATE.—In the case of a national bank which has an affiliate which provides insurance as*

*principal and is not a subsidiary of the bank, the national bank and any subsidiary of the national bank may not engage in any activity involving the underwriting of title insurance pursuant to subsection (a).*

*(c) INSURANCE SUBSIDIARY.—In the case of a national bank which has a subsidiary which provides insurance as principal and has no affiliate which provides insurance as principal and is not a subsidiary, the national bank may not engage in any activity involving the underwriting of title insurance pursuant to subsection (a).*

*(d) "AFFILIATE" AND "SUBSIDIARY" DEFINED.—For purposes of this section, the terms "affiliate" and "subsidiary" have the same meanings as in section 2 of the Bank Holding Company Act of 1956.*

***SEC. 306. EXPEDITED AND EQUALIZED DISPUTE RESOLUTION FOR FINANCIAL REGULATORS.***

*(a) FILING IN COURT OF APPEAL.—In the case of a regulatory conflict between a State insurance regulator and a Federal regulator as to whether any product is or is not insurance as defined in section 304(c) of this Act, or whether a State statute, regulation, order, or interpretation regarding any insurance sales or solicitation activity is properly treated as preempted under Federal law, either regulator may seek expedited judicial review of such determination by the United States Court of Appeals for the circuit*

*in which the State is located or in the United States Court of Appeals for the District of Columbia Circuit by filing a petition for review in such court.*

*(b) EXPEDITED REVIEW.—The United States court of appeals in which a petition for review is filed in accordance with paragraph (1) shall complete all action on such petition, including rendering a judgment, before the end of the 60-day period beginning on the date such petition is filed, unless all parties to such proceeding agree to any extension of such period.*

*(c) SUPREME COURT REVIEW.—Any request for certiorari to the Supreme Court of the United States of any judgment of a United States court of appeals with respect to a petition for review under this section shall be filed with the United States Supreme Court as soon as practicable after such judgment is issued.*

*(d) STATUTE OF LIMITATION.—No action may be filed under this section challenging an order, ruling, determination, or other action of a Federal financial regulator or State insurance regulator after the later of—*

*(1) the end of the 12-month period beginning on the date the first public notice is made of such order, ruling, or determination in its final form; or*

*(2) the end of the 6-month period beginning on the date such order, ruling, or determination takes effect.*

*(e) STANDARD OF REVIEW.—The court shall decide an action filed under this section based on its review on the merits of all questions presented under State and Federal law, including the nature of the product or activity and the history and purpose of its regulation under State and Federal law, without unequal deference.*

***SEC. 307. CONSUMER PROTECTION REGULATIONS.***

*The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:*

***"SEC. 45. CONSUMER PROTECTION REGULATIONS.***

*"(a) REGULATIONS REQUIRED.—*

*"(1) IN GENERAL.—The Federal banking agencies shall prescribe and publish in final form, before the end of the 1-year period beginning on the date of the enactment of this Act, consumer protection regulations (which the agencies jointly determine to be appropriate) that—*

*"(A) apply to retail sales practices, solicitations, advertising, or offers of any insurance product by any insured depository institution or wholesale financial institution or any person*

*who is engaged in such activities at an office of the institution or on behalf of the institution; and*

*"(B) are consistent with the requirements of this Act and provide such additional protections for consumers to whom such sales, solicitations, advertising, or offers are directed as the agency determines to be appropriate.*

*"(2) APPLICABILITY TO SUBSIDIARIES.—The regulations prescribed pursuant to paragraph (1) shall extend such protections to any subsidiaries of an insured depository institution, as deemed appropriate by the regulators referred to in paragraph (3), where such extension is determined to be necessary to ensure the consumer protections provided by this section.*

*"(3) CONSULTATION AND JOINT REGULATIONS.—The Federal banking agencies shall consult with each other and prescribe joint regulations pursuant to paragraph (1), after consultation with the State insurance regulators, as appropriate.*

*"(b) SALES PRACTICES.—The regulations prescribed pursuant to subsection (a) shall include anticoercion rules applicable to the sale of insurance products which prohibit an insured depository institution from engaging in any practice that would lead a consumer to believe an extension*

*of credit, in violation of section 106(b) of the Bank Holding Company Act Amendments of 1970, is conditional upon—*

*"(1) the purchase of an insurance product from the institution or any of its affiliates or subsidiaries; or*

*"(2) an agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product from an unaffiliated entity.*

*"(c) DISCLOSURES AND ADVERTISING.—The regulations prescribed pursuant to subsection (a) shall include the following provisions relating to disclosures and advertising in connection with the initial purchase of an insurance product:*

*"(1) DISCLOSURES.—*

*"(A) IN GENERAL.—Requirements that the following disclosures be made orally and in writing before the completion of the initial sale and, in the case of clause (iv), at the time of application for an extension of credit:*

*"(i) UNINSURED STATUS.—As appropriate, the product is not insured by the Federal Deposit Insurance Corporation, the United States Government, or the insured depository institution.*

*"(ii) INVESTMENT RISK.—In the case of a variable annuity or other insurance product which involves an investment risk, that there is an investment risk associated with the product, including possible loss of value.*

*"(iii) COERCION.—The approval of an extension of credit may not be conditioned on—*

*"(I) the purchase of an insurance product from the institution in which the application for credit is pending or any of its affiliates or subsidiaries; or*

*"(II) an agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product from an unaffiliated entity.*

*"(B) MAKING DISCLOSURE READILY UNDERSTANDABLE.—Regulations prescribed under subparagraph (A) shall encourage the use of disclosure that is conspicuous, simple, direct, and readily understandable, such as the following:*

*"(i) 'NOT FDIC–INSURED'.*

*"(ii) 'NOT GUARANTEED BY THE BANK'.*

*"(iii) 'MAY GO DOWN IN VALUE'.*

*"(C) ADJUSTMENTS FOR ALTERNATIVE METHODS OF PURCHASE.—In prescribing the requirements under subparagraphs (A) and (D), necessary adjustments shall be made for purchase in person, by telephone, or by electronic media to provide for the most appropriate and complete form of disclosure and acknowledgments.*

*"(D) CONSUMER ACKNOWLEDGMENT.—A requirement that an insured depository institution shall require any person selling an insurance product at any office of, or on behalf of, the institution to obtain, at the time a consumer receives the disclosures required under this paragraph or at the time of the initial purchase by the consumer of such product, an acknowledgment by such consumer of the receipt of the disclosure required under this subsection with respect to such product.*

*"(2) PROHIBITION ON MISREPRESENTATIONS.—A prohibition on any practice, or any advertising, at any office of, or on behalf of, the insured depository institution, or any subsidiary as appropriate, which*

*could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to—*

*"(A) the uninsured nature of any insurance product sold, or offered for sale, by the institution or any subsidiary of the institution; or*

*"(B) in the case of a variable annuity or other insurance product that involves an investment risk, the investment risk associated with any such product.*

*"(d) SEPARATION OF BANKING AND NONBANKING ACTIVITIES.—*

*"(1) REGULATIONS REQUIRED.—The regulations prescribed pursuant to subsection (a) shall include such provisions as the Federal banking agencies consider appropriate to ensure that the routine acceptance of deposits is kept, to the extent practicable, physically segregated from insurance product activity.*

*"(2) REQUIREMENTS.—Regulations prescribed pursuant to paragraph (1) shall include the following requirements:*

*"(A) SEPARATE SETTING.—A clear delineation of the setting in which, and the circumstances under which, transactions involving insurance products should be conducted in a lo-*

*cation physically segregated from an area where retail deposits are routinely accepted.*

*"(B) REFERRALS.—Standards which permit any person accepting deposits from the public in an area where such transactions are routinely conducted in an insured depository institution to refer a customer who seeks to purchase any insurance product to a qualified person who sells such product, only if the person making the referral receives no more than a one-time nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.*

*"(C) QUALIFICATION AND LICENSING REQUIREMENTS.—Standards prohibiting any insured depository institution from permitting any person to sell or offer for sale any insurance product in any part of any office of the institution, or on behalf of the institution, unless such person is appropriately qualified and licensed.*

*"(e) DOMESTIC VIOLENCE DISCRIMINATION PROHIBITION.—*

*"(1) IN GENERAL.—In the case of an applicant for, or an insured under, any insurance product described in paragraph (2), the status of the applicant*

*or insured as a victim of domestic violence, or as a provider of services to victims of domestic violence, shall not be considered as a criterion in any decision with regard to insurance underwriting, pricing, renewal, or scope of coverage of insurance policies, or payment of insurance claims, except as required or expressly permitted under State law.*

*"(2) SCOPE OF APPLICATION.—The prohibition contained in paragraph (1) shall apply to any insurance product which is sold or offered for sale, as principal, agent, or broker, by any insured depository institution or any person who is engaged in such activities at an office of the institution or on behalf of the institution.*

*"(3) SENSE OF THE CONGRESS.—It is the sense of the Congress that, by the end of the 30-month period beginning on the date of the enactment of this Act, the States should enact prohibitions against discrimination with respect to insurance products that are at least as strict as the prohibitions contained in paragraph (1).*

*"(4) DOMESTIC VIOLENCE DEFINED.—For purposes of this subsection, the term 'domestic violence' means the occurrence of 1 or more of the following*

*acts by a current or former family member, household member, intimate partner, or caretaker:*

*"(A) Attempting to cause or causing or threatening another person physical harm, severe emotional distress, psychological trauma, rape, or sexual assault.*

*"(B) Engaging in a course of conduct or repeatedly committing acts toward another person, including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm.*

*"(C) Subjecting another person to false imprisonment.*

*"(D) Attempting to cause or cause damage to property so as to intimidate or attempt to control the behavior of another person.*

*"(f) CONSUMER GRIEVANCE PROCESS.—The Federal banking agencies shall jointly establish a consumer complaint mechanism, for receiving and expeditiously addressing consumer complaints alleging a violation of regulations issued under the section, which shall—*

*"(1) establish a group within each regulatory agency to receive such complaints;*

*"(2) develop procedures for investigating such complaints;*

*"(3) develop procedures for informing consumers of rights they may have in connection with such complaints; and*

*"(4) develop procedures for addressing concerns raised by such complaints, as appropriate, including procedures for the recovery of losses to the extent appropriate.*

*"(g) EFFECT ON OTHER AUTHORITY.—*

*"(1) IN GENERAL.—No provision of this section shall be construed as granting, limiting, or otherwise affecting—*

*"(A) any authority of the Securities and Exchange Commission, any self-regulatory organization, the Municipal Securities Rulemaking Board, or the Secretary of the Treasury under any Federal securities law; or*

*"(B) except as provided in paragraph (2), any authority of any State insurance commissioner or other State authority under any State law.*

*"(2) COORDINATION WITH STATE LAW.—*

*"(A) IN GENERAL.—Except as provided in subparagraph (B), regulations prescribed by a*

*Federal banking agency under this section shall not apply to retail sales, solicitations, advertising, or offers of any insurance product by any insured depository institution or wholesale financial institution or to any person who is engaged in such activities at an office of such institution or on behalf of the institution, in a State where the State has in effect statutes, regulations, orders, or interpretations, that are inconsistent with or contrary to the regulations prescribed by the Federal banking agencies.*

*"(B) PREEMPTION.—If, with respect to any provision of the regulations prescribed under this section, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Board of Directors of the Federal Deposit Insurance Corporation determine jointly that the protection afforded by such provision for consumers is greater than the protection provided by a comparable provision of the statutes, regulations, orders, or interpretations referred to in subparagraph (A) of any State, such provision of the regulations prescribed under this section shall supersede the comparable provision of*

*such State statute, regulation, order, or interpretation.*

*"(h) INSURANCE PRODUCT DEFINED.—For purposes of this section, the term 'insurance product' includes an annuity contract the income of which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986.".*

***SEC. 308. CERTAIN STATE AFFILIATION LAWS PREEMPTED FOR INSURANCE COMPANIES AND AFFILIATES.***

*Except as provided in section 104(a)(2), no State may, by law, regulation, order, interpretation, or otherwise—*

*(1) prevent or significantly interfere with the ability of any insurer, or any affiliate of an insurer (whether such affiliate is organized as a stock company, mutual holding company, or otherwise), to become a financial holding company or to acquire control of an insured depository institution;*

*(2) limit the amount of an insurer's assets that may be invested in the voting securities of an insured depository institution (or any company which controls such institution), except that the laws of an insurer's State of domicile may limit the amount of such investment to an amount that is not less than 5 percent of the insurer's admitted assets; or*

*(3) prevent, significantly interfere with, or have the authority to review, approve, or disapprove a plan of reorganization by which an insurer proposes to reorganize from mutual form to become a stock insurer (whether as a direct or indirect subsidiary of a mutual holding company or otherwise) unless such State is the State of domicile of the insurer.*

## *Subtitle B—National Association of Registered Agents and Brokers*

### *SEC. 321. STATE FLEXIBILITY IN MULTISTATE LICENSING REFORMS.*

*(a) IN GENERAL.—The provisions of this subtitle shall take effect unless, not later than 3 years after the date of enactment of this Act, at least a majority of the States—*

*(1) have enacted uniform laws and regulations governing the licensure of individuals and entities authorized to sell and solicit the purchase of insurance within the State; or*

*(2) have enacted reciprocity laws and regulations governing the licensure of nonresident individuals and entities authorized to sell and solicit insurance within those States.*

*(b) UNIFORMITY REQUIRED.—States shall be deemed to have established the uniformity necessary to satisfy subsection (a)(1) if the States—*

*(1) establish uniform criteria regarding the integrity, personal qualifications, education, training, and experience of licensed insurance producers, including the qualification and training of sales personnel in ascertaining the appropriateness of a particular insurance product for a prospective customer;*

*(2) establish uniform continuing education requirements for licensed insurance producers;*

*(3) establish uniform ethics course requirements for licensed insurance producers in conjunction with the continuing education requirements under paragraph (2);*

*(4) establish uniform criteria to ensure that an insurance product, including any annuity contract, sold to a consumer is suitable and appropriate for the consumer based on financial information disclosed by the consumer; and*

*(5) do not impose any requirement upon any insurance producer to be licensed or otherwise qualified to do business as a nonresident that has the effect of limiting or conditioning that producer's activities because of its residence or place of operations, except that counter-signature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities*

*because of its residence or place of operations under this section.*

*(c) RECIPROCITY REQUIRED.—States shall be deemed to have established the reciprocity required to satisfy subsection (a)(2) if the following conditions are met:*

*(1) ADMINISTRATIVE LICENSING PROCEDURES.—At least a majority of the States permit a producer that has a resident license for selling or soliciting the purchase of insurance in its home State to receive a license to sell or solicit the purchase of insurance in such majority of States as a nonresident to the same extent that such producer is permitted to sell or solicit the purchase of insurance in its State, if the producer's home State also awards such licenses on such a reciprocal basis, without satisfying any additional requirements other than submitting—*

*(A) a request for licensure;*

*(B) the application for licensure that the producer submitted to its home State;*

*(C) proof that the producer is licensed and in good standing in its home State; and*

*(D) the payment of any requisite fee to the appropriate authority.*

*(2) CONTINUING EDUCATION REQUIREMENTS.—A majority of the States accept an insurance producer's*

*satisfaction of its home State's continuing education requirements for licensed insurance producers to satisfy the States' own continuing education requirements if the producer's home State also recognizes the satisfaction of continuing education requirements on such a reciprocal basis.*

*(3) NO LIMITING NONRESIDENT REQUIREMENTS.—A majority of the States do not impose any requirement upon any insurance producer to be licensed or otherwise qualified to do business as a nonresident that has the effect of limiting or conditioning that producer's activities because of its residence or place of operations, except that countersignature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section.*

*(4) RECIPROCAL RECIPROCITY.—Each of the States that satisfies paragraphs (1), (2), and (3) grants reciprocity to residents of all of the other States that satisfy such paragraphs.*

*(d) DETERMINATION.—*

*(1) NAIC DETERMINATION.—At the end of the 3-year period beginning on the date of the enactment of this Act, the National Association of Insurance Com-*

*missioners shall determine, in consultation with the insurance commissioners or chief insurance regulatory officials of the States, whether the uniformity or reciprocity required by subsections (b) and (c) has been achieved.*

*(2) JUDICIAL REVIEW.—The appropriate United States district court shall have exclusive jurisdiction over any challenge to the National Association of Insurance Commissioners' determination under this section and such court shall apply the standards set forth in section 706 of title 5, United States Code, when reviewing any such challenge.*

*(e) CONTINUED APPLICATION.—If, at any time, the uniformity or reciprocity required by subsections (b) and (c) no longer exists, the provisions of this subtitle shall take effect 2 years after that date, unless the uniformity or reciprocity required by those provisions is satisfied before the expiration of that 2-year period.*

*(f) SAVINGS PROVISION.—No provision of this section shall be construed as requiring that any law, regulation, provision, or action of any State which purports to regulate insurance producers, including any such law, regulation, provision, or action which purports to regulate unfair trade practices or establish consumer protections, including countersignature laws, be altered or amended in order to*

*satisfy the uniformity or reciprocity required by subsections (b) and (c), unless any such law, regulation, provision, or action is inconsistent with a specific requirement of any such subsection and then only to the extent of such inconsistency.*

*(g) UNIFORM LICENSING.—Nothing in this section shall be construed to require any State to adopt new or additional licensing requirements to achieve the uniformity necessary to satisfy subsection (a)(1).*

***SEC. 322. NATIONAL ASSOCIATION OF REGISTERED AGENTS AND BROKERS.***

*(a) ESTABLISHMENT.—There is established the National Association of Registered Agents and Brokers (hereafter in this subtitle referred to as the "Association").*

*(b) STATUS.—The Association shall—*

*(1) be a nonprofit corporation;*

*(2) have succession until dissolved by an Act of Congress;*

*(3) not be an agent or instrumentality of the United States Government; and*

*(4) except as otherwise provided in this Act, be subject to, and have all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (D.C. Code, sec. 29y–1001 et seq.).*

***SEC. 323. PURPOSE.***

*The purpose of the Association shall be to provide a mechanism through which uniform licensing, appointment, continuing education, and other insurance producer sales qualification requirements and conditions can be adopted and applied on a multistate basis, while preserving the right of States to license, supervise, and discipline insurance producers and to prescribe and enforce laws and regulations with regard to insurance-related consumer protection and unfair trade practices.*

***SEC. 324. RELATIONSHIP TO THE FEDERAL GOVERNMENT.***

*The Association shall be subject to the supervision and oversight of the National Association of Insurance Commissioners (hereafter in this subtitle referred to as the "NAIC").*

***SEC. 325. MEMBERSHIP.***

*(a) ELIGIBILITY.—*

*(1) IN GENERAL.—Any State-licensed insurance producer shall be eligible to become a member in the Association.*

*(2) INELIGIBILITY FOR SUSPENSION OR REVOCATION OF LICENSE.—Notwithstanding paragraph (1), a State-licensed insurance producer shall not be eligible to become a member if a State insurance regulator has suspended or revoked such producer's license in that State during the 3-year period preceding the date on which such producer applies for membership.*

*(3) RESUMPTION OF ELIGIBILITY.—Paragraph (2) shall cease to apply to any insurance producer if—*

*(A) the State insurance regulator renews the license of such producer in the State in which the license was suspended or revoked; or*

*(B) the suspension or revocation is subsequently overturned.*

*(b) AUTHORITY TO ESTABLISH MEMBERSHIP CRITERIA.—The Association shall have the authority to establish membership criteria that—*

*(1) bear a reasonable relationship to the purposes for which the Association was established; and*

*(2) do not unfairly limit the access of smaller agencies to the Association membership.*

*(c) ESTABLISHMENT OF CLASSES AND CATEGORIES.—*

*(1) CLASSES OF MEMBERSHIP.—The Association may establish separate classes of membership, with separate criteria, if the Association reasonably determines that performance of different duties requires different levels of education, training, or experience.*

*(2) CATEGORIES.—The Association may establish separate categories of membership for individuals and for other persons. The establishment of any such categories of membership shall be based either on the*

*types of licensing categories that exist under State laws or on the aggregate amount of business handled by an insurance producer. No special categories of membership, and no distinct membership criteria, shall be established for members which are insured depository institutions or wholesale financial institutions or for their employees, agents, or affiliates.*

*(d) MEMBERSHIP CRITERIA.—*

*(1) IN GENERAL.—The Association may establish criteria for membership which shall include standards for integrity, personal qualifications, education, training, and experience.*

*(2) MINIMUM STANDARD.—In establishing criteria under paragraph (1), the Association shall consider the highest levels of insurance producer qualifications established under the licensing laws of the States.*

*(e) EFFECT OF MEMBERSHIP.—Membership in the Association shall entitle the member to licensure in each State for which the member pays the requisite fees, including licensing fees and, where applicable, bonding requirements, set by such State.*

*(f) ANNUAL RENEWAL.—Membership in the Association shall be renewed on an annual basis.*

*(g) CONTINUING EDUCATION.—The Association shall establish, as a condition of membership, continuing education requirements which shall be comparable to or greater than the continuing education requirements under the licensing laws of a majority of the States.*

*(h) SUSPENSION AND REVOCATION.—The Association may—*

*(1) inspect and examine the records and offices of the members of the Association to determine compliance with the criteria for membership established by the Association; and*

*(2) suspend or revoke the membership of an insurance producer if—*

*(A) the producer fails to meet the applicable membership criteria of the Association; or*

*(B) the producer has been subject to disciplinary action pursuant to a final adjudicatory proceeding under the jurisdiction of a State insurance regulator, and the Association concludes that retention of membership in the Association would not be in the public interest.*

*(i) OFFICE OF CONSUMER COMPLAINTS.—*

*(1) IN GENERAL.—The Association shall establish an office of consumer complaints that shall—*

*(A) receive and investigate complaints from both consumers and State insurance regulators related to members of the Association; and*

*(B) recommend to the Association any disciplinary actions that the office considers appropriate, to the extent that any such recommendation is not inconsistent with State law.*

*(2) RECORDS AND REFERRALS.—The office of consumer complaints of the Association shall—*

*(A) maintain records of all complaints received in accordance with paragraph (1) and make such records available to the NAIC and to each State insurance regulator for the State of residence of the consumer who filed the complaint; and*

*(B) refer, when appropriate, any such complaint to any appropriate State insurance regulator.*

*(3) TELEPHONE AND OTHER ACCESS.—The office of consumer complaints shall maintain a toll-free telephone number for the purpose of this subsection and, as practicable, other alternative means of communication with consumers, such as an Internet home page.*

***SEC. 326. BOARD OF DIRECTORS.***

*(a) ESTABLISHMENT.—There is established the board of directors of the Association (hereafter in this subtitle referred to as the "Board") for the purpose of governing and supervising the activities of the Association and the members of the Association.*

*(b) POWERS.—The Board shall have such powers and authority as may be specified in the bylaws of the Association.*

*(c) COMPOSITION.—*

*(1) MEMBERS.—The Board shall be composed of 7 members appointed by the NAIC.*

*(2) REQUIREMENT.—At least 4 of the members of the Board shall have significant experience with the regulation of commercial lines of insurance in at least 1 of the 20 States in which the greatest total dollar amount of commercial-lines insurance is placed in the United States.*

*(3) INITIAL BOARD MEMBERSHIP.—*

*(A) IN GENERAL.—If, by the end of the 2-year period beginning on the date of enactment of this Act, the NAIC has not appointed the initial 7 members of the Board of the Association, the initial Board shall consist of the 7 State insurance regulators of the 7 States with the great-*

*est total dollar amount of commercial-lines insurance in place as of the end of such period.*

*(B) ALTERNATE COMPOSITION.—If any of the State insurance regulators described in subparagraph (A) declines to serve on the Board, the State insurance regulator with the next greatest total dollar amount of commercial-lines insurance in place, as determined by the NAIC as of the end of such period, shall serve as a member of the Board.*

*(C) INOPERABILITY.—If fewer than 7 State insurance regulators accept appointment to the Board, the Association shall be established without NAIC oversight pursuant to section 332.*

*(d) TERMS.—The term of each director shall, after the initial appointment of the members of the Board, be for 3 years, with 1/3 of the directors to be appointed each year.*

*(e) BOARD VACANCIES.—A vacancy on the Board shall be filled in the same manner as the original appointment of the initial Board for the remainder of the term of the vacating member.*

*(f) MEETINGS.—The Board shall meet at the call of the chairperson, or as otherwise provided by the bylaws of the Association.*

***SEC. 327. OFFICERS.***

*(a) IN GENERAL.—*

*(1) POSITIONS.—The officers of the Association shall consist of a chairperson and a vice chairperson of the Board, a president, secretary, and treasurer of the Association, and such other officers and assistant officers as may be deemed necessary.*

*(2) MANNER OF SELECTION.—Each officer of the Board and the Association shall be elected or appointed at such time and in such manner and for such terms not exceeding 3 years as may be prescribed in the bylaws of the Association.*

*(b) CRITERIA FOR CHAIRPERSON.—Only individuals who are members of the NAIC shall be eligible to serve as the chairperson of the board of directors.*

***SEC. 328. BYLAWS, RULES, AND DISCIPLINARY ACTION.***

*(a) ADOPTION AND AMENDMENT OF BYLAWS.—*

*(1) COPY REQUIRED TO BE FILED WITH THE NAIC.—The board of directors of the Association shall file with the NAIC a copy of the proposed bylaws or any proposed amendment to the bylaws, accompanied by a concise general statement of the basis and purpose of such proposal.*

*(2) EFFECTIVE DATE.—Except as provided in paragraph (3), any proposed bylaw or proposed amendment shall take effect—*

*(A) 30 days after the date of the filing of a copy with the NAIC;*

*(B) upon such later date as the Association may designate; or*

*(C) such earlier date as the NAIC may determine.*

*(3) DISAPPROVAL BY THE NAIC.—Notwithstanding paragraph (2), a proposed bylaw or amendment shall not take effect if, after public notice and opportunity to participate in a public hearing—*

*(A) the NAIC disapproves such proposal as being contrary to the public interest or contrary to the purposes of this subtitle and provides notice to the Association setting forth the reasons for such disapproval; or*

*(B) the NAIC finds that such proposal involves a matter of such significant public interest that public comment should be obtained, in which case it may, after notifying the Association in writing of such finding, require that the procedures set forth in subsection (b) be followed with respect to such proposal, in the same manner as if such proposed bylaw change were a proposed rule change within the meaning of such paragraph.*

*(b) ADOPTION AND AMENDMENT OF RULES.—*

*(1) FILING PROPOSED REGULATIONS WITH THE NAIC.—*

*(A) IN GENERAL.—The board of directors of the Association shall file with the NAIC a copy of any proposed rule or any proposed amendment to a rule of the Association which shall be accompanied by a concise general statement of the basis and purpose of such proposal.*

*(B) OTHER RULES AND AMENDMENTS INEFFECTIVE.—No proposed rule or amendment shall take effect unless approved by the NAIC or otherwise permitted in accordance with this paragraph.*

*(2) INITIAL CONSIDERATION BY THE NAIC.—Not later than 35 days after the date of publication of notice of filing of a proposal, or before the end of such longer period not to exceed 90 days as the NAIC may designate after such date, if the NAIC finds such longer period to be appropriate and sets forth its reasons for so finding, or as to which the Association consents, the NAIC shall—*

*(A) by order approve such proposed rule or amendment; or*

*(B) institute proceedings to determine whether such proposed rule or amendment should be modified or disapproved.*

*(3) NAIC PROCEEDINGS.—*

*(A) IN GENERAL.—Proceedings instituted by the NAIC with respect to a proposed rule or amendment pursuant to paragraph (2) shall—*

*(i) include notice of the grounds for disapproval under consideration;*

*(ii) provide opportunity for hearing; and*

*(iii) be concluded not later than 180 days after the date of the Association's filing of such proposed rule or amendment.*

*(B) DISPOSITION OF PROPOSAL.—At the conclusion of any proceeding under subparagraph (A), the NAIC shall, by order, approve or disapprove the proposed rule or amendment.*

*(C) EXTENSION OF TIME FOR CONSIDERATION.—The NAIC may extend the time for concluding any proceeding under subparagraph (A) for—*

*(i) not more than 60 days if the NAIC finds good cause for such extension and sets forth its reasons for so finding; or*

*(ii) for such longer period as to which the Association consents.*

*(4) STANDARDS FOR REVIEW.—*

*(A) GROUNDS FOR APPROVAL.—The NAIC shall approve a proposed rule or amendment if the NAIC finds that the rule or amendment is in the public interest and is consistent with the purposes of this Act.*

*(B) APPROVAL BEFORE END OF NOTICE PERIOD.—The NAIC shall not approve any proposed rule before the end of the 30-day period beginning on the date on which the Association files proposed rules or amendments in accordance with paragraph (1), unless the NAIC finds good cause for so doing and sets forth the reasons for so finding.*

*(5) ALTERNATE PROCEDURE.—*

*(A) IN GENERAL.—Notwithstanding any provision of this subsection other than subparagraph (B), a proposed rule or amendment relating to the administration or organization of the Association may take effect—*

*(i) upon the date of filing with the NAIC, if such proposed rule or amendment is designated by the Association as relating*

*solely to matters which the NAIC, consistent with the public interest and the purposes of this subsection, determines by rule do not require the procedures set forth in this paragraph; or*

*(ii) upon such date as the NAIC shall for good cause determine.*

*(B) ABROGATION BY THE NAIC.—*

*(i) IN GENERAL.—At any time within 60 days after the date of filing of any proposed rule or amendment under subparagraph (A)(i) or clause (ii) of this subparagraph, the NAIC may repeal such rule or amendment and require that the rule or amendment be refiled and reviewed in accordance with this paragraph, if the NAIC finds that such action is necessary or appropriate in the public interest, for the protection of insurance producers or policyholders, or otherwise in furtherance of the purposes of this subtitle.*

*(ii) EFFECT OF RECONSIDERATION BY THE NAIC.—Any action of the NAIC pursuant to clause (i) shall—*

*(I) not affect the validity or force of a rule change during the period such rule or amendment was in effect; and*

*(II) not be considered to be a final action.*

*(c) ACTION REQUIRED BY THE NAIC.—The NAIC may, in accordance with such rules as the NAIC determines to be necessary or appropriate to the public interest or to carry out the purposes of this subtitle, require the Association to adopt, amend, or repeal any bylaw, rule or amendment of the Association, whenever adopted.*

*(d) DISCIPLINARY ACTION BY THE ASSOCIATION.—*

*(1) SPECIFICATION OF CHARGES.—In any proceeding to determine whether membership shall be denied, suspended, revoked, and not renewed (hereafter in this section referred to as a "disciplinary action"), the Association shall bring specific charges, notify such member of such charges, give the member an opportunity to defend against the charges, and keep a record.*

*(2) SUPPORTING STATEMENT.—A determination to take disciplinary action shall be supported by a statement setting forth—*

*(A) any act or practice in which such member has been found to have been engaged;*

*(B) the specific provision of this subtitle, the rules or regulations under this subtitle, or the rules of the Association which any such act or practice is deemed to violate; and*

*(C) the sanction imposed and the reason for such sanction.*

*(e) NAIC REVIEW OF DISCIPLINARY ACTION.—*

*(1) NOTICE TO THE NAIC.—If the Association orders any disciplinary action, the Association shall promptly notify the NAIC of such action.*

*(2) REVIEW BY THE NAIC.—Any disciplinary action taken by the Association shall be subject to review by the NAIC—*

*(A) on the NAIC's own motion; or*

*(B) upon application by any person aggrieved by such action if such application is filed with the NAIC not more than 30 days after the later of—*

*(i) the date the notice was filed with the NAIC pursuant to paragraph (1); or*

*(ii) the date the notice of the disciplinary action was received by such aggrieved person.*

*(f) EFFECT OF REVIEW.—The filing of an application to the NAIC for review of a disciplinary action, or the insti-*

*tution of review by the NAIC on the NAIC's own motion, shall not operate as a stay of disciplinary action unless the NAIC otherwise orders.*

*(g) SCOPE OF REVIEW.—*

*(1) IN GENERAL.—In any proceeding to review such action, after notice and the opportunity for hearing, the NAIC shall—*

*(A) determine whether the action should be taken;*

*(B) affirm, modify, or rescind the disciplinary sanction; or*

*(C) remand to the Association for further proceedings.*

*(2) DISMISSAL OF REVIEW.—The NAIC may dismiss a proceeding to review disciplinary action if the NAIC finds that—*

*(A) the specific grounds on which the action is based exist in fact;*

*(B) the action is in accordance with applicable rules and regulations; and*

*(C) such rules and regulations are, and were, applied in a manner consistent with the purposes of this subtitle.*

***SEC. 329. ASSESSMENTS.***

*(a) INSURANCE PRODUCERS SUBJECT TO ASSESSMENT.—The Association may establish such application and membership fees as the Association finds necessary to cover the costs of its operations, including fees made reimbursable to the NAIC under subsection (b), except that, in setting such fees, the Association may not discriminate against smaller insurance producers.*

*(b) NAIC ASSESSMENTS.—The NAIC may assess the Association for any costs that the NAIC incurs under this subtitle.*

***SEC. 330. FUNCTIONS OF THE NAIC.***

*(a) ADMINISTRATIVE PROCEDURE.—Determinations of the NAIC, for purposes of making rules pursuant to section 328, shall be made after appropriate notice and opportunity for a hearing and for submission of views of interested persons.*

*(b) EXAMINATIONS AND REPORTS.—*

*(1) The NAIC may make such examinations and inspections of the Association and require the Association to furnish to the NAIC such reports and records or copies thereof as the NAIC may consider necessary or appropriate in the public interest or to effectuate the purposes of this subtitle.*

*(2) As soon as practicable after the close of each fiscal year, the Association shall submit to the NAIC*

*a written report regarding the conduct of its business, and the exercise of the other rights and powers granted by this subtitle, during such fiscal year. Such report shall include financial statements setting forth the financial position of the Association at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year. The NAIC shall transmit such report to the President and the Congress with such comment thereon as the NAIC determines to be appropriate.*

***SEC. 331. LIABILITY OF THE ASSOCIATION AND THE DIRECTORS, OFFICERS, AND EMPLOYEES OF THE ASSOCIATION.***

*(a) IN GENERAL.—The Association shall not be deemed to be an insurer or insurance producer within the meaning of any State law, rule, regulation, or order regulating or taxing insurers, insurance producers, or other entities engaged in the business of insurance, including provisions imposing premium taxes, regulating insurer solvency or financial condition, establishing guaranty funds and levying assessments, or requiring claims settlement practices.*

*(b) LIABILITY OF THE ASSOCIATION, ITS DIRECTORS, OFFICERS, AND EMPLOYEES.—Neither the Association nor any of its directors, officers, or employees shall have any liability to any person for any action taken or omitted in*

*good faith under or in connection with any matter subject to this subtitle.*

***SEC. 332. ELIMINATION OF NAIC OVERSIGHT.***

*(a) IN GENERAL.—The Association shall be established without NAIC oversight and the provisions set forth in section 324, subsections (a), (b), (c), and (e) of section 328, and sections 329(b) and 330 of this subtitle shall cease to be effective if, at the end of the 2-year period beginning on the date on which the provisions of this subtitle take effect pursuant to section 321—*

*(1) at least a majority of the States representing at least 50 percent of the total United States commercial-lines insurance premiums have not satisfied the uniformity or reciprocity requirements of subsections (a) and (b) of section 321; and*

*(2) the NAIC has not approved the Association's bylaws as required by section 328 or is unable to operate or supervise the Association, or the Association is not conducting its activities as required under this Act.*

*(b) BOARD APPOINTMENTS.—If the repeals required by subsection (a) are implemented, the following shall apply:*

*(1) GENERAL APPOINTMENT POWER.—The President, with the advice and consent of the United States Senate, shall appoint the members of the Association's*

*Board established under section 326 from lists of candidates recommended to the President by the National Association of Insurance Commissioners.*

*(2) PROCEDURES FOR OBTAINING NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS APPOINTMENT RECOMMENDATIONS.—*

*(A) INITIAL DETERMINATION AND RECOMMENDATIONS.—After the date on which the provisions of subsection (a) take effect, the NAIC shall, not later than 60 days thereafter, provide a list of recommended candidates to the President. If the NAIC fails to provide a list by that date, or if any list that is provided does not include at least 14 recommended candidates or comply with the requirements of section 326(c), the President shall, with the advice and consent of the United States Senate, make the requisite appointments without considering the views of the NAIC.*

*(B) SUBSEQUENT APPOINTMENTS.—After the initial appointments, the NAIC shall provide a list of at least 6 recommended candidates for the Board to the President by January 15 of each subsequent year. If the NAIC fails to provide a list by that date, or if any list that is pro-*

*vided does not include at least 6 recommended candidates or comply with the requirements of section 326(c), the President, with the advice and consent of the Senate, shall make the requisite appointments without considering the views of the NAIC.*

*(C) PRESIDENTIAL OVERSIGHT.—*

*(i) REMOVAL.—If the President determines that the Association is not acting in the interests of the public, the President may remove the entire existing Board for the remainder of the term to which the members of the Board were appointed and appoint, with the advice and consent of the Senate, new members to fill the vacancies on the Board for the remainder of such terms.*

*(ii) SUSPENSION OF RULES OR ACTIONS.—The President, or a person designated by the President for such purpose, may suspend the effectiveness of any rule, or prohibit any action, of the Association which the President or the designee determines is contrary to the public interest.*

*(c) ANNUAL REPORT.—As soon as practicable after the close of each fiscal year, the Association shall submit to the President and to the Congress a written report relative to the conduct of its business, and the exercise of the other rights and powers granted by this subtitle, during such fiscal year. Such report shall include financial statements setting forth the financial position of the Association at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year.*

***SEC. 333. RELATIONSHIP TO STATE LAW.***

*(a) PREEMPTION OF STATE LAWS.—State laws, regulations, provisions, or other actions purporting to regulate insurance producers shall be preempted as provided in subsection (b).*

*(b) PROHIBITED ACTIONS.—No State shall—*

*(1) impede the activities of, take any action against, or apply any provision of law or regulation to, any insurance producer because that insurance producer or any affiliate plans to become, has applied to become, or is a member of the Association;*

*(2) impose any requirement upon a member of the Association that it pay different fees to be licensed or otherwise qualified to do business in that State, including bonding requirements, based on its residency;*

*(3) impose any licensing, appointment, integrity, personal or corporate qualifications, education, training, experience, residency, or continuing education requirement upon a member of the Association that is different from the criteria for membership in the Association or renewal of such membership, except that counter-signature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section; or*

*(4) implement the procedures of such State's system of licensing or renewing the licenses of insurance producers in a manner different from the authority of the Association under section 325.*

*(c) SAVINGS PROVISION.—Except as provided in subsections (a) and (b), no provision of this section shall be construed as altering or affecting the continuing effectiveness of any law, regulation, provision, or other action of any State which purports to regulate insurance producers, including any such law, regulation, provision, or action which purports to regulate unfair trade practices or establish consumer protections, including countersignature laws.*

***SEC. 334. COORDINATION WITH OTHER REGULATORS.***

*(a) COORDINATION WITH STATE INSURANCE REGULATORS.—The Association shall have the authority to—*

*(1) issue uniform insurance producer applications and renewal applications that may be used to apply for the issuance or removal of State licenses, while preserving the ability of each State to impose such conditions on the issuance or renewal of a license as are consistent with section 333;*

*(2) establish a central clearinghouse through which members of the Association may apply for the issuance or renewal of licenses in multiple States; and*

*(3) establish or utilize a national database for the collection of regulatory information concerning the activities of insurance producers.*

*(b) COORDINATION WITH THE NATIONAL ASSOCIATION OF SECURITIES DEALERS.—The Association shall coordinate with the National Association of Securities Dealers in order to ease any administrative burdens that fall on persons that are members of both associations, consistent with the purposes of this subtitle and the Federal securities laws.*

***SEC. 335. JUDICIAL REVIEW.***

*(a) JURISDICTION.—The appropriate United States district court shall have exclusive jurisdiction over litigation involving the Association, including disputes between the Association and its members that arise under this sub-*

*title. Suits brought in State court involving the Association shall be deemed to have arisen under Federal law and therefore be subject to jurisdiction in the appropriate United States district court.*

*(b) EXHAUSTION OF REMEDIES.—An aggrieved person shall be required to exhaust all available administrative remedies before the Association and the NAIC before it may seek judicial review of an Association decision.*

*(c) STANDARDS OF REVIEW.—The standards set forth in section 553 of title 5, United States Code, shall be applied whenever a rule or bylaw of the Association is under judicial review, and the standards set forth in section 554 of title 5, United States Code, shall be applied whenever a disciplinary action of the Association is judicially reviewed.*

***SEC. 336. DEFINITIONS.***

*For purposes of this subtitle, the following definitions shall apply:*

*(1) HOME STATE.—The term "home State" means the State in which the insurance producer maintains its principal place of residence and is licensed to act as an insurance producer.*

*(2) INSURANCE.—The term "insurance" means any product, other than title insurance, defined or*

*regulated as insurance by the appropriate State insurance regulatory authority.*

*(3) INSURANCE PRODUCER.—The term "insurance producer" means any insurance agent or broker, surplus lines broker, insurance consultant, limited insurance representative, and any other person that solicits, negotiates, effects, procures, delivers, renews, continues or binds policies of insurance or offers advice, counsel, opinions or services related to insurance.*

*(4) STATE.—The term "State" includes any State, the District of Columbia, American Samoa, Guam, Puerto Rico, and the United States Virgin Islands.*

*(5) STATE LAW.—The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.*

# *TITLE IV—UNITARY SAVINGS AND LOAN HOLDING COMPANIES*

***SEC. 401. PREVENTION OF CREATION OF NEW S&L HOLDING COMPANIES WITH COMMERCIAL AFFILIATES.***

*Section 10(c) of the Home Owners' Loan Act (12 U.S.C. 1467a(c)) is amended by adding at the end the following new paragraph:*

*"(9) PREVENTION OF NEW AFFILIATIONS BETWEEN S&L HOLDING COMPANIES AND COMMERCIAL FIRMS.—*

*"(A) IN GENERAL.—Notwithstanding paragraph (3), no company may directly or indirectly, including through any merger, consolidation, or other type of business combination, acquire control of a savings association after September 3, 1998, unless the company is engaged, directly or indirectly (including through a subsidiary other than a savings association), only in activities that are permitted—*

*"(i) under paragraph (1)(C) or (2); or*

*"(ii) for financial holding companies under section 6(c) of the Bank Holding Company Act of 1956.*

*"(B) PREVENTION OF NEW COMMERCIAL AFFILIATIONS.—Notwithstanding paragraph (3), no savings and loan holding company may engage directly or indirectly (including through a subsidiary other than a savings association) in any activity other than as described in clauses (i) and (ii) of subparagraph (A).*

*"(C) PRESERVATION OF AUTHORITY OF EXISTING UNITARY S&L HOLDING COMPANIES.—Subparagraphs (A) and (B) do not apply with respect to any company that was a savings and loan holding company on September 3, 1998, or that becomes a savings and loan holding company pursuant to an application pending before the Office of Thrift Supervision on or before that date, and that—*

*"(i) meets and continues to meet the requirements of paragraph (3); and*

*"(ii) continues to control not fewer than 1 savings association that it controlled on September 3, 1998, or that it acquired pursuant to an application pending before the Office of Thrift Supervision on or before that date, or the successor to such savings association.*

*"(D) CORPORATE REORGANIZATIONS PERMITTED.—This paragraph does not prevent a transaction that—*

*"(i) involves solely a company under common control with a savings and loan holding company from acquiring, directly or indirectly, control of the savings and loan holding company or any savings association that is already a subsidiary of the savings and loan holding company; or*

*"(ii) involves solely a merger, consolidation, or other type of business combination as a result of which a company under common control with the savings and loan holding company acquires, directly or indirectly, control of the savings and loan holding company or any savings association that is already a subsidiary of the savings and loan holding company.*

*"(E) AUTHORITY TO PREVENT EVASIONS.—The Director may issue interpretations, regulations, or orders that the Director determines necessary to administer and carry out the purpose and prevent evasions of this paragraph, including a determination that, notwithstanding the*

*form of a transaction, the transaction would in substance result in a company acquiring control of a savings association.''.*

***SEC. 402. OPTIONAL CONVERSION OF FEDERAL SAVINGS ASSOCIATIONS TO NATIONAL BANKS.***

*Section 5(i) of the Home Owners' Loan Act (12 U.S.C. 1464(i)) is amended by adding at the end the following new paragraph:*

*''(5) CONVERSION TO A NATIONAL BANK.—Notwithstanding any other provision of law, any Federal savings association chartered and in operation before the date of enactment of the Financial Services Act of 1998, with branches in 1 or more States, may convert, with the approval of the Comptroller of the Currency, into 1 or more national banks, each of which may encompass one or more of the branches of the Federal savings association in 1 or more States, but only if the resulting national bank or banks will meet any and all financial, management, and capital requirements applicable to a national bank.''.*

***SEC. 403. RETENTION OF "FEDERAL" IN NAME OF CONVERTED FEDERAL SAVINGS ASSOCIATION.***

*Section 2 of the Act entitled ''An Act to enable national banking associations to increase their capital stock and to change their names or locations'', approved May 1, 1886*

*(12 U.S.C. 30), is amended by adding at the end the following new subsection:*

*"(d) RETENTION OF 'FEDERAL' IN NAME OF CONVERTED FEDERAL SAVINGS ASSOCIATION.—*

*"(1) IN GENERAL.—Notwithstanding subsection (a) or any other provision of law, any depository institution the charter of which is converted from that of a Federal savings association to a national bank or a State bank after the date of the enactment of the Financial Services Act of 1998 may retain the term 'Federal' in the name of such institution if such depository institution remains an insured depository institution.*

*"(2) DEFINITIONS.—For purposes of this subsection, the terms 'depository institution', 'insured depository institution', 'national bank', and 'State bank' have the same meanings as in section 3 of the Federal Deposit Insurance Act.".*

# *TITLE V—FINANCIAL INFORMATION PRIVACY*

***SEC. 501. FINANCIAL INFORMATION PRIVACY.***

*The Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) is amended by adding at the end the following:*

# *"TITLE X—FINANCIAL INFORMATION PRIVACY PROTECTION*

***"SEC. 1001. SHORT TITLE; TABLE OF CONTENTS.***

*"(a) SHORT TITLE.—This title may be cited as the 'Financial Information Privacy Act of 1998'.*

*"(b) TABLE OF CONTENTS.—The table of contents for this title is as follows:*

*"TITLE X—FINANCIAL INFORMATION PRIVACY PROTECTION*

*"Sec. 1001. Short title; table of contents.*
*"Sec. 1002. Definitions.*
*"Sec. 1003. Privacy protection for customer information of financial institutions.*
*"Sec. 1004. Administrative enforcement.*
*"Sec. 1005. Civil liability.*
*"Sec. 1006. Criminal penalty.*
*"Sec. 1007. Relation to State laws.*
*"Sec. 1008. Agency guidance.*

***"SEC. 1002. DEFINITIONS.***

*"For purposes of this title, the following definitions shall apply:*

*"(1) CUSTOMER.—The term 'customer' means, with respect to a financial institution, any person (or authorized representative of a person) to whom the financial institution provides a product or service, including that of acting as a fiduciary.*

*"(2) CUSTOMER INFORMATION OF A FINANCIAL INSTITUTION.—The term 'customer information of a financial institution' means any information maintained by a financial institution which is derived from the relationship between the financial institution*

*and a customer of the financial institution and is identified with the customer.*

*"(3) DOCUMENT.—The term 'document' means any information in any form.*

*"(4) FINANCIAL INSTITUTION.—*

*"(A) IN GENERAL.—The term 'financial institution' means any institution engaged in the business of providing financial services to customers who maintain a credit, deposit, trust, or other financial account or relationship with the institution.*

*"(B) CERTAIN FINANCIAL INSTITUTIONS SPECIFICALLY INCLUDED.—The term 'financial institution' includes any depository institution (as defined in section 19(b)(1)(A) of the Federal Reserve Act), any loan or finance company, any credit card issuer or operator of a credit card system, and any consumer reporting agency that compiles and maintains files on consumers on a nationwide basis (as defined in section 603(p)).*

*"(C) FURTHER DEFINITION BY REGULATION.—The Board of Governors of the Federal Reserve System may prescribe regulations further defining the term 'financial institution', in*

*accordance with subparagraph (A), for purposes of this title.*

***"SEC. 1003. PRIVACY PROTECTION FOR CUSTOMER INFORMATION OF FINANCIAL INSTITUTIONS.***

*"(a) PROHIBITION ON OBTAINING CUSTOMER INFORMATION BY FALSE PRETENSES.—It shall be a violation of this title for any person to obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed to any person, customer information of a financial institution relating to another person—*

*"(1) by knowingly making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial institution with the intent to deceive the officer, employee, or agent into relying on that statement or representation for purposes of releasing the customer information;*

*"(2) by knowingly making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution with the intent to deceive the customer into relying on that statement or representation for purposes of releasing the customer information or authorizing the release of such information; or*

*"(3) by knowingly providing any document to an officer, employee, or agent of a financial institu-*

*tion, knowing that the document is forged, counterfeit, lost, or stolen, was fraudulently obtained, or contains a false, fictitious, or fraudulent statement or representation, if the document is provided with the intent to deceive the officer, employee, or agent into relying on that document for purposes of releasing the customer information.*

*"(b) PROHIBITION ON SOLICITATION OF A PERSON TO OBTAIN CUSTOMER INFORMATION FROM FINANCIAL INSTITUTION UNDER FALSE PRETENSES.—It shall be a violation of this title to request a person to obtain customer information of a financial institution, knowing or consciously avoiding knowing that the person will obtain, or attempt to obtain, the information from the institution in any manner described in subsection (a).*

*"(c) NONAPPLICABILITY TO LAW ENFORCEMENT AGENCIES.—No provision of this section shall be construed so as to prevent any action by a law enforcement agency, or any officer, employee, or agent of such agency, to obtain customer information of a financial institution in connection with the performance of the official duties of the agency.*

*"(d) NONAPPLICABILITY TO FINANCIAL INSTITUTIONS IN CERTAIN CASES.—No provision of this section shall be construed to prevent any financial institution, or any offi-*

*cer, employee, or agent of a financial institution, from obtaining customer information of such financial institution in the course of—*

*"(1) testing the security procedures or systems of such institution for maintaining the confidentiality of customer information;*

*"(2) investigating allegations of misconduct or negligence on the part of any officer, employee, or agent of the financial institution; or*

*"(3) recovering customer information of the financial institution which was obtained or received by another person in any manner described in subsection (a) or (b).*

*"(e) NONAPPLICABILITY TO CERTAIN TYPES OF CUSTOMER INFORMATION OF FINANCIAL INSTITUTIONS.—No provision of this section shall be construed to prevent any person from obtaining customer information of a financial institution that otherwise is available as a public record filed pursuant to the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934).*

***"SEC. 1004. ADMINISTRATIVE ENFORCEMENT.***

*"(a) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—Except as provided in subsection (b), compliance with this title shall be enforced by the Federal Trade Commission in the same manner and with the same power and*

*authority as the Commission has under the Fair Debt Collection Practices Act to enforce compliance with that title.*

*"(b) ENFORCEMENT BY OTHER AGENCIES IN CERTAIN CASES.—*

*"(1) IN GENERAL.—Compliance with this title shall be enforced under—*

*"(A) section 8 of the Federal Deposit Insurance Act, in the case of—*

*"(i) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;*

*"(ii) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act, by the Board;*

*"(iii) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System and*

*national nonmember banks) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and*

*"(iv) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, by the Director of the Office of Thrift Supervision; and*

*"(B) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union.*

*"(2) VIOLATIONS OF THIS TITLE TREATED AS VIOLATIONS OF OTHER LAWS.—For the purpose of the exercise by any agency referred to in paragraph (1) of its powers under any Act referred to in that paragraph, a violation of this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in paragraph (1), each of the agencies referred to in that paragraph may exercise, for the purpose of enforcing compliance with this title, any other authority conferred on such agency by law.*

*"(c) STATE ACTION FOR VIOLATIONS.—*

*"(1) AUTHORITY OF STATES.—In addition to such other remedies as are provided under State law, if the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this title, the State—*

*"(A) may bring an action to enjoin such violation in any appropriate United States district court or in any other court of competent jurisdiction;*

*"(B) may bring an action on behalf of the residents of the State to recover damages of not more than $1,000 for each violation; and*

*"(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees as determined by the court.*

*"(2) RIGHTS OF FEDERAL REGULATORS.—*

*"(A) PRIOR NOTICE.—The State shall serve prior written notice of any action under paragraph (1) upon the Federal Trade Commission and, in the case of an action which involves a financial institution described in section 1004(b)(1), the agency referred to in such section with respect to such institution and provide the*

*Federal Trade Commission and any such agency with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action.*

*"(B) RIGHT TO INTERVENE.—The Federal Trade Commission or an agency described in subsection (b) shall have the right—*

*"(i) to intervene in an action under paragraph (1);*

*"(ii) upon so intervening, to be heard on all matters arising therein;*

*"(iii) to remove the action to the appropriate United States district court; and*

*"(iv) to file petitions for appeal.*

*"(3) INVESTIGATORY POWERS.—For purposes of bringing any action under this subsection, no provision of this subsection shall be construed as preventing the chief law enforcement officer, or an official or agency designated by a State, from exercising the powers conferred on the chief law enforcement officer or such official by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.*

*"(4) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION PENDING.—If the Federal Trade Commission or any agency described in subsection (b) has instituted a civil action for a violation of this title, no State may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Federal Trade Commission or such agency for any violation of this title that is alleged in that complaint.*

***"SEC. 1005. CIVIL LIABILITY.***

*"Any person, other than a financial institution, who fails to comply with any provision of this title with respect to any financial institution or any customer information of a financial institution shall be liable to such financial institution or the customer to whom such information relates in an amount equal to the sum of the amounts determined under each of the following paragraphs:*

*"(1) ACTUAL DAMAGES.—The greater of—*

*"(A) the amount of any actual damage sustained by the financial institution or customer as a result of such failure; or*

*"(B) any amount received by the person who failed to comply with this title, including an amount equal to the value of any nonmone-*

*tary consideration, as a result of the action which constitutes such failure.*

*"(2) ADDITIONAL DAMAGES.—Such additional amount as the court may allow.*

*"(3) ATTORNEYS' FEES.—In the case of any successful action to enforce any liability under paragraph (1) or (2), the costs of the action, together with reasonable attorneys' fees.*

***"SEC. 1006. CRIMINAL PENALTY.***

*"(a) IN GENERAL.—Whoever violates, or attempts to violate, section 1003 shall be fined in accordance with title 18, United States Code, or imprisoned for not more than 5 years, or both.*

*"(b) ENHANCED PENALTY FOR AGGRAVATED CASES.—Whoever violates, or attempts to violate, section 1003 while violating another law of the United States or as part of a pattern of any illegal activity involving more than $100,000 in a 12-month period shall be fined twice the amount provided in subsection (b)(3) or (c)(3) (as the case may be) of section 3571 of title 18, United States Code, imprisoned for not more than 10 years, or both.*

***"SEC. 1007. RELATION TO STATE LAWS.***

*"(a) IN GENERAL.—This title shall not be construed as superseding, altering, or affecting the statutes, regulations, orders, or interpretations in effect in any State, ex-*

*cept to the extent that such statutes, regulations, orders, or interpretations are inconsistent with the provisions of this title, and then only to the extent of the inconsistency.*

*"(b) GREATER PROTECTION UNDER STATE LAW.—For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this title if the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided under this title.*

***"SEC. 1008. AGENCY GUIDANCE.***

*"In furtherance of the objectives of this title, each Federal banking agency (as defined in section 3(z) of the Federal Deposit Insurance Act) shall issue advisories to depository institutions under the jurisdiction of the agency, in order to assist such depository institutions in deterring and detecting activities proscribed under section 1003.".*

***SEC. 502. REPORT TO CONGRESS ON FINANCIAL PRIVACY.***

*Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States, in consultation with the Federal Trade Commission, the Federal banking agencies, and other appropriate Federal law enforcement agencies, shall submit to the Congress a report on—*

*(1) the efficacy and adequacy of the remedies provided in the amendments made by section 501 in*

*addressing attempts to obtain financial information by fraudulent means or by false pretenses; and*

*(2) any recommendations for additional legislative or regulatory action to address threats to the privacy of financial information created by attempts to obtain information by fraudulent means or false pretenses.*

# *TITLE VI—MISCELLANEOUS*

***SEC. 601. GRAND JURY PROCEEDINGS.***

*Section 3322(b) of title 18, United States Code, is amended—*

*(1) in paragraph (1), by inserting "Federal or State" before "financial institution"; and*

*(2) in paragraph (2), by inserting "at any time during or after the completion of the investigation of the grand jury," before "upon".*

***SEC. 602. SENSE OF THE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS OF THE SENATE.***

*(a) FINDINGS.—The Committee on Banking, Housing, and Urban Affairs of the Senate finds that—*

*(1) financial modernization legislation should benefit small institutions as well as large institutions;*

*(2) the Congress made the subchapter S election of the Internal Revenue Code of 1986, available to*

*banks in 1996, reflecting a desire by the Congress to reduce the tax burden on community banks;*

*(3) large numbers of community banks have elected or expressed interest in the subchapter S election; and*

*(4) the Committee on Banking, Housing, and Urban Affairs of the Senate recognizes that some obstacles remain for community banks wishing to make the subchapter S election.*

*(b) SENSE OF THE COMMITTEE.—It is the sense of the Committee on Banking, Housing, and Urban Affairs of the Senate that—*

*(1) the small business tax provisions of the Internal Revenue Code of 1986, should be more widely available to community banks;*

*(2) legislation should be passed to amend the Internal Revenue Code of 1986, to—*

*(A) increase the allowed number of S corporation shareholders;*

*(B) permit S corporation stock to be held in individual retirement accounts;*

*(C) clarify that interest on investments held for safety, soundness, and liquidity purposes should not be considered to be passive income;*

*(D) provide that bank director stock is not treated as a disqualifying second class of stock for S corporations; and*

*(E) improve the tax treatment of bad debt and interest deductions; and*

*(3) the legislation described in paragraph (2) should be adopted by the Congress in conjunction with any financial modernization legislation.*

***SEC. 603. INVESTMENTS IN GOVERNMENT SPONSORED ENTERPRISES.***

*Section 18(s) of the Federal Deposit Insurance Act (12 U.S.C. 1828(s)) is amended—*

*(1) by redesignating paragraph (4) as paragraph (6); and*

*(2) by inserting after paragraph (3) the following:*

*"(4) CERTAIN INVESTMENTS.—Paragraph (1) shall not apply with respect to investments lawfully made before April 11, 1996, by a depository institution in any Government sponsored enterprise.*

*"(5) STUDENT LOANS.—*

*"(A) IN GENERAL.—This subsection does not apply to any arrangement between a Holding Company (or any subsidiary of the Holding Company other than the Student Loan Market-*

*ing Association) and a depository institution, if the Secretary approves the affiliation and determines that—*

*"(i) the wind-down of the Association in accordance with the requirements of section 440 of the Higher Education Act of 1965, will not be adversely affected by the arrangement;*

*"(ii) the Association will not extend credit to, or guarantee or provide credit enhancement to any obligation of, the depository institution; and*

*"(iii) the operations of the Association will be separate from the operations of the depository institution.*

*"(B) TERMS AND CONDITIONS.—In approving an affiliation referred to in subparagraph (A), the Secretary may impose any terms and conditions on such affiliation that the Secretary considers appropriate, including—*

*"(i) requiring the Association to provide a binding plan to dissolve before September 30, 2008;*

*"(ii) imposing additional restrictions on the issuance of debt obligations by the Association; or*

*"(iii) restricting the use of proceeds from the issuance of such debt.*

*"(C) ENFORCEMENT.—Terms and conditions imposed under subparagraph (B) may be enforced by the Secretary in accordance with section 440 of the Higher Education Act of 1965.*

*"(D) DEFINITIONS.—In this paragraph—*

*"(i) the terms 'Association' and 'Holding Company' have the same meanings as in section 440(i) of the Higher Education Act of 1965; and*

*"(ii) the term 'Secretary' means the Secretary of the Treasury.".*

***SEC. 604. REPEAL OF SAVINGS BANK PROVISIONS IN THE BANK HOLDING COMPANY ACT OF 1956.***

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

*"(f) [Reserved].".*