

105TH CONGRESS
1ST SESSION

H. R. 268

To enhance competition in the financial services sector and merge the commercial bank and savings association charters.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 1997

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

A BILL

To enhance competition in the financial services sector and merge the commercial bank and savings association charters.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Depository Institution Affiliation and Thrift Charter
6 Conversion Act”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purposes.

TITLE I—FINANCIAL SERVICES HOLDING COMPANY ACT

Sec. 101. Short title.

Subtitle A—General Provisions

- Sec. 102. Definitions.
 Sec. 103. Changes in control of depository institutions.
 Sec. 104. Affiliate transactions.
 Sec. 105. Capital requirements.
 Sec. 106. Interstate acquisitions of insured banks.
 Sec. 107. Differential treatment prohibition; laws inconsistent with this Act.
 Sec. 108. Insider lending provisions.
 Sec. 109. Reports, examination and enforcement.
 Sec. 110. Divestiture.
 Sec. 111. Criminal penalties.
 Sec. 112. Civil enforcement, cease-and-desist orders, civil money penalties, removal, and prohibition authority.
 Sec. 113. Judicial review.
 Sec. 114. National Financial Services Committee.

Subtitle B—Securities Activities of Financial Services Holding Companies

- Sec. 121. Limitation on securities activities of depository institutions affiliated with securities affiliates.
 Sec. 122. Safeguards relating to securities affiliates.
 Sec. 123. Joint standards relating to retail sales of certain nondeposit investment products.

Subtitle C—Insurance and Real Estate Development Activities of Financial Services Holding Companies

- Sec. 131. Limitation on insurance underwriting and real estate development activities of depository institutions.
 Sec. 132. Acquisition of preexisting insurance agency by bank holding companies.
 Sec. 133. Existing contracts.

Subtitle D—Redomestication of Mutual Life Insurers

- Sec. 141. Redomestication of mutual life insurers.

TITLE II—CONFORMING AMENDMENTS TO OTHER LAWS FOR FINANCIAL SERVICES HOLDING COMPANIES

- Sec. 201. Exemption of financial services holding companies from the Bank Holding Company Act of 1956.
 Sec. 202. Amendment to the Federal Reserve Act.
 Sec. 203. Amendments to the Banking Act of 1933.
 Sec. 204. Amendments to the Federal Deposit Insurance Act.
 Sec. 205. Amendment to the Community Reinvestment Act.
 Sec. 206. Amendment to the Federal Power Act.
 Sec. 207. Amendment to the Right to Financial Privacy Act.
 Sec. 208. Amendments to the International Banking Act.
 Sec. 209. Amendment concerning national banks.

TITLE III—FUNCTIONAL REGULATION AMENDMENTS TO SECURITIES LAWS FOR FINANCIAL SERVICES HOLDING COMPANIES

Subtitle A—Broker Dealer Provisions

- Sec. 301. Definition of broker.
- Sec. 302. Definition of dealer.
- Sec. 303. Power to exempt from the definitions of broker and dealer.
- Sec. 304. Margin requirements.

Subtitle B—Investment Company Provisions

- Sec. 311. Custody of investment company assets by affiliated bank.
- Sec. 312. Lending to an affiliated investment company.
- Sec. 313. Independent directors.
- Sec. 314. Additional SEC disclosure authority.
- Sec. 315. Definition of broker under the Investment Company Act of 1940.
- Sec. 316. Definition of dealer under the Investment Company Act of 1940.
- Sec. 317. Removal of the exclusion from the definition of investment adviser for banks that advise investment companies.
- Sec. 318. Definition of broker under the Investment Advisors Act of 1940.
- Sec. 319. Definition of dealer under the Investment Advisors Act of 1940.
- Sec. 320. Interagency consultation.
- Sec. 321. Treatment of bank common trust funds.
- Sec. 322. Investment advisers prohibited from having controlling interest in registered investment company.
- Sec. 323. Conforming change in definition.
- Sec. 324. Effective date.

TITLE IV—WHOLESALE FINANCIAL INSTITUTIONS OWNED BY
FINANCIAL SERVICES HOLDING COMPANIES

- Sec. 401. National wholesale financial institutions.
- Sec. 402. State member wholesale financial institutions.
- Sec. 403. Amendments to the Federal Deposit Insurance Act.

TITLE V—MERGER OF BANK AND THRIFT CHARTERS,
REGULATORS, AND INSURANCE FUNDS

Subtitle A—Conversion of Thrift Charters

- Sec. 501. Short title.
- Sec. 502. Termination of Federal savings associations; treatment of State savings associations as banks for purposes of Federal banking law.
- Sec. 503. Treatment of certain activities and affiliations of bank holding companies resulting from this Act.
- Sec. 504. Transition provisions for activities of savings associations which convert into or become treated as banks.
- Sec. 505. Registration of bank holding companies resulting from conversions of savings associations to banks or treatment of savings associations as banks.
- Sec. 506. Additional transition provisions and special rules.
- Sec. 507. Technical and conforming amendments.
- Sec. 508. References to savings associations and state banks in federal law.
- Sec. 509. Repeal of Home Owners' Loan Act.
- Sec. 510. Definitions.

Subtitle B—Elimination of Office of Thrift Supervision

- Sec. 511. Office of Thrift Supervision abolished.

Sec. 512. Determination of transferred functions and employees.

Sec. 513. Savings provisions.

Sec. 514. Cost of funds indexes.

Sec. 515. References in federal law to director of the Office of Thrift Supervision.

Sec. 516. Reconfiguration of board of directors of FDIC as a result of removal of director of the Office of Thrift Supervision.

Subtitle C—Merger of BIF and SAIF

Sec. 521. Amendment to Economic Growth and Paperwork Reduction Act of 1996.

TITLE VI—NATIONAL MARKET FUNDED LENDING INSTITUTIONS

Sec. 601. National market funded lending institutions.

TITLE VII—EFFECTIVE DATE

Sec. 701. Effective date.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—The Congress finds that—

3 (1) current laws and regulations restrain effi-
4 ciency, competition, and innovation in the design
5 and delivery of financial services to the disadvantage
6 of consumers;

7 (2) restrictions on ownership of depository insti-
8 tutions and affiliations with other business organiza-
9 tions and restrictions and burdens on ownership of
10 other financial institutions by insurance companies
11 interfere with their ability to attract and retain cap-
12 ital and managerial resources;

13 (3) the vulnerability of the financial system and
14 its discrete components is increased and effective
15 monitoring, supervision, and coordination of actions
16 during periods of stress is impeded by fragmented
17 and disparate regulation;

1 (4) the thrift charter has become obsolete;

2 (5) market demand and safety and soundness
3 considerations warrant the creation of a new charter
4 for uninsured wholesale financial institutions; and

5 (6) current laws inhibit the ability of domestic
6 financial markets and intermediaries to respond to
7 the serious competitive challenges presented by for-
8 eign intermediaries and the globalization of markets.

9 (b) PURPOSES.—The purposes of this Act are to pro-
10 mote the safety and soundness of the Nation’s financial
11 system, enhance the quality of regulation and supervision
12 of financial intermediaries, and achieve a more efficient
13 market and effective regulatory structure by—

14 (1) establishing an alternative and comprehen-
15 sive legislative framework for the creation and regu-
16 lation of financial services holding companies;

17 (2) enhancing the capital adequacy of commer-
18 cial banks, brokers and dealers, insurance compa-
19 nies, and other financial companies by eliminating
20 prohibitions on common ownership and affiliation
21 within a financial services holding company;

22 (3) permitting affiliates to engage in regulated
23 activities subject to functional and equal regulation
24 by the appropriate Federal or State regulator;

1 (4) insulating and protecting insured depository
2 institutions through enhanced capital requirements,
3 expanded restrictions on relationships with affiliates,
4 broader examination and enforcement authority, and
5 increased civil and criminal penalties;

6 (5) permitting the efficient marketing and dis-
7 tribution of financial services to consumers subject
8 to safeguards against coercive tie-ins and other un-
9 fair and abusive practices;

10 (6) establishing the National Financial Services
11 Committee to oversee the evolution and supervision
12 of the financial services industry and to report to the
13 Congress;

14 (7) eliminating the thrift charter and requiring
15 thrifts to convert to banks, subject to appropriate
16 transition provisions;

17 (8) merging the bank and thrift insurance
18 funds; and

19 (9) creating new State and Federal charters for
20 uninsured wholesale financial institutions.

21 **TITLE I—FINANCIAL SERVICES HOLDING**
22 **COMPANY ACT**

23 **SEC. 101. SHORT TITLE.**

24 This title may be cited as the “Financial Services
25 Holding Company Act”.

1 **Subtitle A—General Provisions**

2 **SEC. 102. DEFINITIONS.**

3 For purposes of this Act, the following definitions
4 apply.

5 (a) **FINANCIAL SERVICES HOLDING COMPANY.**—The
6 term “financial services holding company” means a com-
7 pany that—

8 (1) has filed with the National Financial Serv-
9 ices Committee a notice stating such company’s in-
10 tent to comply with the requirements of this Act and
11 has not withdrawn such notice;

12 (2) controls, acquires control of, or operates a
13 depository institution; and

14 (3) is predominantly a financial company.

15 (b) **COMPANY.**—The term “company” means any cor-
16 poration, partnership, business, trust, association, or simi-
17 lar organization, or any other trust unless by its terms
18 it must terminate within 25 years or not later than 21
19 years and 10 months after the death of individuals living
20 on the effective date of the trust, but shall not include
21 any corporation the majority of the shares of which are
22 owned by the United States or by any State.

23 (c) **BANK HOLDING COMPANY.**—The term “bank
24 holding company” has the same meaning as in section
25 2(a) of the Bank Holding Company Act of 1956.

1 (d) CONTROL.—Except as provided in section
2 107(e)(2), the term “control” means, directly or indi-
3 rectly, owns or has the power to vote 25 percent or more
4 of any class of voting securities of a company, or has the
5 power to elect a majority of the directors of a company,
6 except that—

7 (1) no company shall be deemed to control or
8 to have acquired control of any other company by
9 virtue of its ownership of the voting securities of
10 such other company—

11 (A) acquired or held in an agency, trust, or
12 other fiduciary capacity, unless the company
13 has sole discretionary authority to exercise vot-
14 ing rights with respect thereto;

15 (B) acquired or held in connection with or
16 incidental to the underwriting of securities if
17 such securities are held only for such period of
18 time as will permit the sale thereof on a reason-
19 able basis; or

20 (C) acquired in securing or collecting a
21 debt previously contracted in good faith, until 2
22 years after the date of acquisition or for such
23 additional period of time as the appropriate
24 Federal banking agency may permit; and

1 (2) no company formed for the sole purpose of
2 participating in a proxy solicitation shall be deemed
3 to be in control of a company by virtue of its acqui-
4 sition of voting rights with respect to shares of such
5 company acquired in the course of such solicitation.

6 (e) AFFILIATE.—Except as provided in section
7 107(e)(1), the term “affiliate” of a company means any
8 other company which controls, is controlled by, or is under
9 common control with such company.

10 (f) SUBSIDIARY.—The term “subsidiary” has the
11 same meaning as in section 2(d) of the Bank Holding
12 Company Act of 1956.

13 (g) DEPOSITORY INSTITUTION AND INSURED DEPOS-
14 ITORY INSTITUTION.—

15 (1) IN GENERAL.—The terms “depository insti-
16 tution” and “insured depository institution” have
17 the same meanings as in section 3 of the Federal
18 Deposit Insurance Act, except that the term “depos-
19 itory institution” also means—

20 (A) any wholesale financial institution; and

21 (B) any branch, agency, or commercial
22 lending company operated in the United States
23 by a foreign bank.

24 (2) EXCEPTION RELATED TO FOREIGN
25 BANKS.—Notwithstanding paragraph (1)(B), the

1 National Financial Services Committee may, for
2 purposes of any section or provision of this Act, ex-
3 empt from the definition of “depository institution”
4 any branch, agency, or commercial lending company
5 operated in the United States by a foreign bank as
6 the Committee deems appropriate, provided that
7 such exemption is—

8 (A) issued by regulation, and

9 (B) consistent with the principles of na-
10 tional treatment and equality of competitive op-
11 portunity.

12 (h) LEAD DEPOSITORY INSTITUTION.—The term
13 “lead depository institution” means the largest depository
14 institution controlled by the financial services holding
15 company, based on a comparison of the average total as-
16 sets controlled by each depository institution during the
17 previous 12-month period.

18 (i) WHOLESALE FINANCIAL INSTITUTION.—The
19 term “wholesale financial institution” means a national
20 wholesale financial institution described in section 5136B
21 of the Revised Statutes of the United States or a State
22 member wholesale financial institution described in section
23 9B of the Federal Reserve Act.

24 (j) FOREIGN BANK TERMS.—

1 (1) IN GENERAL.—The terms “agency”,
2 “branch”, “foreign bank”, and “commercial lending
3 company” have the same meaning as in section 1(b)
4 of the International Banking Act.

5 (2) COMMERCIAL LENDING COMPANY OPER-
6 ATED BY A FOREIGN BANK.—The term “commercial
7 lending company operated by a foreign bank” means
8 a commercial lending company controlled by a for-
9 eign bank.

10 (3) BRANCH OR AGENCY OPERATED BY A FOR-
11 EIGN BANK.—A branch or agency operated by a for-
12 eign bank shall be deemed to be controlled by that
13 foreign bank.

14 (k) DOMESTIC BRANCH.—The term “domestic
15 branch” has the same meaning as in section 3(o) of the
16 Federal Deposit Insurance Act;

17 (l) PREDOMINANTLY A FINANCIAL COMPANY.

18 (1) IN GENERAL.—The term “predominantly a
19 financial company” with respect to any company
20 means a company at least 75 percent of the business
21 (in the United States) of which is derived from—

22 (A) financial service institutions controlled
23 by such company; or

24 (B) financial activities engaged in by such
25 company or any of its affiliates.

1 (2) QUALIFIED BANK HOLDING COMPANY AL-
2 TERNATIVE.—As an alternative to paragraph (1),
3 the term “predominantly a financial company”
4 means any company which would satisfy all the re-
5 quirements of section 4(k) of the Bank Holding
6 Company Act of 1956 if such company had elected
7 to be a bank holding company rather than a finan-
8 cial services holding company.

9 (3) FOREIGN BANK ALTERNATIVE.—As an al-
10 ternative to paragraph (1), a foreign bank, and any
11 company of which a foreign bank is a subsidiary, is
12 “predominantly a financial company” if—

13 (A) all of the business of such foreign bank
14 and any such company (including the business
15 of direct and indirect subsidiaries of the foreign
16 bank) in the United States is derived from—

17 (i) financial services institutions con-
18 trolled or operated by such foreign bank;

19 (ii) financial activities engaged in by
20 such foreign bank or any of its affiliates;

21 (iii) companies that, with respect to
22 that foreign bank, would meet the stand-
23 ard for investment under sections 2(h)(2)
24 or 4(c)(9) of the Bank Holding Company

1 Act of 1956 as if that foreign bank were
2 subject to that Act; or

3 (iv) activities that, with respect to
4 that foreign bank, would be permissible
5 under section 4(c)(9) of the Bank Holding
6 Company Act of 1956 if that foreign bank
7 were subject to that Act; and

8 (B) the amount of banking business con-
9 ducted outside the United States by such for-
10 eign bank and such company of which that for-
11 eign bank is a subsidiary satisfies the standard
12 described in section 2(h)(2) of the Bank Hold-
13 ing Company Act of 1956.

14 (4) RECIPROCAL NATIONAL TREATMENT.—

15 (A) IN GENERAL.—A foreign bank that op-
16 erates a branch, agency or commercial lending
17 company in the United States, and any com-
18 pany that owns or controls such a foreign bank,
19 shall be eligible for the treatment afforded
20 under paragraph (1) and section 122(m) only if
21 the home country of such foreign bank or com-
22 pany accords to the United States banks the
23 same competitive opportunities in banking as
24 such country accords to domestic banks of such
25 country.

1 (B) COORDINATION WITH NAFTA.—Sub-
2 paragraph (A) shall not apply in derogation of
3 any obligation under the North American Free
4 Trade Agreement.

5 (C) HOME COUNTRY DEFINED.—For pur-
6 poses of subparagraph (A), the term “home
7 country” means, with respect to any foreign
8 bank or company referred to in subparagraph
9 (A), the country under the laws of which the
10 foreign bank or company is organized.

11 (5) INTERPRETIVE AUTHORITY.—The National
12 Financial Services Committee shall issue regulations
13 describing the method for calculating compliance
14 with the standard described in paragraphs (1) and
15 (2), taking into account such factors as revenues
16 and assets, including assets under management.

17 (6) IMPLEMENTATION AND AUTHORITY.—The
18 appropriate Federal banking agency of the lead de-
19 pository institution of a financial services holding
20 company shall implement and enforce the regula-
21 tions prescribed pursuant to paragraph (4) with re-
22 spect to such holding company.

23 (m) FINANCIAL SERVICES INSTITUTION.—The term
24 “financial services institution” means—

25 (1) A depository institution;

1 (2) A broker or dealer (as defined in section 3
2 of the Securities Exchange Act of 1934);

3 (3) A futures commission merchant (as defined
4 in section 1(a)(12) of the Commodity Exchange
5 Act);

6 (4) An investment company (as defined in sec-
7 tion 3 of the Investment Company Act of 1940);

8 (5) An investment adviser (as defined in section
9 202(a)(11) of the Investment Act of 1940);

10 (6) An insurance company organized or licensed
11 under the law of any State, including a company
12 that only incurs liabilities under annuity contracts,
13 the income on which is tax deferred under Section
14 72 of the Internal Revenue Code of 1986;

15 (7) A trust company organized under the laws
16 of the United States or the laws of any State; or

17 (8) A national market funded lending institu-
18 tion organized pursuant to section 5158 of the Re-
19 vised Statutes of the United States, as added by sec-
20 tion 601 of the Depository Institution Affiliation and
21 Thrift Charter Conversion Act;

22 (9) Any other type of company that is “engaged
23 in the business of providing financial services”, as
24 determined by the National Financial Services Com-
25 mittee by rule, regulation, or order.

1 (n) FINANCIAL ACTIVITIES.—The term “financial ac-
2 tivities” means any of the following—

3 (1) receiving money subject to a deposit or
4 other repayment obligation;

5 (2) lending, exchanging, transferring or safe-
6 guarding money or other financial assets;

7 (3) providing any device or other instrumentality
8 for the transfer of money or other financial as-
9 sets;

10 (4) insuring, guaranteeing or indemnifying
11 against loss, harm, damage, illness, disability or
12 death;

13 (5) providing financial, investment or economic
14 advisory or information services, including advising
15 an investment company (as defined in section 3 of
16 the Investment Company Act of 1940);

17 (6) directly or indirectly acquiring or control-
18 ling, whether as principal, on behalf of 1 or more en-
19 tities (including entities, other than a depository in-
20 stitution or subsidiary of a depository institution,
21 that the financial services holding company con-
22 trols), or otherwise, shares, assets, or ownership in-
23 terests (including without limitation debt or equity
24 securities, partnership interests, trust certificates, or

1 other instruments representing ownership) of a com-
2 pany or other entity, whether or not constituting
3 control of such company or entity, engaged in any
4 activity if—

5 (A) the shares, assets, or ownership inter-
6 ests are not acquired or held by a depository in-
7 stitution or a subsidiary of a depository institu-
8 tion;

9 (B) such shares, assets, or ownership in-
10 terests are acquired and held as part of a bona
11 fide underwriting, investment banking, or insur-
12 ance company investment activity, which in-
13 cludes investment activities engaged in for the
14 purpose of appreciation and ultimate resale or
15 other disposition of the investment, and such
16 shares, assets, or ownership interest are held
17 for such a period of time as will permit the sale
18 or disposition thereof on a reasonable basis con-
19 sistent with the nature of such activities; and

20 (C) during the period such shares, assets,
21 or ownership interests are held, the financial
22 services holding company does not actively man-
23 age or operate the company or entity except in-
24 sofar as necessary to achieve the objectives of
25 subparagraph (B);

1 (7) arranging, effecting or facilitating financial
2 transactions for the account of third parties;

3 (8) underwriting, dealing in or making a mar-
4 ket in securities;

5 (9) engaging in any activity that is permissible
6 for a bank holding company pursuant to section
7 4(c)(8) of the Bank Holding Company Act of 1956
8 by rule, order or regulation;

9 (10) engaging in any activity (in the United
10 States) that is—

11 (A) permissible for a bank holding com-
12 pany to engage in outside the United States,
13 and

14 (B) considered a financial activity or bank-
15 ing or financial operation, pursuant to section
16 4(c)(13) of the Bank Holding Company Act of
17 1956 or any rule, order, or regulation issued
18 thereunder;

19 (11) owning shares of any company that would
20 be permissible for a bank holding company to own
21 pursuant to sections 4(c)(6) and 4(c)(7) of the Bank
22 Holding Company Act of 1956;

23 (12) engaging in the functional equivalent of
24 any of the foregoing; or

1 (13) engaging in any activity that the National
2 Financial Services Committee determines by rule,
3 order, or regulation to be financial in nature or inci-
4 dental to such financial activities, taking into ac-
5 count—

6 (A) changes or reasonably expected
7 changes in the marketplace in which financial
8 services holding company compete;

9 (B) changes or reasonably expected
10 changes in the technology by which financial
11 services are delivered; or

12 (C) whether such activity is necessary or
13 appropriate to—

14 (i) allow a financial services holding
15 company and its affiliates to compete effec-
16 tively against any company seeking to pro-
17 vide financial services in the United States;

18 (ii) use any available or emerging
19 technological means to provide financial
20 services; or

21 (iii) offer customers any available or
22 emerging technological means for using fi-
23 nancial services.

24 (o) APPROPRIATE FEDERAL BANKING AGENCY.—

25 The term “appropriate Federal banking agency” has the

1 same meaning as in section 3 of the Federal Deposit In-
2 surance Act.

3 (p) STATE.—The term “State” has the same mean-
4 ing as in section 3 of the Federal Deposit Insurance Act.

5 (q) CAPITAL TERMS.—

6 (1) IN GENERAL.—The terms “adequately cap-
7 italized” and “well capitalized” have the same mean-
8 ings as in—

9 (A) section 38(b)(1) of the Federal Deposit
10 Insurance Act with respect to an insured depos-
11 itory institution;

12 (B) section 9B(c)(2)(B) of the Federal Re-
13 serve Act with respect to a State member
14 wholesale financial institution; and

15 (C) section 5136(B)(e) of the Revised
16 Statutes of the United States with respect to a
17 national wholesale financial institution.

18 (2) FOREIGN BANK CAPITAL.—With respect to
19 a branch, agency, or commercial lending company
20 operated in the United States by a foreign bank, the
21 terms “adequately capitalized” and “well capital-
22 ized” shall be defined and established by the Na-
23 tional Financial Services Committee for purposes of
24 this Act, provided that such capital standards—

1 (A) are comparable to the capital stand-
2 ards that apply to other depository institutions
3 for purposes of this Act; and

4 (B) give due regard to the principle of na-
5 tional treatment and equality of competitive op-
6 portunity.

7 (r) SECURITIES AFFILIATE.—The term “securities
8 affiliate” means a company that—

9 (1) is an affiliate of a financial services holding
10 company, other than a depository institution; and

11 (2) underwrites or deals in any security; and

12 (3) is (or is required to be) registered under the
13 Securities Exchange Act of 1934 as a broker or
14 dealer,

15 but does not include a company that underwrites or deals
16 exclusively in securities that are expressly authorized by
17 section 5136 of the Revised Statutes of the United States
18 as permissible for a national bank to underwrite or deal
19 in.

20 **SEC. 103. CHANGES IN CONTROL OF DEPOSITORY INSTITU-**
21 **TIONS.**

22 No financial services holding company acting directly
23 or indirectly, or through or in concert with one or more
24 other persons, all acquire control of a depository institu-
25 tion, bank holding company, or financial services holding

1 company not controlled by such company on the date it
2 became a financial services holding company, if such ac-
3 quisition and control occurs through a purchase, assign-
4 ment, transfer, pledge, or other deposition of voting stock
5 of such depository institution, bank holding company, or
6 financial services holding company, unless the financial
7 services holding company has complied with the require-
8 ments of section 7(j) of the Federal Deposit Insurance
9 Act. Any failure to comply with the preceding require-
10 ments shall subject the relevant financial services holding
11 company to the penalties and other procedures provided
12 in sections 109 through 112, in addition to otherwise ap-
13 plicable penalties.

14 **SEC. 104. AFFILIATE TRANSACTIONS.**

15 (a) APPLICABILITY OF SECTIONS 23A AND 23B OF
16 THE FEDERAL RESERVE ACT.—

17 (1) IN GENERAL.—The provisions of sections
18 23A and 23B of the Federal Reserve Act shall be
19 applicable to every depository institution controlled
20 by a financial services holding company in the same
21 manner and to the same extent as if such depository
22 institution were a member bank; and for this pur-
23 pose, any company which would be an affiliate of a
24 depository institution for purposes of such sections
25 23A and 23B if such depository institution were a

1 member bank shall be deemed to be an affiliate of
2 such depository institution.

3 (2) APPLICABILITY TO FOREIGN BANKS.—A de-
4 pository institution that is a branch, agency or com-
5 mercial lending company operated in the United
6 States by a foreign bank that is a financial services
7 holding company shall be deemed to satisfy the re-
8 quirements of paragraph (1) if all of the trans-
9 actions between the depository institution and any of
10 the following companies affiliated with the depository
11 institution comply with the provisions of Sec-
12 tions 23A and 23B of the Federal Reserve Act in
13 the same manner and to the same extent as if the
14 foreign bank were a member bank—

15 (A) a securities affiliate; and

16 (B) any company that is neither a finan-
17 cial services institution nor primarily engaged
18 in financial activities, other than, with respect
19 to a foreign bank that qualifies as “predomi-
20 nantly a financial company” under section
21 102(l)(2) rather than section 102(l)(1), an affil-
22 iate that is held and operated in compliance
23 with the standards of sections 2(h)(2) and
24 2(h)(4) of the Bank Holding Company Act of

1 1956 that would apply if the foreign bank were
2 subject to that Act.

3 (b) ADDITIONAL LIMITATIONS ON AFFILIATE TRANS-
4 ACTIONS.—

5 (1) IN GENERAL.—The appropriate Federal
6 banking agency may, upon a finding of probable
7 harm that cannot adequately be prevented by less
8 burdensome rules and regulations, adopt such rules
9 and regulations, consistent with the purposes of this
10 Act, as may be necessary in order to prevent a de-
11 pository institution that is controlled or operated by
12 a financial services holding company from engaging
13 in unsafe or unsound practices that involve the fi-
14 nancial services holding company or any of its affili-
15 ates including, without limitation, unsafe or unsound
16 practices that involve covered transactions, as de-
17 fined in section 23A of the Federal Reserve Act, and
18 any transactions described in section 23B(a)(2) of
19 the Federal Reserve Act.

20 (2) REGULATORY ACTIVITY.—Any rule or regu-
21 lation adopted pursuant to paragraph (1) shall be
22 adopted in accordance with section 553 of title 5,
23 United States Code, except that the appropriate
24 Federal banking agency shall give interested persons

1 an opportunity for oral presentations of data, views,
2 and arguments, in addition to written submissions.

3 (3) APPLICATION TO PRIOR APPROVED TRANS-
4 ACTIONS.—Any transaction that was approved by an
5 appropriate Federal banking agency before the date
6 of enactment of this Act shall be exempt from any
7 rules or regulations adopted pursuant to paragraph
8 (1).

9 (c) EXCEPTIONS.—With the concurrence of the Na-
10 tional Financial Services Committee, the appropriate Fed-
11 eral banking agency may, by rule, regulation or order, ex-
12 empt any depository institution that is controlled by a fi-
13 nancial services holding company or class of such institu-
14 tions, or any transaction or class of transactions (includ-
15 ing transactions with affiliates that are neither located nor
16 doing business in the United States) from any require-
17 ment under subsection (b)(1) or section 23A or 23B of
18 the Federal Reserve Act, notwithstanding the provisions
19 of any other law, rule, regulation or order, if the appro-
20 priate Federal banking agency deems such an exemption
21 to be reasonable and not inconsistent with the purposes
22 of this Act and in the public interest.

23 (d) SAFEGUARDS RELATING TO NONFINANCIAL AF-
24 FILIATES.—

1 (1) IN GENERAL.—Except as permitted pursu-
2 ant to regulations issued by the National Financial
3 Services Committee, no depository institution con-
4 trolled by a financial services holding company shall
5 directly or indirectly extend credit, or issue or enter
6 into a standby letter of credit, indemnity, guarantee,
7 insurance, or other similar facility to or for the ben-
8 efit of any affiliate that is neither a financial serv-
9 ices institution nor primarily engaged in financial
10 activities.

11 (2) EXCEPTION FOR CERTAIN FOREIGN
12 BANKS.—A depository institution that is a branch,
13 agency, or commercial lending company operated or
14 controlled by a foreign bank that—

15 (A) is a financial services holding com-
16 pany; and

17 (B) qualifies as “predominantly a financial
18 company” under section 102(l)(2) rather than
19 section 102(l)(1);

20 shall not be subject to the limitation described in
21 paragraph (1) with respect to transactions with af-
22 filiates that, with respect to that foreign bank, are
23 held and operated in compliance with the standard
24 for investment under section 2(h)(2) of the Bank

1 Holding Company Act of 1956 that would apply if
2 that foreign bank were subject to that Act.

3 (e) PRIMARILY ENGAGED IN FINANCIAL ACTIVI-
4 TIES.—For purposes of subsections (a)(2)(B) and (d)(1),
5 the term “primarily engaged in financial activities” shall
6 be defined by regulation by the National Financial Serv-
7 ices Committee.

8 **SEC. 105. CAPITAL REQUIREMENTS.**

9 (a) WELL-CAPITALIZED DEPOSITORY INSTITU-
10 TIONS.—Each depository institution that is controlled by
11 a financial services holding company shall be well capital-
12 ized.

13 (b) ACTIONS BY APPROPRIATE FEDERAL BANKING
14 AGENCY.—In the event of a finding by the appropriate
15 Federal banking agency that a depository institution con-
16 trolled by a financial services holding company is not well
17 capitalized, the financial services holding company shall—

18 (1) execute an agreement with the appropriate
19 Federal banking agency within 30 days to return the
20 depository institution within a reasonable period of
21 time to being well capitalized; or

22 (2) divest control of the depository institution
23 in an orderly manner within 180 days, or such addi-
24 tional period of time as the appropriate Federal

1 banking agency may determine is reasonably re-
2 quired in order to effect such divestiture.

3 (c) NO HOLDING COMPANY CAPITAL REQUIRE-
4 MENTS.—An appropriate Federal banking agency may not
5 impose by regulation, order, agreement, or any other
6 means, any requirement pertaining to the capital of a fi-
7 nancial services holding company.

8 **SEC. 106. INTERSTATE ACQUISITIONS OF INSURED BANKS.**

9 (a) INSURED BANKS.—Except as otherwise author-
10 ized pursuant to section 13(f) of the Federal Deposit In-
11 surance Act, no financial services holding company may
12 acquire control of an additional insured bank (as such
13 term is defined in section 2(c) of the Bank Holding Com-
14 pany Act of 1956) if the acquisition could not be approved
15 by the Board of Governors of the Federal Reserve System
16 under any provision of section 3(d) of the Bank Holding
17 Company Act of 1956, other than subsection (d)(1)(A),
18 if such acquisition were made by a bank holding company.

19 (b) TREATMENT OF FINANCIAL SERVICES HOLDING
20 COMPANIES AND SUBSIDIARIES.—For purposes of section
21 18(r) of the Federal Deposit Insurance Act, a financial
22 services holding company shall be treated as a bank hold-
23 ing company, and any depository institution affiliate of a
24 financial services holding company shall be treated as a
25 bank subsidiary.

1 **SEC. 107. DIFFERENTIAL TREATMENT PROHIBITION; LAWS**
2 **INCONSISTENT WITH THIS ACT.**

3 (a) IN GENERAL.—Notwithstanding any other Fed-
4 eral law, no State, and no Federal or State regulatory
5 agency, including the appropriate Federal banking agency,
6 may act by law, rule, regulation, order, or otherwise if the
7 effect of such action would be to differentiate depository
8 institutions controlled by financial services holding compa-
9 nies from any other depository institutions in a manner
10 adverse to depository institutions controlled by financial
11 services holding companies, or to differentiate financial
12 services holding companies or their affiliates from bank
13 holding companies and their affiliates in a manner adverse
14 to financial services holding companies or their affiliates,
15 except to the extent that the appropriate Federal banking
16 agency may act to implement this Act.

17 (b) APPLICATION OF STATE LAWS.—

18 (1) FINDINGS.—The Congress finds that:

19 (A) Certain State laws and regulations
20 have the purpose or effect of preventing depository
21 institutions from being or becoming affili-
22 ated with companies or persons engaged in non-
23 banking activities.

1 (B) Such laws restrain legitimate competi-
2 tion in interstate commerce and deny consum-
3 ers freedom of choice in selecting financial serv-
4 ices.

5 (C) Such restrictions also threaten the
6 long-term safety and soundness of depository
7 institutions by denying them access to capital.

8 (D) Given the preponderant Federal inter-
9 est in ensuring competition in national markets
10 for financial services and in ensuring the safety
11 and soundness of depository institutions, it is
12 necessary to preempt such anticompetitive State
13 laws and regulations to the extent necessary to
14 permit the formation and efficient operation of
15 financial services holding companies.

16 (E) There is, however, a legitimate and
17 traditional State interest in ensuring that State
18 depository institutions and other State-char-
19 tered or licensed companies are operated in a
20 safe and sound manner to serve the interests of
21 the public and consumers.

22 (F) The preemption provided in paragraph
23 (2) shall not be construed as preempting State
24 laws that—

1 (i) concern the regulation, supervision,
2 and examination of State depository insti-
3 tutions (as defined in section 3 of the Fed-
4 eral Deposit Insurance Act); and

5 (ii) are not inconsistent with the pur-
6 poses of this Act.

7 (2) PREEMPTIONS.—

8 (A) CROSS-MARKETING.—Any provision of
9 Federal or State law, rule, regulation, or order
10 that is expressly or impliedly inconsistent with
11 the provisions and purposes of this Act is here-
12 by preempted, including, without limitation,
13 State banking, savings and loan, insurance, real
14 estate, securities, finance company, retail, or
15 other laws which have the purpose or effect
16 of—

17 (i) preventing or impeding depository
18 institutions or affiliates, agents, principals,
19 brokers, directors, officers, employees, or
20 other representatives of such institutions
21 or affiliates thereof, as a result of the
22 types of nonbanking activities (including
23 an insurance business) engaged in directly

1 or indirectly by such company or any affili-
2 ate thereof or by any agent, principal, so-
3 licitor, broker, director, officer, employee,
4 or other representative of such company or
5 affiliate thereof, from being owned or con-
6 trolled by or from being affiliated in any
7 way with a financial services holding com-
8 pany or any affiliate of a financial services
9 holding company;

10 (ii) preventing or impeding depository
11 institutions or affiliates, agents, principals,
12 brokers, directors, officers, employees or
13 other representatives of such institutions
14 or affiliates thereof from offering or mar-
15 keting products or services of their affili-
16 ated financial services holding company or
17 any affiliate thereof or from having their
18 products or services offered or marketed by
19 their affiliated financial services holding
20 company or any affiliate thereof, or by any
21 agent, principal, broker, director, officer,
22 employee, or other representative of such
23 company or any affiliate of such company;
24 or

1 (iii) preventing, impeding, or burden-
2 ing any insurance company, or any affiliate
3 of an insurance company (whether such af-
4 filiate is organized as a stock company,
5 mutual holding company or otherwise),
6 from becoming a financial services holding
7 company under this Act or acquiring con-
8 trol of a depository institution or limiting
9 the amount of an insurance company's as-
10 sets that may be invested in the voting se-
11 curities of a depository institution the par-
12 ent company of a depository institution
13 (except that the laws of an insurance com-
14 pany's State of domicile may limit the
15 amount of an insurance company's assets
16 that may be invested in a depository insti-
17 tution to an amount that is not less than
18 5 percent of the insurance company's ad-
19 mitted assets), or authorizing the insur-
20 ance regulatory or other authorities of
21 States other than the State in which an in-
22 surance company is domiciled to prevent,
23 impede or burden or review a plan of reor-
24 ganization by which the insurance company
25 proposes to reorganize from mutual form

1 to become a stock insurance company con-
2 trolled by a mutual holding company.

3 (B) INFORMATION SHARING.—

4 (i) IN GENERAL.—Notwithstanding
5 any other provision of law, any depository
6 institution, or any affiliate or subsidiary of
7 any depository institution, may share or
8 exchange information or otherwise transfer
9 information between or among themselves
10 without any restriction or limitation if it
11 is clearly and conspicuously disclosed that
12 the information may be communicated
13 among such persons and the consumer is
14 given the opportunity, before the time that
15 the information is initially communicated,
16 to direct that such information not be com-
17 municated among such persons.

18 (ii) DEFINITION.—For purposes of
19 this subsection, the term “information”
20 means any and all data, records, or other
21 information and material obtained or
22 maintained by any depository institution or
23 any affiliate or subsidiary thereof in the
24 ordinary course of its business that relates
25 in any way to a person who applies for,

1 maintains, or has maintained an account
2 or credit relationship with or applied for,
3 purchased or obtained other products or
4 services from any depository institution or
5 any affiliate or subsidiary of any deposi-
6 tory institution, regardless of the source or
7 manner in which the information is ob-
8 tained or furnished.

9 (c) LAWS AFFECTING COURT ACTIONS.—

10 (1) IN GENERAL.—No State or State regulatory
11 agency may act by law, rule, regulation, or order if
12 the effect of such action would be to impede or pre-
13 vent a depository institution that is located in an-
14 other State from qualifying to maintain or defend in
15 court any action which could be maintained or de-
16 fended under similar circumstances by a company
17 that is located in such other State and that is not
18 a depository institution, if the depository institution
19 does not establish or operate in that State a domes-
20 tic branch.

21 (2) EXCEPTION.—Where the maintenance or
22 defense of a court action referred to in paragraph
23 (1) by a company that is located in such other State
24 and that is not a depository institution is subject to
25 certain conditions, the maintenance or defense of

1 such an action by a depository institution located in
2 such other State may be subject to those same con-
3 ditions, if such conditions are applied in a non-
4 discriminatory manner to fulfill legitimate State ob-
5 jectives and do not have the effect, directly or indi-
6 rectly, of denying depository institutions located in
7 other States the opportunity to maintain or defend
8 such actions.

9 (d) OTHER RESTRICTIONS.—Except for licensing,
10 marketing, compensation, employment, or other require-
11 ments applied in a nondiscriminatory manner to fulfill le-
12 gitimate State regulatory objectives which are not incon-
13 sistent with the purposes of this Act, no State may,
14 through legislative, administrative, executive, or judicial
15 action, impede or prevent a financial services holding com-
16 pany or affiliate thereof from utilizing or compensating
17 any agent (including an affiliated depository institution
18 acting in accordance with section 18(r) of the Federal De-
19 posit Insurance Act), solicitor, broker, employee, or other
20 person located in that State and representing in any lawful
21 capacity any depository institution or any such financial
22 services holding company or such affiliate thereof, pro-
23 vided that if any such person is being utilized or com-
24 pensated for the performance of activities on behalf of a
25 depository institution, such activities do not result in the

1 establishment or operation by the depository institution of
2 a domestic branch at any location other than the main
3 or branch offices of such depository institution.

4 (e) DEFINITIONS.—As used in subsections (b)
5 through (d) only—

6 (1) the term “affiliate” means a person that di-
7 rectly or indirectly controls or is controlled by, or is
8 under common control with the person specified; and

9 (2) the term “control,” including the terms
10 “controlled by” and “under common control with,”
11 means the power, directly or indirectly, to direct the
12 management or policies of a person and shall be pre-
13 sumed to exist if any person, directly or indirectly,
14 owns, controls, or holds with power to vote 10 per-
15 cent or more of the voting securities of any other
16 person.

17 **SEC. 108. INSIDER LENDING PROVISIONS.**

18 (a) IN GENERAL.—A financial services holding com-
19 pany shall be treated as a bank holding company, and any
20 depository institution controlled by such financial services
21 holding company shall be treated as a bank, for purposes
22 of section 22(h) of the Federal Reserve Act and any regu-
23 lation prescribed under such section.

24 (b) REGULATORY AUTHORITY.—For purposes of this
25 subsection, the appropriate Federal banking agency shall

1 exercise the authority provided to the Board of Governors
2 of the Federal Reserve System under section 22(h) of the
3 Federal Reserve Act.

4 **SEC. 109. REPORTS, EXAMINATION AND ENFORCEMENT.**

5 (a) NOTICE.—

6 (1) TIMING.—Within 90 days after filing the
7 notice referred to in section 102(a)(1), each financial
8 services holding company shall file a separate notice
9 with the appropriate Federal banking agency for the
10 lead depository institution of such company.

11 (2) FORM AND CONTENT.—The notice required
12 by paragraph (1) shall be on forms prescribed by the
13 National Financial Services Committee, and shall in-
14 clude such information under oath or otherwise, with
15 respect to the financial condition, ownership, oper-
16 ation and management of such financial services
17 company and its subsidiaries, and related matters,
18 as the Committee may deem necessary or appro-
19 priate for the appropriate Federal banking agency to
20 ascertain and monitor the impact that such financial
21 services holding company and its subsidiaries may
22 have on the safety and soundness of any depository
23 institution affiliated with such financial services
24 holding company or to otherwise carry out the pur-
25 poses of this Act.

1 (b) REPORTING AND RECORDKEEPING.—

2 (1) DEFINITIONS.—

3 (A) DEPOSITORY INSTITUTION.—For pur-
4 poses of this subsection, the term “depository
5 institution”, in addition to its meaning under
6 section 102(g), means a depository institution
7 affiliated with a financial services holding com-
8 pany.

9 (B) APPROPRIATE FEDERAL BANKING
10 AGENCY.—For purposes of this subsection, the
11 appropriate Federal banking agency of a depos-
12 itory institution (which is affiliated with a fi-
13 nancial services holding company) shall be the
14 appropriate Federal banking agency of the lead
15 depository institution of that financial services
16 holding company.

17 (2) OBLIGATIONS TO OBTAIN, MAINTAIN, AND
18 REPORT INFORMATION.—

19 (A) IN GENERAL.—Every depository insti-
20 tution shall obtain such information and make
21 and keep such records as its appropriate Fed-
22 eral banking agency by rule prescribes concern-
23 ing the depository institution’s policies, proce-
24 dures, or systems for—

1 (i) monitoring and controlling finan-
2 cial and operational risks to it resulting
3 from the activities of any of its affiliates
4 whose business activities are reasonably
5 likely to have a material impact on the fi-
6 nancial or operational condition of such de-
7 pository institution, including its level of
8 capitalization and its ability to conduct or
9 finance its operations; and

10 (ii) monitoring the extent to which the
11 depository institution or its affiliates have
12 complied with the provisions of this Act.

13 (B) CONTENTS OF RECORDS.—Such
14 records shall describe, in the aggregate, each of
15 the financial activities conducted by, and the
16 customary sources of capital and funding of,
17 these affiliates.

18 (C) REPORTS.—The appropriate Federal
19 banking agency, by rule, may require summary
20 reports of such information to be filed no more
21 frequently than quarterly.

1 (3) AUTHORITY TO REQUIRE ADDITIONAL IN-
2 FORMATION.—If, as a result of adverse market con-
3 ditions or based on reports provided to the appro-
4 priate Federal banking agency pursuant to para-
5 graph (2) or other available information, the appro-
6 priate Federal banking agency reasonably concludes
7 that the agency has concerns regarding the financial
8 or operational condition of any depository institution
9 for which such agency is the appropriate Federal
10 banking agency, such agency may require the depository
11 institution to make reports concerning the fi-
12 nancial activities of any of such depository institu-
13 tion’s affiliates engaged in financial activities whose
14 business activities are reasonably likely to have a
15 material impact on the financial or operational con-
16 dition of such depository institution. The appro-
17 priate Federal banking agency, in requiring reports
18 pursuant to this paragraph, shall specify the infor-
19 mation required, the period for which it is required,
20 and the time and date on which the information
21 must be furnished.

22 (4) SPECIAL PROVISIONS WITH RESPECT TO AF-
23 FILIATES SUBJECT TO SECURITIES AND EXCHANGE
24 COMMISSION OR STATE INSURANCE REGULATION.—

1 (A) COOPERATION IN IMPLEMENTATION.—

2 In developing and implementing reporting re-
3 quirements pursuant to paragraph (2) of this
4 subsection with respect to the activities of affili-
5 ates subject to examination by, or reporting re-
6 quirements of, the Securities and Exchange
7 Commission, the appropriate Federal banking
8 agency shall consult with and consider the views
9 of the Securities and Exchange Commission. If
10 the Securities and Exchange Commission com-
11 ments in writing on a proposed rule of the ap-
12 propriate Federal banking agency under this
13 subsection that has been published for com-
14 ment, the appropriate Federal banking agency
15 shall respond in writing to such written com-
16 ment before adopting the proposed rule. The
17 appropriate Federal banking agency shall, at
18 the request of the Securities and Exchange
19 Commission, publish such comment and re-
20 sponse in the Federal Register at the time of
21 publishing the adopted rule.

22 (B) USE OF SECURITIES AND EXCHANGE
23 COMMISSION OR STATE INSURANCE RECORDS
24 AND REPORTS.—A depository institution shall

1 be in compliance with any recordkeeping or re-
2 porting requirement adopted pursuant to para-
3 graph (2) of this subsection concerning an affil-
4 iate if (i) with respect to an affiliate that is
5 subject to examination by or reporting require-
6 ments of the Securities and Exchange Commis-
7 sion, such depository institution utilizes for
8 such recordkeeping or reporting requirement
9 copies of reports filed by the affiliate with the
10 Securities and Exchange Commission pursuant
11 to section 204 of the Investment Advisers Act
12 of 1940, sections 30 and 31 of the Investment
13 Company Act of 1940, or section 17 of the Se-
14 curities Exchange Act of 1934; and (ii) with re-
15 spect to an affiliate that is subject to examina-
16 tion by or reporting requirements of a State in-
17 surance regulator, such depository institution
18 utilizes for such recordkeeping or reporting re-
19 quirement copies of reports filed by the affiliate
20 with the State insurance regulator. The appro-
21 priate Federal banking agency of a depository
22 institution may, however, by rule adopted pur-
23 suant to paragraph (2), require any such depos-
24 itory institution filing such reports with the ap-
25 propriate Federal banking agency to obtain,

1 maintain, or report supplemental information if
2 the appropriate Federal banking agency makes
3 an explicit finding that such supplemental infor-
4 mation is necessary to inform the appropriate
5 Federal banking agency regarding potential
6 risks to such depository institution. Prior to re-
7 quiring any such supplemental information, the
8 appropriate Federal banking agency shall first
9 request the Securities and Exchange Commis-
10 sion or the State insurance regulator, as appro-
11 priate, to expand its reporting requirements to
12 include such information.

13 (C) PROCEDURE FOR REQUIRING ADDI-
14 TIONAL INFORMATION.—Prior to making a re-
15 quest pursuant to paragraph (3) of this sub-
16 section for information with respect to an affili-
17 ate that is subject to examination by or report-
18 ing requirements of the Securities and Ex-
19 change Commission or a State insurance regu-
20 lator, the appropriate Federal banking agency
21 shall—

22 (i) notify the Securities and Exchange
23 Commission or the State insurance regu-
24 lator, as appropriate, of the information
25 required with respect to such affiliate; and

1 (ii) consult with the Securities and
2 Exchange Commission or the State insur-
3 ance regulator, as appropriate, to deter-
4 mine whether the information required is
5 available from the Securities and Exchange
6 Commission or the State insurance regu-
7 lator, unless the appropriate Federal bank-
8 ing agency determines that any delay re-
9 sulting from such consultation would be in-
10 consistent with ensuring the safety and
11 soundness of the depository institution or
12 the stability or integrity of the banking
13 system.

14 (D) CONFIDENTIALITY OF INFORMATION
15 PROVIDED.—No information provided to or ob-
16 tained by the appropriate Federal banking
17 agency from the Securities and Exchange Com-
18 mission or a State insurance regulator pursuant
19 to a request by the appropriate Federal banking
20 agency under subparagraph (C) of this para-
21 graph may be disclosed to any other person,
22 without the prior written approval of the Secu-
23 rities and Exchange Commission or the State
24 insurance regulator, as appropriate. Nothing in
25 this subsection shall authorize the appropriate

1 Federal banking agency to withhold information
2 from Congress, or prevent the appropriate Fed-
3 eral banking agency from complying with a re-
4 quest for information from any other Federal
5 department or agency requesting the informa-
6 tion for purposes within the scope of its juris-
7 diction, or complying with an order of a court
8 of the United States in an action brought by
9 the United States or the appropriate Federal
10 banking agency.

11 (E) NOTICE TO BANKING AGENCIES CON-
12 CERNING FINANCIAL AND OPERATIONAL CONDI-
13 TION CONCERNS.—The Securities and Ex-
14 change Commission shall notify the appropriate
15 Federal banking agency of any concerns it has
16 regarding significant financial or operational
17 risks to any depository institution resulting
18 from the activities of any affiliate of the deposi-
19 tory institution for which the Securities and Ex-
20 change Commission is the appropriate regu-
21 latory agency. Any State insurance regulator
22 shall notify the appropriate Federal banking
23 agency of any concerns it has regarding signifi-
24 cant financial or operational risks to any deposi-
25 tory institution resulting from the activities of

1 any affiliate of the depository institution for
2 which the State insurance regulator is the ap-
3 propriate regulatory agency.

4 (5) UNIFORM REGULATIONS.—The National Fi-
5 nancial Services Committee shall prescribe by regu-
6 lation uniform standards for the rules required by
7 this subsection.

8 (6) EXEMPTIONS.—The National Financial
9 Services Committee by rule or order may exempt
10 any person or class of persons, under such terms
11 and conditions and for such periods as the Commit-
12 tee shall provide in such rule or order, from the pro-
13 visions of this subsection, and the rules thereunder.
14 In granting such exemptions, the Committee shall
15 consider, among other factors—

16 (A) whether information of the type re-
17 quired under this subsection is available for a
18 supervisory agency (as defined in section
19 1101(6) of the Right to Financial Privacy Act
20 of 1978 (12 U.S.C. 3401(6)), a State insurance
21 commission or similar State agency, the Com-
22 modity Futures Trading Commission, or a for-
23 eign regulatory body of a similar type;

24 (B) the primary business of any affiliate;

1 (C) the nature and extent of domestic or
2 foreign regulation of the affiliate's activities;

3 (D) the nature and extent of the deposi-
4 tory institution's banking activities;

5 (E) with respect to the depository institu-
6 tion and its affiliates, on a consolidated basis,
7 the amount and proportion of assets devoted to,
8 and revenues derived from, banking activities in
9 the United States; and

10 (F) whether the affiliate's activities could
11 pose a significant risk to the safety and sound-
12 ness of any depository institution subsidiary of
13 the financial services holding company.

14 (7) AUTHORITY TO LIMIT DISCLOSURE OF IN-
15 FORMATION.—Notwithstanding any other provision
16 of law, the appropriate Federal banking agency shall
17 not be compelled to disclose any information re-
18 quired to be reported pursuant to this subsection, or
19 any information supplied to the appropriate Federal
20 banking agency by any domestic or foreign regu-
21 latory agency that relates to the financial or oper-
22 ational condition of any affiliate of a depository in-
23 stitution. Nothing in this subsection shall authorize
24 the appropriate Federal banking agency to withhold

1 information from Congress, or prevent the appro-
2 priate Federal banking agency from complying with
3 a request for information from any other Federal de-
4 partment or agency requesting the information for
5 purposes within the scope of its jurisdiction, or com-
6 plying with an order of a court of the United States
7 in an action brought by the United States or the ap-
8 propriate Federal banking agency. For purposes of
9 section 552 of title 5, United States Code, this sub-
10 section shall be considered a statute described in
11 subsection (b)(3)(B) of such section 552.

12 (8) APPLICABILITY TO FOREIGN BANKS.—For
13 purposes of this subsection, with respect to a foreign
14 bank that is a financial services holding company,
15 the appropriate Federal banking agency shall give
16 due regard to the primary authority and responsibil-
17 ity of the foreign bank’s home country regulator for
18 supervision and examination of the bank outside the
19 United States and shall seek to minimize additional
20 examination or regulatory burdens on the foreign
21 bank outside of the United States, by coordinating
22 with and relying on examinations of and information
23 from the home country regulator to the fullest extent
24 possible.

1 (c) TERMINATION.— The National Financial Services
2 Committee may at any time, upon its own motion or upon
3 application, terminate the status of a company as a finan-
4 cial services holding company, if it is determined that such
5 company no longer controls or operates any depository in-
6 stitutions or otherwise fails to qualify as a financial serv-
7 ices holding company as defined in this Act.

8 (d) NO EXTENSION OF INSURANCE COVERAGE.—In
9 no instance shall the benefits of Federal deposit insurance
10 coverage applicable to an insured depository institution
11 that is controlled by a financial services holding company
12 be extended or interpreted to extend to either such finan-
13 cial services holding company or to any other company
14 controlled by such financial services holding company that
15 is not an insured depository institution.

16 (e) ENFORCEMENT OF VIOLATIONS.—Whenever it
17 appears to the appropriate Federal banking agency of the
18 lead depository institution of a financial services holding
19 company that such holding company is violating, has vio-
20 lated, or is about to violate any provision of this Act or
21 any regulation prescribed under this Act, such agency
22 may, in its discretion, apply to the appropriate district
23 court of the United States or the United States court of
24 any territory for—

1 (1) a temporary or permanent injunction or re-
2 straining order enjoining such financial services
3 holding company from violating this Act or any reg-
4 ulation prescribed under this Act; or

5 (2) such other equitable relief, including divesti-
6 ture, as may be necessary to prevent such violation.

7 (f) COURT JURISDICTION.—The district courts of the
8 United States and the United States court in any territory
9 shall have jurisdiction and power to issue any injunction
10 or restraining order or grant any other relief described in
11 subsection (f). When appropriate, any injunction, order,
12 or other equitable relief granted under this subparagraph
13 shall be granted without requiring the posting of any
14 bond.

15 (g) NOTICE OF VIOLATIONS.—Whenever it appears
16 to a Federal or State official or agency with supervisory
17 or examination authority over any affiliate of a financial
18 services holding company that such affiliate or such finan-
19 cial services holding company is violating, has violated, or
20 is about to violate any provision of this Act or any regula-
21 tion prescribed under this Act, such official or agency shall
22 promptly notify the appropriate Federal banking agency
23 of the lead depository institution of such holding company
24 in order that such banking agency, in consultation with

1 the notifying agency, may determine whether action under
2 this section is appropriate.

3 **SEC. 110. DIVESTITURE.**

4 (a) **IN GENERAL.**—In addition to all of its other reg-
5 ulatory and supervisory powers, if the appropriate Federal
6 banking agency determines that a depository institution
7 under its supervision has engaged in a continuing course
8 of conduct involving its financial services holding company
9 or any affiliate of such holding company which has had,
10 or has a significant probability of having, the effect of
11 causing such depository institution to be in an unsafe or
12 unsound condition, it may make an initial finding that the
13 financial services holding company should be required to
14 terminate its control or operation of the depository institu-
15 tion. If the appropriate Federal banking agency makes
16 such an initial finding, it shall within 3 days so notify the
17 financial services holding company controlling or operating
18 the depository institution and the National Financial Serv-
19 ices Committee. Such notice shall provide a statement for
20 the basis of the appropriate Federal banking agency's ac-
21 tion.

22 (b) **HEARING PROCEDURES.**—Not later than 30 days
23 after receipt of the notice described in subsection (a), the
24 financial services holding company receiving such notice
25 may request an agency hearing before the appropriate

1 Federal banking agency. In such hearing, all issues shall
2 be determined pursuant to section 554 of title 5, United
3 States Code. The length of the hearing shall be determined
4 by the appropriate Federal banking agency, and such
5 hearing may be before a hearing examiner appointed by
6 such agency. At the conclusion thereof, the appropriate
7 Federal banking agency shall issue a final order, on the
8 basis of the record made at such hearing, affirming or re-
9 versing the initial finding of the appropriate Federal bank-
10 ing agency. A company that fails to request an agency
11 hearing under this paragraph shall be deemed to have con-
12 sented to the issuance of a final order affirming the initial
13 finding without the necessity of the hearing provided for
14 in this paragraph.

15 (c) TERMINATION OF CONTROL.—If such final order
16 affirms the initial finding, the financial services holding
17 company shall, upon completion of the judicial review, if
18 any, of the appropriate Federal banking agency’s final
19 order as provided for in section 113, terminate its control
20 or operation of the depository institution involved within
21 1 year or such longer period as the appropriate Federal
22 banking deems necessary and appropriate to protect the
23 safety and soundness of the depository institution or pre-
24 vent financial disruption.

1 (d) NO “SOURCE OF STRENGTH” DOCTRINE.—No
2 appropriate Federal banking agency may require, by regu-
3 lation, order, agreement, or any other means, any financial
4 services holding company to serve as a “source of
5 strength” to any depository institution affiliate of such
6 holding company.

7 **SEC. 111. CRIMINAL PENALTIES.**

8 (a) WILLFUL VIOLATIONS.—Any company or insured
9 depository institution which knowingly and willfully par-
10 ticipates in a material violation of any provision of this
11 Act, or any rule, regulation, or order issued by an appro-
12 priate Federal banking agency pursuant thereto, shall,
13 upon conviction, be fined for each violation not more than
14 the greater of \$250,000 or an amount equal to 0.01 per-
15 cent of the minimum required capital of the lead deposi-
16 tory institution of the financial services holding company
17 for each day during which the violation continues, except
18 that in no case shall any such amount for any violation
19 or related series of violations exceed 1 percent of the mini-
20 mum required capital of the lead depository institution.

21 (b) ENFORCEMENT AGAINST INDIVIDUALS.—Any
22 natural person who knowingly and willfully participates in
23 a material violation of any provision of this Act or any
24 rule, regulation, or order issued pursuant thereto, shall
25 upon conviction be imprisoned not more than 5 years and

1 fined for each violation not more than the greater of
2 \$250,000 or double the individual's annual compensation
3 at the time the violation occurred.

4 (c) ENFORCEABILITY AGAINST OFFICERS AND EM-
5 PLOYEES.—Every officer, director, employee, and agent of
6 a financial services holding company or depository institu-
7 tion also shall be subject to the same penalties for false
8 entries in any book, report, or statement of such company
9 or depository institution as are applicable to officers, di-
10 rectors, employees, and agents of member banks for false
11 entries in any books, reports, or statements of member
12 banks under section 1005 of title 18, United States Code.

13 (d) ENFORCEABILITY AGAINST HOLDING COMPA-
14 NIES.—A financial services holding company and its affili-
15 ates shall be subject to the provisions of title 18, United
16 States Code, to the same extent as a registered bank hold-
17 ing company or any affiliate of such a company.

18 **SEC. 112. CIVIL ENFORCEMENT, CEASE-AND-DESIST OR-**
19 **DERS, CIVIL MONEY PENALTIES, REMOVAL,**
20 **AND PROHIBITION AUTHORITY.**

21 Subsections (b) through (s) and subsection (u) of sec-
22 tion 8 of the Federal Deposit Insurance Act shall apply
23 to any financial services holding company in the same
24 manner as they apply to an insured depository institution.
25 Nothing in subsection (b) or (c) of that section 8 shall

1 authorize any Federal banking agency, other than the ap-
2 propriate Federal banking agency, to issue a notice of
3 charges or cease-and-desist order against a financial serv-
4 ices holding company.

5 **SEC. 113. JUDICIAL REVIEW.**

6 Any party aggrieved by an appropriate Federal bank-
7 ing agency's findings or other actions under this Act may
8 obtain review by the United States court of appeals of the
9 circuit wherein such party has its principal place of busi-
10 ness or the United States Court of Appeals for the District
11 of Columbia Circuit, by filing a Notice of Appeal in such
12 court within 30 days from the date of such action, and
13 simultaneously sending a copy of such notice by registered
14 or certified mail to the appropriate Federal banking agen-
15 cy. The appropriate Federal banking agency shall prompt-
16 ly certify and file in such court the record upon which
17 such action or finding was based. The actions or findings
18 of the appropriate Federal banking agency shall be set
19 aside if not supported by substantial evidence or if found
20 to violate procedures established by this Act. An initial
21 finding by the appropriate Federal banking agency under
22 section 110 shall be subject to judicial review only in the
23 context of review of a final order under section 110(b).

1 **SEC. 114. NATIONAL FINANCIAL SERVICES COMMITTEE.**

2 (a) ESTABLISHMENT.—There is established a Na-
3 tional Financial Services Committee which shall consist of
4 the following members:

5 (1) The Secretary of the Treasury.

6 (2) The Chairman of the Board of Governors of
7 the Federal Reserve System.

8 (3) The Chairman of the Board of Directors of
9 the Federal Deposit Insurance Corporation.

10 (4) The Comptroller of the Currency.

11 (5) The Chairman of the Securities and Ex-
12 change Commission.

13 (6) An insurance commissioner (or similar offi-
14 cial) of a State, as designated by the National Asso-
15 ciation of Insurance Commissioners.

16 (b) MEMBER AGENCIES.—For purposes of this Act,
17 the term “member agencies means—

18 (1) the agencies or departments headed by
19 members of the committee described in paragraphs
20 (1), (2), (3), (4), and (5) of subsection (a); and

21 (2) in the case of a member of the committee
22 appointed in accordance with paragraph (6) of such
23 subsection, the National Association of Insurance
24 Commissioners.

25 (c) CHAIR.—The Chair of the Committee shall be the
26 Secretary of the Treasury.

1 (d) COMPENSATION.—Each member of the Commit-
2 tee shall serve without additional compensation, but shall
3 be entitled to reasonable expenses incurred in carrying out
4 the official duties as such a member.

5 (e) PUBLIC MEETINGS.—The Committee shall hold
6 public meetings at least annually. All meetings of the
7 Committee shall be conducted in conformity with the pro-
8 visions of section 3(a) of the Government in the Sunshine
9 Act (5 U.S.C. 552b). The Committee may not take any
10 action unless such action is approved by a majority vote
11 of the members of the Committee.

12 (f) SECRETARIAT.—The Department of the Treasury
13 shall provide the Secretariat for the Committee and shall
14 assume any expenses arising from execution of the respon-
15 sibilities of the Committee, except for expenses incurred
16 by employees of any Member of the Committee.

17 (g) ACCESS TO RECORDS.—For the purpose of carry-
18 ing out this section, the Committee shall have access to
19 all books, accounts, records, reports, files, memoranda, pa-
20 pers, things, and property belonging to or in use by any
21 appropriate Federal banking agency.

22 (h) FUNCTIONS OF THE COMMITTEE.—

23 (1) UNIFORM PRINCIPLES AND STANDARDS.—
24 The Committee shall, insofar as is practicable, es-
25 tablish uniform principles and standards applicable

1 to the notices, reports, examinations and supervision
2 of financial services institutions regulated by the
3 member agencies, and to the extent permitted by
4 this Act, financial services holding companies, which
5 principles and standards shall be applied by the
6 member agencies.

7 (2) RECOMMENDATIONS.—The Committee shall
8 make recommendations for uniformity in other su-
9 pervisory matters, such as, but not limited to, identi-
10 fying financial services institutions and other provid-
11 ers of financial services in need of special super-
12 visory attention, the adequacy of supervisory tools
13 for determining the impact of affiliate operations on
14 insured depository institutions, and the ability of the
15 member agencies to discover possible fraud or ques-
16 tionable practices.

17 (3) RECOMMENDATIONS TO CONGRESS.—The
18 Committee shall, from time to time, recommend to
19 the Congress additional measures to strengthen the
20 separation between insured depository institutions
21 controlled by depository institutions holding compa-
22 nies from the activities of any of their affiliates, in-
23 cluding the imposition of additional restrictions on
24 interaffiliate transactions and the strict application
25 of Federal deposit insurance coverage only for the

1 benefit of depositors of insured depository institu-
2 tions.

3 (i) CONSULTATION WITH STATE REGULATORS.—The
4 Committee shall consult with the appropriate organiza-
5 tions representing the State regulators of banks, savings
6 and loan associations, savings banks, securities firms, and
7 other providers of financial services, and as deemed appro-
8 priate, meet with such State regulators. The Committee,
9 when appropriate, shall invite to each public meeting of
10 the Committee representatives of such organizations.

11 (j) STUDIES AND RECOMMENDATIONS.—The Com-
12 mittee may conduct or authorize studies to carry out the
13 purposes of this Act. On the basis of such studies, the
14 Committee may make recommendations to the Congress
15 and member agencies concerning the implementation of
16 this Act and changes in statutes and regulations necessary
17 to promote the strength and stability of the Nation's fi-
18 nancial system and financial institutions, the competitive-
19 ness of providers of financial services in domestic and
20 international markets, and the purposes of this Act. Not
21 later than 1 year after the date of the enactment of this
22 Act, the Committee shall report to the Congress on pro-
23 posals for legislative or regulatory actions that will im-
24 prove the examination process to permit better oversight
25 of all insured depository institutions. In particular, the

1 Committee shall consider whether the number of, or com-
2 pensation for, examiners employed by the appropriate
3 Federal regulatory agencies should be increased.

4 (k) NOTICE PROCEDURES FOR DETERMINING NEW
5 FINANCIAL SERVICES INSTITUTIONS AND NEW FINAN-
6 CIAL ACTIVITIES.—

7 (1) NOTICE REQUIREMENT.—A financial serv-
8 ices holding company may request the Committee to
9 determine that—

10 (A) an activity not described in section
11 102(n) (1)–(12) constitutes a financial activity
12 pursuant to section 102(n)(13); or

13 (B) a company not described in section
14 102(m) (1)–(8) is a financial services institu-
15 tion pursuant to section 102(m)(9),

16 by providing the Committee with written notice de-
17 scribing the proposed activity or institution.

18 (2) CONTENTS OF NOTICE.—The notice submit-
19 ted to the Committee shall contain such information
20 as the Committee shall prescribe by regulation or by
21 specific request in connection with a particular no-
22 tice.

23 (3) PROCEDURE FOR COMMITTEE ACTION.—

24 (a) NOTICE OF DISAPPROVAL.—Any notice
25 filed under this subsection shall be deemed to

1 be approved by the Committee unless before the
2 end of the 60-day period beginning on the date
3 the Committee receives a complete notice under
4 subparagraph (1), the Committee issues an
5 order determining the activity does not con-
6 stitute a financial activity or the institution is
7 not a financial services institution and setting
8 forth the reasons for disapproval.

9 (B) EXTENSION OF PERIOD.—The Com-
10 mittee may extend the 60-day period referred to
11 in subparagraph (A) for an additional 30 days.
12 The Committee may further extend the period
13 with the agreement of the financial services
14 holding company submitting the notice pursu-
15 ant to this subsection.

16 (4) SHORTER PERIODS.—The Committee may
17 prescribe regulations which provide for a shorter no-
18 tice period than the periods described in subpara-
19 graphs (A) and (B).

20 (5) INCOMPLETE INFORMATION.—The Commit-
21 tee may determine that an activity or an institution
22 for which notice has been submitted pursuant to this
23 subsection, does not constitute a financial activity or
24 is not a financial services institution, if the financial

1 services holding company submitting such notice ne-
2 glects, fails, or refuses to furnish the Committee all
3 the information required by the Committee.

4 **Subtitle B—Securities Activities of Financial**
5 **Services Holding Companies**

6 **SEC. 121. LIMITATION ON SECURITIES ACTIVITIES OF DE-**
7 **POSITORY INSTITUTIONS AFFILIATED WITH**
8 **SECURITIES AFFILIATES.**

9 (a) IN GENERAL.—A financial services holding com-
10 pany that is affiliated with a securities affiliate shall not
11 permit any depository institution, or any subsidiary of any
12 depository institution, which is controlled by such holding
13 company to engage, directly or indirectly in the United
14 States—

15 (1) in underwriting securities backed by or rep-
16 resenting interests in notes, drafts, acceptances,
17 loans, leases, receivables, other obligations, or pools
18 of any such obligations originated or purchased by
19 the institution or its affiliates; or

20 (2) in underwriting or dealing in any other se-
21 curities,

22 except securities expressly authorized by section 5136 of
23 the Revised Statutes of the United States as permissible
24 for a national bank to underwrite or deal in.

1 (b) RULE OF CONSTRUCTION.—No provision of this
2 section shall be construed as permitting a securities affili-
3 ate to accept deposits in contravention of section 21 of
4 the Banking Act of 1933.

5 (c) DEFINITION OF SECURITY.—

6 (1) IN GENERAL.—For purposes of this section,
7 the term “security” has the meaning given to such
8 term in section 3(a)(10) of the Securities Exchange
9 Act of 1934.

10 (2) EXCEPTIONS.—Notwithstanding any other
11 provision of law, the term “security” does not in-
12 clude any of the following for purposes of this sec-
13 tion:

14 (A) A contract of insurance.

15 (B) A deposit account, savings account,
16 certificate of deposit, or other deposit instru-
17 ment issued by a depository institution.

18 (C) A share account issued by a savings
19 association if the account is insured by the Fed-
20 eral Deposit Insurance Corporation.

21 (D) A banker’s acceptance.

22 (E) A letter of credit issued by a deposi-
23 tory institution.

1 (F) A debit account at a depository insti-
2 tution arising from a credit card or similar ar-
3 rangement.

4 (G) A loan or loan participation (as deter-
5 mined by the appropriate Federal banking
6 agency), including any debt security issued in
7 connection with sovereign debt restructuring
8 which a bank purchases and sells pursuant to
9 such bank's lending authority.

10 (H) A qualified financial contract (as de-
11 fined in section 11(e)(8)(D)(i) of the Federal
12 Deposit Insurance Act), as determined by the
13 appropriate Federal Banking agency, after con-
14 sultation with and consideration of the views of
15 the Securities and Exchange Commission, ex-
16 cept that, for purposes of this section such term
17 does not include—

18 (i) any securities contract (as defined
19 in section 11(e)(8)(D)(ii) of such Act) that
20 is based on or directly relates to a security
21 that is not expressly authorized by section
22 5136 of the Revised Statutes of the United
23 States as permissible for a national bank
24 to underwrite or deal in unless the appro-
25 priate Federal banking agency determines,

1 after consultation with and consideration
2 of the views of the Securities and Ex-
3 change Commission, that such securities
4 contract is appropriate for a bank to un-
5 derwrite or deal in, taking into account
6 other qualified financial contracts which a
7 bank is permitted to underwrite or deal in;
8 and

9 (ii) any agreement, contract, or trans-
10 action which is determined by the Federal
11 Deposit Insurance Corporation in a regula-
12 tion prescribed after the date of the enact-
13 ment of this Act to be a qualified financial
14 contract unless the appropriate Federal
15 banking agency determines, after consulta-
16 tion with and consideration of the views of
17 the Securities and Exchange Commission,
18 that such agreement, contract, or trans-
19 action shall be treated as a qualified finan-
20 cial contract for purposes of this section.

21 (3) AUTHORITY TO EXEMPT BANKING PROD-
22 UCTS.—Notwithstanding any other provision of law,
23 the appropriate Federal banking agency may, by
24 regulation or order, exempt a banking product from

1 the definition of security if the appropriate Federal
2 banking agency finds that—

3 (i) the product is available in the
4 course of a banking business and is more
5 appropriately regulated as a banking prod-
6 uct; and

7 (ii) the exemption is otherwise consist-
8 ent with the purposes of this section, the
9 maintenance of fair and orderly markets,
10 and the protection of investors.

11 (4) DEFINITION FOR LIMITED PURPOSE.—The
12 fact that a particular instrument is excluded pursu-
13 ant to paragraph (2) or (3) from the definition of
14 security for purposes of this section shall not be con-
15 strued as finding or implying that such instrument
16 is or is not a security for purposes of—

17 (A) Federal securities law;

18 (B) section 5136 of the Revised Statutes
19 of the United States; or

20 (C) section 20, 21, or 32 of the Banking
21 Act of 1933 (12 U.S.C. 377, 378, and 78).

22 (5) RESERVATION OF AUTHORITY TO CHARTER-
23 ING AUTHORITY.—A determination by the appro-
24 priate Federal banking agency under this subsection
25 shall not be construed in any way as authorizing a

1 bank to provide any product or service that the bank
2 is not otherwise authorized to provide under relevant
3 law governing the activities and powers of the bank.

4 (6) CONSULTATION WITH COMMISSION.—

5 (A) NOTICE AND CONSULTATION RE-
6 QUIRED.—In determining whether to exempt a
7 banking product pursuant to paragraph (3), the
8 appropriate Federal banking agency shall pro-
9 vide written notice to, consult with, and con-
10 sider the views of the Securities and Exchange
11 Commission.

12 (B) RESPONSE AND PUBLICATION.—If the
13 Securities and Exchange Commission comments
14 in writing on a proposed determination of the
15 appropriate Federal banking agency, such agen-
16 cy shall—

17 (i) respond in writing to such written
18 comment; and

19 (ii) at the request of such Commis-
20 sion, publish such comment and response
21 in the Federal Register at the time the de-
22 termination becomes effective.

23 (7) APPROVAL OF NATIONAL FINANCIAL SERV-
24 ICES COMMITTEE.—

1 (A) IN GENERAL.—An appropriate Federal
2 banking agency may not issue a regulation or
3 order pursuant to paragraph (3) without the
4 approval of the National Financial Services
5 Committee.

6 (B) UNIFORM STANDARDS.—Any regula-
7 tion or order subject to the approval of the Na-
8 tional Financial Services Committee under
9 paragraph (1) shall be identical for each appro-
10 priate Federal banking agency, except as other-
11 wise permitted by such Committee.

12 **SEC. 122. SAFEGUARDS RELATING TO SECURITIES AFFILI-**
13 **ATES.**

14 (a) EXTENSIONS OF CREDIT AND ASSET PURCHASES
15 RESTRICTED.—

16 (1) IN GENERAL.—No depository institution af-
17 filiated with a securities affiliate shall, directly or in-
18 directly, do any of the following:

19 (A) Extend credit in any manner to the se-
20 curities affiliate.

21 (B) Issue a guarantee, acceptance, or let-
22 ter of credit, including an endorsement or a
23 standby letter of credit, for the benefit of the
24 securities affiliate.

1 (C) Except as provided in paragraph (3),
2 purchase for its own account, or for the account
3 of any subsidiary of such institution, financial
4 assets of the securities affiliate.

5 (2) EXCEPTION FOR CLEARING SECURITIES.—
6 Paragraph (1)(A) shall not apply with respect to an
7 extension of credit by a well capitalized depository
8 institution to acquire or sell securities if the follow-
9 ing conditions are met:

10 (A) The extension of credit is incidental to
11 clearing transactions in those securities through
12 the depository institution.

13 (B) Both the principal of and the interest
14 on the extension of credit are fully secured by
15 those securities.

16 (C) Either—

17 (i) the extension of credit is to be re-
18 paid before the close of business on the
19 same business day; or

20 (ii) all of the following conditions are
21 satisfied:

22 (I) The securities cannot, in the
23 ordinary course of business, be cleared
24 on that business day.

1 (II) The extension of credit is to
2 be repaid before the close of business
3 on the next business day.

4 (III) Extensions of credit subject
5 to this clause, when aggregated with
6 all other covered transactions between
7 the institution and all affiliated secu-
8 rities affiliates do not exceed 10 per-
9 cent of the institution's capital stock
10 and surplus.

11 (D) Either—

12 (i) the securities are securities ex-
13 pressly authorized by section 5136 of the
14 Revised Statutes of the United States as
15 permissible for a national bank to under-
16 write or deal in; or

17 (ii) the appropriate Federal banking
18 agency for the depository institution per-
19 mits transactions under this paragraph in
20 securities not described in clause (i) and
21 the securities affiliate provides the deposi-
22 tory institution with such additional secu-
23 rity or other assurance of performance, if

1 any, as such agency shall require to pre-
2 vent such transactions from posing any ap-
3 preciable risk to the institution.

4 (3) EXCEPTIONS FOR CERTAIN SECURITIES
5 PURCHASED FOR A DEPOSITORY INSTITUTION'S OWN
6 ACCOUNT.—Paragraph (1)(C) shall not apply with
7 respect to purchases at the current market value
8 (based on reliable and regularly available price
9 quotations, including those readily available on elec-
10 tronic quotation systems) of—

11 (A) securities expressly authorized by sec-
12 tion 5136 of the Revised Statutes of the United
13 States as permissible for a national bank to un-
14 derwrite or deal in; or

15 (B) securities that—

16 (i) the securities affiliate has been
17 marking to market daily; and

18 (ii) are rated investment grade by at
19 least one nationally recognized statistically
20 rating organization.

21 (4) OTHER EXCEPTIONS.—The appropriate
22 Federal banking agency may make exceptions to
23 paragraph (1) for well capitalized depository institu-
24 tions it regulates if—

1 (A) the transaction is fully secured in ac-
2 cordance with section 23A(c) of the Federal Re-
3 serve Act; and

4 (B) the aggregate amount of covered
5 transactions between the institution and all se-
6 curities affiliates of the financial services hold-
7 ing company, excluding transactions permitted
8 under paragraph (2)(C)(i) or (3)(A), does not
9 exceed 10 percent of the institution's capital
10 stock and surplus.

11 (b) CREDIT ENHANCEMENT RESTRICTED.—

12 (1) IN GENERAL.—No depository institution af-
13 filiated with a securities affiliate shall, directly or in-
14 directly, extend credit, or issue or enter into a stand-
15 by letter of credit, asset purchase agreement, indem-
16 nity, guarantee, insurance, or other facility, for the
17 purpose of enhancing the marketability of a securi-
18 ties issue underwritten by the securities affiliate.

19 (2) DEFINITION OF TERM BY BOARD.—The ap-
20 propriate Federal banking agency shall prescribe a
21 definition for the term “for the purpose of enhanc-
22 ing the marketability of a securities issue” for pur-
23 pose of paragraph (1).

24 (3) EXCEPTION FOR BANK ELIGIBLE SECURI-
25 TIES.—Paragraph (1) shall not apply with regard to

1 securities expressly authorized by section 5136 of
2 the Revised Statutes of the United States as permis-
3 sible for a national bank to underwrite or deal in.

4 (4) APPLICATION TO WELL CAPITALIZED DE-
5 POSITORY INSTITUTIONS.—

6 (A) IN GENERAL.—A well capitalized de-
7 pository institution may engage in a transaction
8 described in paragraph (1) if—

9 (i) the depository institution has
10 adopted appropriate limits on exposure on
11 a consolidated basis to any single customer
12 whose securities are underwritten by the
13 securities affiliate; and

14 (ii) the institution and its securities
15 affiliate have adopted appropriate proce-
16 dures, including maintenance of necessary
17 documentary records, to assure that any
18 such extension of credit, standby letter of
19 credit, asset purchase agreement indem-
20 nity, guarantee, insurance or other facility,
21 is on arm's length basis.

22 (B) ARM'S LENGTH TRANSACTION DE-
23 SCRIBED.—An extension of credit may be con-
24 sidered to be on arm's length basis if the terms
25 and conditions are substantially the same as

1 those prevailing at the time for comparable
2 transactions involving securities that are not
3 underwritten by the securities affiliate.

4 (C) COMPLIANCE WITH PARAGRAPH (1).—

5 The appropriate Federal banking agency may
6 require, by regulation or order, compliance with
7 paragraph (1) by well capitalized depository in-
8 stitutions exempt under this paragraph in order
9 to achieve any purpose specified in subsection
10 (k).

11 (c) PROHIBITION OF FINANCING PURCHASE OF SE-
12 CURITY BEING UNDERWRITTEN.—

13 (1) IN GENERAL.—No financial services holding
14 company or subsidiary of a financial services holding
15 company (other than a securities affiliate) shall
16 knowingly extend or arrange for the extension of
17 credit, directly or indirectly, secured by or for the
18 purpose of purchasing any security while, or for 30
19 days after, that security is the subject of a distribu-
20 tion in which a securities affiliate of that financial
21 services holding company participates as an under-
22 writer or a member of a selling group.

23 (2) RELIANCE ON ACKNOWLEDGEMENT.—For
24 purposes of paragraph (1), a financial services hold-
25 ing company or subsidiary may rely on an express

1 written acknowledgement signed by the borrower
2 that the credit is not secured by or for the purpose
3 of purchasing a security described in this subpara-
4 graph.

5 (3) APPLICATION TO BANK ELIGIBLE SECURI-
6 TIES.—Paragraph (1) shall not apply with regard to
7 extensions of credit if the securities are securities ex-
8 pressly authorized by section 5136 of the Revised
9 Statutes of the United States as permissible for a
10 national bank to underwrite or deal in.

11 (4) APPLICATION TO WELL CAPITALIZED DE-
12 POSITORY INSTITUTIONS.—The appropriate Federal
13 banking agency may make exceptions, by regulation
14 or order, to paragraph (1) for an extension of credit,
15 after consultation with and considering the views of
16 the Securities and Exchange Commission.

17 (5) CONSISTENCY WITH THE FEDERAL SECURI-
18 TIES LAWS.—No provision of this subsection shall be
19 construed as permitting a securities affiliate to ex-
20 tend or maintain credit, or arrange for an extension
21 of credit, except in compliance with applicable provi-
22 sions of the Securities Exchange Act of 1934 and
23 the regulations prescribed and interpretations issued
24 under such Act.

1 (d) RESTRICTION ON EXTENDING CREDIT TO MAKE
2 PAYMENTS ON SECURITIES.—

3 (1) IN GENERAL.—No depository institution af-
4 filiated with a securities affiliate shall, directly or in-
5 directly, extend credit to an issuer of securities un-
6 derwritten by such securities affiliate for the purpose
7 of paying the principal of those securities or interest
8 or dividends on those securities.

9 (2) EXCEPTIONS FOR CERTAIN EXTENSIONS OF
10 CREDIT.—Paragraph (1) shall not apply to an exten-
11 sion of credit for a documented purpose (other than
12 paying principal, interest, or dividends) if the tim-
13 ing, maturity, and other terms of the credit, taken
14 as a whole, are substantially different from those of
15 the underwritten securities.

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

21 (4) APPLICATION TO WELL CAPITALIZED DE-
22 POSITORY INSTITUTIONS.—

23 (A) IN GENERAL.—Paragraph (1) shall not
24 apply with respect to well capitalized depository
25 institutions if—

1 (i) the depository institution has
2 adopted appropriate limits on exposure on
3 a consolidated basis to any single customer
4 whose securities are underwritten by the
5 securities affiliate; and

6 (ii) the depository institution has
7 adopted appropriate procedures, including
8 maintenance of necessary documentary
9 records, to assure that any extension of
10 credit by the depository institution to an
11 issuer for the purpose of paying the prin-
12 cipal, interest or dividends on securities
13 underwritten by the securities affiliate is
14 on an arm's length basis.

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

23 (C) COMPLIANCE WITH SUBPARAGRAPH
24 (A).—The appropriate Federal banking agency
25 may require by regulation or order, compliance

1 with paragraph (1) by well capitalized depository
2 institutions exempt under this paragraph
3 in order to achieve any purpose specified in
4 subsection (k).

5 (e) COMMON DIRECTORS AND SENIOR EXECUTIVE
6 OFFICERS.—

7 (1) IN GENERAL.—The appropriate Federal
8 banking agency shall, by regulation or order, pre-
9 scribe the circumstances under which directors and
10 senior executive officers of a securities affiliate may
11 serve at the same time as directors or senior execu-
12 tive officers of any affiliated depository institutions.

13 (2) STANDARDS.—The appropriate Federal
14 banking agency, in issuing any regulation or order
15 pursuant to paragraph (1), shall consider appro-
16 priate factors including—

17 (A) any burdens imposed by restrictions on
18 director and senior executive officer interlocks;

19 (B) the safety and soundness of depository
20 institutions and securities affiliates;

21 (C) unfair competition in securities activi-
22 ties;

23 (D) improper exchange of customer infor-
24 mation; or

1 (E) harm to customers of securities affili-
2 ates or depository institutions that could rea-
3 sonably result from director and senior officer
4 interlocks.

5 (3) EXCEPTION FOR SMALL FINANCIAL SERV-
6 ICES HOLDING COMPANIES.—

7 (A) IN GENERAL.—Notwithstanding para-
8 graph (1), a director or senior executive officer
9 of a securities affiliate may serve at the same
10 time as a director or senior executive officer of
11 an affiliated depository institution if that insti-
12 tution and all affiliated depository institutions
13 have, in the aggregate, total assets of not more
14 than \$500,000,000.

15 (B) INFLATION ADJUSTMENT.—The dollar
16 limitation contained in subparagraph (A) shall
17 be adjusted annually after December 31, 1995,
18 by the annual percentage increase in the
19 Consumer Price Index for Urban Wage Earners
20 and Clerical Workers published by the Bureau
21 of Labor Statistics.

22 (4) EXCEPTION FOR CERTAIN FOREIGN AFFILI-
23 ATES.—Paragraph (1) shall not prohibit a director
24 or senior executive officer of a securities affiliate

1 from serving at the same time as a director or senior
2 executive officer of an entity which—

3 (A) is organized under section 25 or 25A
4 of the Federal Reserve Act;

5 (B) is an affiliate of such securities affili-
6 ate; and

7 (C) principally engages in business outside
8 the United States.

9 (f) DISCLOSURE REQUIRED BY SECURITIES AFFILI-
10 ATE.—

11 (1) IN GENERAL.—Pursuant to rules adopted
12 by the Securities and Exchange Commission in con-
13 sultation with the appropriate Federal banking agen-
14 cies, a securities affiliate shall conspicuously disclose
15 in writing to each of its customers at the time a se-
16 curities account is opened, or within a reasonable
17 time thereafter if it is not practicable to provide
18 such notice at that time, that—

19 (A) securities sold, offered, or rec-
20 ommended by the securities affiliate—

21 (i) are not deposits;

22 (ii) are not insured by the Federal
23 Deposit Insurance Corporation;

24 (iii) are not guaranteed by an affili-
25 ated insured depository institution;

1 (iv) are not otherwise an obligation of
2 an insured depository institution (unless
3 such is the case); and

4 (v) with regard to any product that
5 includes any investment component, are
6 subject to investment risks including pos-
7 sible loss of principal invested;

8 (B) the securities affiliate is not an in-
9 sured depository institution, and is a corpora-
10 tion separate from any insured depository insti-
11 tution; and

12 (C) the securities affiliate may be under-
13 writing or dealing in the securities being sold,
14 offered or recommended, and if so, would have
15 a financial interest in the transaction.

16 (2) FORM OF DISCLOSURE.—The disclosures re-
17 quired by paragraph (1) shall be made in clear and
18 concise language that—

19 (A) is readily comprehensible to customers
20 of the securities affiliate; and

21 (B) is designed to promote customer un-
22 derstanding that uninsured investment products
23 are not deposits insured by the Federal Deposit
24 Insurance Corporation.

1 (3) DISCLOSURE AUTHORITY.—Subject to para-
2 graph (2), the Securities and Exchange Commission,
3 after consultation with the appropriate Federal
4 banking agencies may, in its discretion, prescribe
5 disclosures in addition to the disclosures prescribed
6 by paragraph (1).

7 (g) DISCLOSURE REQUIRED BY DEPOSITORY INSTI-
8 TUTIONS.—

9 (1) IN GENERAL.—Pursuant to rules adopted
10 jointly by the appropriate Federal banking agencies
11 in consultation with the Securities and Exchange
12 Commission, no insured depository institution shall
13 knowingly express any opinion on the value of, or
14 the advisability of purchasing or selling, nonbanking
15 products (as defined by the appropriate Federal
16 banking agency) sold by the insured depository insti-
17 tution or any affiliate of an insured depository insti-
18 tution unless the insured depository institution con-
19 spicuously discloses in writing to the customer
20 that—

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

25 (B) the nonbanking products—

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

1 (B) is designed to promote customer un-
2 derstanding that nonbanking products are not
3 deposits insured by the Federal Deposit Insur-
4 ance Corporation.

5 (3) CUSTOMER ACKNOWLEDGMENT OF DISCLO-
6 SURE.—

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

17 (B) ONE-TIME ACKNOWLEDGMENT.—The
18 one-time written acknowledgment required by
19 subparagraph (A) and obtained with respect to
20 one account from a customer shall satisfy the
21 requirement with respect to all other investment
22 accounts opened by that customer at that de-
23 pository institution or securities affiliate.

1 (C) TIMING OF ACKNOWLEDGMENT.—The
2 one-time acknowledgment required by subpara-
3 graph (A) must be obtained within a reasonable
4 time after the account is opened.

5 (D) SPECIAL RULE FOR ACCREDITED IN-
6 VESTORS.—This paragraph shall not apply to
7 any customer who is, or meets the requirements
8 for, an accredited investor (as defined in section
9 2(15) of the Securities Act of 1933).

10 (4) DISCLOSURE AUTHORITY.—Subject to para-
11 graph (2), the appropriate Federal banking agencies
12 may jointly prescribe, after consultation with the Se-
13 curities and Exchange Commission, disclosures in
14 addition to the disclosures required by paragraph
15 (1).

16 (h) UNDERWRITING SECURITIES REPRESENTING OB-
17 LIGATIONS ORIGINATED BY AFFILIATE RESTRICTED.—A
18 securities affiliate shall not underwrite securities secured
19 by or representing an interest in mortgages or other obli-
20 gations originated or purchased by an affiliated depository
21 institution or subsidiary of such an institution—

22 (1) unless those securities—

23 (A) are rated by at least one unaffiliated,
24 nationally recognized statistical rating organiza-
25 tion;

1 (B) are issued or guaranteed by the Fed-
2 eral Home Loan Mortgage Corporation, the
3 Federal National Mortgage Association, or the
4 Government National Mortgage Association; or

5 (C) represent interests in securities de-
6 scribed in subparagraph (B); or

7 (2) except as permitted by the appropriate Fed-
8 eral banking agency.

9 (i) RECIPROCAL ARRANGEMENTS PROHIBITED.—No
10 financial services holding company and no subsidiary of
11 a financial services holding company may enter into any
12 agreement, understanding, or other arrangement under
13 which—

14 (1) One financial services holding company (or
15 subsidiary of that financial services holding com-
16 pany) agrees to engage in a transaction with, or on
17 behalf of, another financial services holding company
18 (or subsidiary of that financial services holding com-
19 pany), in exchange for

20 (2) the agreement of the second financial serv-
21 ices holding company referred to in paragraph (1)
22 (or a subsidiary of that financial services holding
23 company) to engage in any transaction with, or on

1 behalf of, the first financial services holding com-
2 pany referred to in such paragraph (or any subsidi-
3 ary of that financial services holding company), for
4 the purpose of evading any requirement or restric-
5 tion of Federal law on transactions between, or for
6 the benefit of, affiliates of financial services holding
7 companies.

8 (j) SAFEGUARDS APPLY TO CERTAIN SUBSIDI-
9 ARIES.—Except as provided in this section—

10 (1) SECURITIES AFFILIATE.—No subsidiary of
11 a securities affiliate may do anything that this sec-
12 tion prohibits the securities affiliate from doing.

13 (2) DEPOSITORY INSTITUTION.—No subsidiary
14 of a depository institution may do anything that this
15 subsection prohibits the depository institution from
16 doing.

17 (k) AUTHORITY TO MODIFY AND IMPOSE ADDI-
18 TIONAL SAFEGUARDS; INTERPRETIVE AUTHORITY.—

19 (1) IN GENERAL.—The appropriate Federal
20 banking agency may, by regulation or order—

21 (A) adopt additional limitations, restric-
22 tions or conditions on relationships or trans-
23 actions among depository institutions, their af-
24 filiates, and their customers; and

1 (B) make any modification to any limita-
2 tion, restriction, or condition imposed under
3 this section on relationships or transactions
4 among depository institutions, the affiliates of
5 depository institutions, and the customers of
6 such institutions or affiliates, including modi-
7 fications in addition to those expressly provided
8 for in this section.

9 (2) STANDARDS.—The appropriate Federal
10 banking agency may not exercise authority under
11 paragraph (1) unless such agency finds that such
12 action is consistent with the purposes of this act, in-
13 cluding—

14 (A) the avoidance of any significant risk to
15 the safety and soundness of depository institu-
16 tions or the Federal deposit insurance funds;

17 (B) the enhancement of the financial sta-
18 bility of financial services holding companies;

19 (C) the prevention of the subsidization of
20 securities affiliates by depository institutions;

21 (D) the avoidance of conflicts of interest or
22 other abuses; and

23 (E) the application of the principle of na-
24 tional treatment and equality of competitive op-
25 portunity between securities affiliates owned or

1 controlled by domestic financial services holding
2 companies and securities affiliates owned or
3 controlled by foreign banks operating in the
4 United States.

5 (3) BIENNIAL REVIEW.—Beginning 2 years
6 after the effective date of the Depository Institution
7 Affiliation Act, the appropriate Federal banking
8 agency shall, on a biennial basis—

9 (A) review all restrictions established pur-
10 suant to paragraph (1) to determine whether
11 any such restrictions are required any longer to
12 carry out the purposes of this Act; and

13 (B) modify or eliminate any such restric-
14 tion that such agency determines is no longer
15 required to carry out the purposes of this Act.

16 (l) COMPLIANCE PROGRAMS REQUIRED.—

17 (1) IN GENERAL.—Each appropriate Federal
18 banking agency and the Securities and Exchange
19 Commission shall establish a program for—

20 (A) sharing information, including reports
21 of examinations, concerning compliance with
22 this section or the amendments made by title
23 III of the Depository Institution Affiliation and
24 Thrift Charter Conversion Act, by—

1 (i) brokers, dealers, investment advis-
2 ers, or investment companies that are reg-
3 istered with the Securities and Exchange
4 Commission and that are affiliated with
5 depository institutions, or are separately
6 identifiable departments or divisions of de-
7 pository institutions registered as invest-
8 ment advisers; and

9 (ii) depository institutions and their
10 affiliates;

11 (B) enforcing compliance with this section
12 and the amendments made by this subtitle and
13 paragraphs (4) and (5) of section 3(a) of the
14 Securities Exchange Act of 1934 by entities
15 under its supervision; and

16 (C) responding to any complaints from
17 customers about inappropriate cross-marketing
18 of securities products or inadequate disclosure.

19 (2) DATA COLLECTION.—

20 (A) IN GENERAL.—The appropriate Fed-
21 eral banking agencies, after consultation with
22 and consideration of the views of the Securities
23 and Exchange Commission, shall (except as oth-
24 erwise provided by the appropriate Federal
25 banking agency after such consultation) require

1 any depository institution that has effected se-
2 curities transactions pursuant to any exception
3 enumerated in paragraphs (4)(C) and (5)(D) of
4 section 3(a) of the Securities Exchange Act of
5 1934 to identify the exceptions relied upon and
6 to submit such information necessary to mon-
7 itor compliance under such paragraphs.

8 (B) COMMISSION ACCESS.—The appro-
9 priate Federal banking agency shall make any
10 information referred to in subparagraph (A)
11 available to the Securities and Exchange Com-
12 mission, upon the request of the Commission.

13 (C) COMPLIANCE.—In implementing the
14 provisions of this paragraph, the appropriate
15 Federal banking agencies shall ensure that any
16 information requests to depository institutions
17 take into account the size and activities of the
18 institutions and do not cause undue reporting
19 burdens.

20 (3) COMMISSION'S ENFORCEMENT AUTHOR-
21 ITY.—Without limiting in any way the authority of
22 the appropriate Federal banking agencies under this
23 section, the Securities and Exchange Commission
24 shall have the authority to enforce provision of this

1 section against a securities affiliate as if such provi-
2 sion were a provision of the Securities Exchange Act
3 of 1934 to the extent that the provision applies with
4 respect to the conduct or activities of the securities
5 affiliate.

6 (4) EXAMINATION REPORTS.—

7 (A) IN GENERAL.—The appropriate Fed-
8 eral banking agencies shall, to the fullest extent
9 possible, use the reports of examination of any
10 broker, dealer, investment adviser, or invest-
11 ment company made by or on behalf of the Se-
12 curities and Exchange Commission and reports
13 made by or on behalf of a registered securities
14 association or national securities exchange, and
15 shall defer to such examinations for compliance
16 with the Federal securities laws.

17 (B) COMPLIANCE WITH SECTION 122 SAFE-
18 GUARDS.—The appropriate Federal banking
19 agencies shall—

20 (i) to the fullest extent possible, use
21 the reports of examination of any securi-
22 ties affiliate made by the appropriate Fed-
23 eral banking agency for such affiliate; and

1 (ii) defer to such examinations for
2 compliance with the provisions of this sec-
3 tion.

4 (5) INTERPRETATIONS OF THE FEDERAL SECURITIES
5 LAWS.—The appropriate Federal banking
6 agencies shall defer to the Securities and Exchange
7 Commission regarding all interpretations and en-
8 forcement of the Federal securities laws relating to
9 the application of the Federal securities laws to the
10 activities and conduct of brokers, dealers, investment
11 advisers, and investment companies.

12 (6) NOTICE OF CERTAIN ACTIONS BY SEC.—
13 The Securities and Exchange Commission shall give
14 notice to the appropriate Federal banking agency
15 upon the commencement of any disciplinary or law
16 enforcement proceedings by the Commission and a
17 copy of any order entered by the Commission
18 against—

19 (A) any broker, dealer, or investment ad-
20 viser that—

21 (i) is registered with the Securities
22 and Exchange Commission; and

23 (ii) is affiliated with, or is a sepa-
24 rately identifiable department or division
25 of, a depository institution;

1 (B) any investment company registered
2 with the Securities and Exchange Commission
3 that is an affiliate of or is advised by an invest-
4 ment adviser affiliated with a depository institu-
5 tion or by a separately identifiable department
6 or division of a depository institution that is a
7 registered investment adviser; or

8 (C) any financial services holding company,
9 depository institution, or subsidiary of such
10 company or institution, if the proposed action
11 relates to this section or the amendments made
12 by title III of the Depository Institution Affili-
13 ation and Thrift Charter Conversion Act.

14 (7) NOTICE OF CERTAIN ACTIONS BY APPRO-
15 PRIATE FEDERAL BANKING AGENCIES.—Upon the
16 commencement of any disciplinary or law enforce-
17 ment proceedings to enforce the provisions of this
18 section by an appropriate Federal banking agency
19 against any broker, dealer, investment adviser, or in-
20 vestment company that is registered under the Fed-
21 eral securities laws and is affiliated with a deposi-
22 tory institution or is a separately identifiable depart-
23 ment or division of a depository institution, the ap-
24 propriate Federal banking agency shall give notice to

1 the Securities and Exchange Commission of the pro-
2 posed action.

3 (8) IMMEDIATE ACTION ALLOWED BEFORE NO-
4 TICE.—The notice required under paragraph (6) or
5 (7) may be provided promptly after action by the Se-
6 curities and Exchange Commission or the appro-
7 priate Federal banking agency, if—

8 (A) the Commission determines that the
9 protection of investors requires immediate ac-
10 tion by the Commission and prior notice under
11 paragraph (6) is not practical under the cir-
12 cumstances; or

13 (B) the appropriate Federal banking agen-
14 cy determines that concerns for the safety and
15 soundness of a depository institution or its affil-
16 iate require immediate action by the agency and
17 prior notice under (7) is not practical under the
18 circumstances.

19 (9) COORDINATED ENFORCEMENT ACTION.—
20 The Securities and Exchange Commission and the
21 appropriate Federal banking agencies shall, to the
22 extent practicable, coordinate supervisory actions
23 based on applicable law where the actions are based
24 on the same or related events or practices.

1 (10) INVESTMENT COMPANIES NOT AFFILIATED
2 WITH A DEPOSITORY INSTITUTION.—The appro-
3 priate Federal banking agency shall not have au-
4 thority under this section or any other provision of
5 law to inspect or examine any investment company
6 registered under the Federal securities laws that is
7 not—

8 (A) affiliated with a depository institution;
9 or

10 (B) advised by an investment adviser affili-
11 ated with a depository institution or by a sepa-
12 rately identifiable department or division of a
13 depository institution that is a registered invest-
14 ment adviser.

15 (11) DEFINITION.—For purposes of this sub-
16 section, the term “Federal securities laws” means
17 the provisions of Federal law governing securities ac-
18 tivities that are within the jurisdiction of the Securi-
19 ties and Exchange Commission under the Securities
20 Act of 1933, the Securities Exchange Act of 1934,
21 the Investment Company Act of 1940, the Invest-
22 ment Advisers Act of 1940, and the Trust Indenture
23 Act of 1939.

24 (m) FOREIGN BANK FIREWALLS.—

1 (1) IN GENERAL.—A branch, agency, or com-
2 mercial lending company that is operated by a for-
3 eign bank that is a financial services holding com-
4 pany shall not be subject to the restrictions of any
5 subsection of this section, other than subsections (k)
6 and (l), if—

7 (A) such branch, agency, or commercial
8 lending company accepts no deposits in the
9 United States that are insured under the Fed-
10 eral Deposit Insurance Act;

11 (B) such foreign bank meets risk-based
12 capital standards comparable to the capital
13 standards required for a wholesale financial in-
14 stitution, giving due regard to the principle of
15 national treatment and equality of competitive
16 opportunity; and

17 (C) the home country of such foreign bank
18 satisfies the national treatment standard de-
19 scribed in section 102(l)(3).

20 (2) APPLICABILITY OF SUBSECTION (K) TO FOR-
21 EIGN BANKS.—Any limitation, restriction, condition,
22 or modification adopted under subsection (k) may be
23 applied by the appropriate Federal banking agency
24 to—

1 (A) a foreign bank that operates a branch,
2 agency, or commercial lending company de-
3 scribed in paragraph (1) (and any company
4 that owns or controls such foreign bank);

5 (B) any branch, agency or commercial
6 lending company operated by such foreign bank
7 in the United States; or

8 (C) any other affiliate of such foreign bank
9 in the United States; if such limitation, restric-
10 tion, condition, or modification is applied by
11 regulation or order of general applicability
12 under subsection (n)(1) to wholesale financial
13 institutions and their securities affiliates, sub-
14 ject to such modifications, conditions, or exemp-
15 tions as the appropriate Federal banking agen-
16 cy of such wholesale financial institution deems
17 appropriate, giving due regard to the principle
18 of national treatment and equality of competi-
19 tive opportunity.

20 (n) FIREWALLS APPLICABLE TO WHOLESALe FI-
21 NANCIAL INSTITUTIONS AND NATIONAL MARKET LEND-
22 ING INSTITUTIONS.—

23 (1) IN GENERAL.—A wholesale financial institu-
24 tion, and transactions between a wholesale financial
25 institution and its securities affiliate, shall not be

1 subject to the provisions of this section, except that
2 a wholesale financial institution and its securities af-
3 filiate shall be subject to subsections (k) and (l) in
4 the same manner and to the same extent such sub-
5 sections would apply if the wholesale financial insti-
6 tution were an insured depository institution.

7 (2) PROHIBITION ON EVASION OF FIREWALLS
8 BY AFFILIATED INSURED DEPOSITORY INSTITU-
9 TIONS.—An insured depository institution that is af-
10 filiated with a wholesale financial institution shall
11 not evade any requirement or restriction imposed by
12 this section by engaging in transactions or arrange-
13 ments with its affiliated wholesale financial institu-
14 tion.

15 (3) SIMILAR TREATMENT FOR NATIONAL MAR-
16 KET LENDING INSTITUTIONS.—A national market
17 lending institution, as defined in section 5158 of the
18 Revised Statutes of the United States, that is con-
19 trolled by a financial services holding company shall
20 be subject to this section in the same manner and
21 to the same extent as a wholesale financial institu-
22 tion.

23 (o) AUTHORITY OF NATIONAL FINANCIAL SERVICES
24 COMMITTEE.—

1 (1) IN GENERAL.—Except for rules issued pur-
2 suant to subsections (f) or (g), no rule, regulation,
3 or order authorized or required by this section shall
4 be issued without the approval of the National Fi-
5 nancial Services Committee.

6 (2) UNIFORM STANDARDS.—Any regulation,
7 rule, or order subject to the approval of the National
8 Financial Services Committee under paragraph (1)
9 shall be identical for each appropriate Federal bank-
10 ing agency, except as otherwise permitted by such
11 Committee, taking into account existing require-
12 ments, coordination of new requirements, minimiza-
13 tion of duplicative regulation, the degree of uniform-
14 ity between regulation of securities affiliates or in-
15 vestment companies affiliated with or advised by de-
16 pository institutions or their affiliates and other
17 broker dealers or investment companies, and an
18 analysis of any of the benefits to be obtained by any
19 unique regulatory burdens placed on securities affili-
20 ates or investment companies affiliated with or ad-
21 vised by depository institutions or their affiliates.

1 **SEC. 123. JOINT STANDARDS RELATING TO RETAIL SALES**
2 **OF CERTAIN NONDEPOSIT INVESTMENT**
3 **PRODUCTS.**

4 (a) IN GENERAL.—The National Financial Services
5 Committee shall prescribe standards applicable to any de-
6 pository institution which—

7 (1) is not registered as a broker under the Se-
8 curities Exchange Act of 1934;

9 (2) effects retail transactions in securities, in-
10 cluding securities issued by an investment company
11 or annuities; and

12 (3) is affiliated with a financial services holding
13 company.

14 (b) SCOPE OF STANDARDS.—The standards required
15 under paragraph (1) with respect to retail sales of securi-
16 ties and annuities referred to in such paragraph shall, at
17 a minimum, establish requirements with respect to—

18 (1) sales practices;

19 (2) disclosures and advertising in connection
20 with transactions in such securities and annuities,
21 including—

22 (A) the content, form, and timing of any
23 such disclosure; and

24 (B) disclaimers concerning the noninsured
25 status of the security or annuity;

1 (3) the compensation of sales personnel with re-
2 spect to referrals or transactions;

3 (4) the training of and qualifications for per-
4 sonnel involved in such transactions, including train-
5 ing in making an accurate judgment about the suit-
6 ability of a particular investment product for a pro-
7 spective customer; and

8 (5) the setting in which and the circumstances
9 under which transactions may be effected, and refer-
10 rals made, by sales personnel with respect to such
11 securities and annuities.

12 (c) COMPARABILITY REQUIREMENT.—The standards
13 required under paragraph (1) shall be comparable to the
14 standards applicable to brokers and dealers registered
15 under the Securities Exchange Act of 1934 unless the Na-
16 tional Financial Services Committee determines that im-
17 plementation of comparable standards is not necessary or
18 appropriate for the maintenance of fair and orderly mar-
19 kets or the protection of investors or is not in the public
20 interest.

1 **Subtitle C—Insurance and Real Estate Devel-**
2 **opment Activities of Financial Services**
3 **Holding Companies**

4 **SEC. 131. LIMITATION ON INSURANCE UNDERWRITING AND**
5 **REAL ESTATE DEVELOPMENT ACTIVITIES OF**
6 **DEPOSITORY INSTITUTIONS.**

7 (a) IN GENERAL.—No depository institution that is
8 an affiliate of a financial services holding company shall
9 directly engage in—

10 (1) insurance underwriting (other than credit-
11 related insurance underwriting); or

12 (2) real estate investment or development, ex-
13 cept to the extent that such activities are performed
14 in relation to the premises of the depository institu-
15 tion or in connection with securing or collecting a
16 debt previously contracted in good faith, or would be
17 authorized for a national bank under section 5137
18 of the Revised Statutes of the United States or the
19 first section of the Act of September 28, 1962 (12
20 U.S.C. 92a).

21 (b) CONSTRUCTION.—Nothing contained in this sec-
22 tion shall be construed to prohibit or impede—

23 (1) a financial services holding company or any
24 affiliate of a financial services holding company

1 other than a depository institution from engaging in
2 any of the activities set forth in paragraph (1); or
3 (2) any employee of a depository institution
4 that is an affiliate of a financial services holding
5 company from promoting or advertising products or
6 services of an affiliate of such insured depository in-
7 stitution that engages in any of such activities.

8 **SEC. 132. ACQUISITION OF PREEXISTING INSURANCE AGEN-**
9 **CY BY BANK HOLDING COMPANIES.**

10 (a) IN GENERAL.— No bank holding company which
11 becomes a financial services holding company and no fi-
12 nancial services holding company which did not at any
13 time prior to becoming such a holding company, directly
14 or indirectly, engage in insurance agency activities other
15 than activities generally permissible for bank holding com-
16 panies under section 4(e)(8) of the Bank Holding Com-
17 pany Act of 1956, shall commence any insurance agency
18 activities not generally permissible for bank holding com-
19 panies under section 4(e)(8) of the Bank Holding Com-
20 pany Act of 1956, unless such activities are conducted
21 through an existing insurance agency acquired directly or
22 indirectly by such financial services holding company or

1 through any successor to such insurance agency, and un-
2 less such acquired insurance agency shall have been ac-
3 tively engaged in such insurance activities during the 2-
4 year period preceding the date of such acquisition.

5 **SEC. 133. EXISTING CONTRACTS.**

6 Nothing in sections 131 or 132 shall require the
7 breach of any contract entered into before the date of en-
8 actment of this Act.

9 **Subtitle D—Redomestication of**
10 **Mutual Life Insurers**

11 **SEC. 141. REDOMESTICATION OF MUTUAL LIFE INSURERS.**

12 (a) REDOMESTICATION.—A mutual life insurer orga-
13 nized under the laws of any State may transfer its domi-
14 cile to a transferee domicile as a step in a reorganization
15 in which, pursuant to the laws of the transferee domicile,
16 the mutual life insurer becomes a stock life insurer, wheth-
17 er as a direct or indirect subsidiary of a mutual holding
18 company or otherwise. Upon compliance with the applica-
19 ble law of the transferee domicile governing transfers of
20 domicile and completion of a transfer pursuant to this sec-
21 tion, the mutual life insurer shall cease to be a domestic
22 insurer in the transferor domicile and, as a continuation
23 of its corporate existence, shall be a domestic insurer of
24 the transferee domicile.

1 (b) LICENSES, ETC.—The certificate of authority,
2 agents' appointments and licenses, rates, approvals and
3 other items which a licensed State allows and that are in
4 existence immediately prior to the time a redomesticating
5 insurer transfers its domicile pursuant to this section shall
6 continue in full force and effect upon transfer if the in-
7 surer remains duly qualified to transact the business of
8 insurance in such licensed State. All outstanding insur-
9 ance policies and annuity contracts of a redomesticating
10 insurer shall remain in full force and effect and need not
11 be endorsed as to the new domicile of the insurer unless
12 so ordered by the State insurance regulator of a licensed
13 State, and then only as to those outstanding policies whose
14 owners reside in such licensed State. Applicable State law
15 may require a redomesticating insurer to file new policy
16 forms with the State insurance regulator of a licensed
17 State on or before the effective date of the transfer, but
18 a redomesticating insurer may use existing policy forms
19 with appropriate endorsements to reflect the new domicile
20 of the redomesticating insurer until the new policy forms
21 are approved for use by the State insurance regulator of
22 such licensed State. A redomesticating insurer shall give
23 notice of the proposed transfer to the State insurance reg-
24 ulator of each licensed State and shall file promptly any
25 resulting amendments to corporate documents required to

1 be filed by a foreign licensed mutual life insurer with the
2 insurance regulator of each such licensed State.

3 (c) PREEMPTION OF STATE LAWS RESTRICTING RE-
4 DOMESTICATION.—(1) Any State law conflicting with the
5 provisions of this section is hereby preempted. Without
6 limiting the generality of the preceding sentence, the fol-
7 lowing State laws purporting to regulate redomesticated
8 or redomesticating insurers shall be preempted with re-
9 spect to such insurers:

10 (A) Any provision impeding or intended to im-
11 pede the activities of, taking any action against, or
12 applying any provision of law or regulation to, any
13 insurer or affiliate of such insurer because that in-
14 surer or any affiliate plans to redomesticate or has
15 redomesticated pursuant to this section.

16 (B) Any provision impeding the activities of,
17 taking any action against, or applying any provision
18 of law or regulation to, any insured or any insurance
19 licensee or other intermediary because such insured
20 or such insurance licensee or other intermediary has
21 procured insurance from or placed insurance with
22 any insurer or any affiliate of such insurer that
23 plans to redomesticate or has redomesticated pursu-
24 ant to this section.

1 (C) Any provision purporting to terminate, by
2 reason of the redomestication of a mutual life in-
3 surer pursuant to this section, any certificate of au-
4 thority, agent appointment or license, rate approval
5 or other approval of any State insurance regulator
6 or other State authority in existence immediately
7 prior to the redomestication in any State other than
8 the transferee domicile.

9 Where a State applies any State law to a redomesticating
10 or redomesticated insurer or insurers (as well as affiliates
11 of such insurer or insurers) in a different manner than
12 the State has applied such law to insurers that are not
13 redomesticating or redomesticated insurers, such applica-
14 tion of such law or regulation to the redomesticating or
15 redomesticated insurer or insurers shall be preempted.

16 (2) If any licensed State fails to issue, delays the issu-
17 ance of, or seeks to revoke an original or renewal certifi-
18 cate of authority of a redomesticated insurer immediately
19 following redomestication, except on grounds and in a
20 manner consistent with its past practices regarding the
21 issuance of certificates of authority to foreign insurers
22 that are not redomesticating, then the redomesticating in-
23 surer shall be exempt from any State law of the licensed
24 State to the extent that such State law or the operation

1 of such State law would make unlawful, or regulate, di-
2 rectly or indirectly, the operation of the redomesticated in-
3 surer, except that such licensed State may require the re-
4 domesticated insurer to—

5 (A) comply with the unfair claim settlement
6 practices law of the licensed State;

7 (B) pay, on a nondiscriminatory basis, applica-
8 ble premium and other taxes which are levied on li-
9 censed insurers or policyholders under the laws of
10 the licensed State;

11 (C) register with and designate the State insur-
12 ance regulator as its agent solely for the purpose of
13 receiving service of legal documents or process;

14 (D) submit to an examination by the State in-
15 surance regulator in any licensed State in which the
16 redomesticated insurer is doing business to deter-
17 mine the insurer's financial condition, if (i) the
18 State insurance regulator of the transferee domicile
19 has not begun and has refused to initiate an exam-
20 ination of the redomesticated insurer; and (ii) any
21 such examination is coordinated to avoid unjustified
22 duplication and repetition;

23 (E) comply with a lawful order issued in (i) a
24 delinquency proceeding commenced by the State in-
25 surance regulator of any licensed State if there has

1 been a judicial finding of financial impairment under
2 subparagraph (G) below, or (ii) a voluntary dissolu-
3 tion proceeding;

4 (F) comply with any State law regarding decep-
5 tive, false, or fraudulent acts or practices, except
6 that if the licensed State seeks an injunction regard-
7 ing the conduct described in this paragraph, such in-
8 junction must be obtained from a court of competent
9 jurisdiction as provided in subparagraph (D);

10 (G) comply with an injunction issued by a court
11 of competent jurisdiction, upon a petition by the
12 State insurance regulator alleging that the redomes-
13 ticated insurer is in hazardous financial condition or
14 is financially impaired;

15 (H) participate in any insurance insolvency
16 guaranty association on the same basis as any other
17 insurer licensed in the licensed State;

18 (I) require a person acting, or offering to act,
19 as an insurance licensee for a redomesticated insurer
20 in the licensed State to obtain a license from that
21 State, except that such State may not impose any
22 qualification or requirement which discriminates
23 against a nonresident insurance licensee.

24 (d) JUDICIAL REVIEW.—The appropriate United
25 States district court shall have exclusive jurisdiction over

1 litigation arising under this section involving any redomes-
2 ticating or redomesticated company.

3 (e) SEPARABILITY.—If any provision of this section,
4 or the application thereof to any person or circumstances,
5 is held invalid, the remainder of the section, and the appli-
6 cation of such provision to other persons or circumstances,
7 shall not be affected thereby.

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

10 (1) COURT OF COMPETENT JURISDICTION.—

11 The term “court of competent jurisdiction” means a
12 court authorized pursuant to subsection (d) to adju-
13 dicate litigation arising under this section.

14 (2) DOMICILE.—The term “domicile” means
15 the State in which an insurer is incorporated, char-
16 tered or organized.

17 (3) INSURANCE LICENSEE.—The term “insur-
18 ance licensee” means any person who or which holds
19 a license under State law to act as insurance agent,
20 subagent, broker or consultant.

21 (4) INSTITUTION.—The term “institution”
22 means a corporation, joint stock company, limited li-
23 ability company, limited liability partnership, asso-
24 ciation, trust, partnership or any similar entity.

1 (5) LICENSED STATE.—The term “licensed
2 State” means any State, Puerto Rico or the United
3 States Virgin Islands in which the redomesticating
4 insurer has a certificate of authority in effect imme-
5 diately prior to the redomestication.

6 (6) MUTUAL LIFE INSURER.—The term “mu-
7 tual life insurer” means a mutual life insurer orga-
8 nized under the laws of any State.

9 (7) PERSON.—The term “person” means an in-
10 dividual, institution, government or governmental
11 agency, State or political subdivision of a State, pub-
12 lic corporation, board, association, estate, trustee, or
13 fiduciary, or any similar entity.

14 (8) REDOMESTICATED INSURER.—The term
15 “redomesticated insurer” means a mutual life in-
16 surer that has redomesticated pursuant to this sec-
17 tion.

18 (9) REDOMESTICATING INSURER.—The term
19 “redomesticating insurer” means a mutual life in-
20 surer that is redomesticating pursuant to this sec-
21 tion.

22 (10) REDOMESTICATION OR TRANSFER.—The
23 terms “redomestication” and “transfer” mean the
24 transfer of the domicile of a mutual life insurer from
25 one State to another State pursuant to this section.

1 (11) STATE INSURANCE REGULATOR.—The
2 term “State insurance regulator” means the prin-
3 cipal insurance regulatory authority of a State or of
4 Puerto Rico or the United States Virgin Islands.

5 (12) STATE LAW.—The term “State law”
6 means the statutes of any State or of Puerto Rico
7 or the United States Virgin Islands and any regula-
8 tion, order, or requirement prescribed pursuant to
9 any such statute.

10 (13) TRANSFEREE DOMICILE.—The term
11 “transferee domicile” means the State to which a
12 mutual life insurer is redomesticating pursuant to
13 the provisions of this section.

14 (14) TRANSFEROR DOMICILE.—The term
15 “transferor domicile” means the State from which a
16 mutual life insurer is redomesticating pursuant to
17 the provisions of this section.

18 (15) VOTING SECURITIES.—The term “voting
19 securities” means securities of any class or any own-
20 ership interest having voting power for the election
21 of the board of directors of a person, other than se-
22 curities having voting power only because of the oc-
23 currence of a contingency.

1 **TITLE II—CONFORMING AMENDMENTS TO**
2 **OTHER LAWS FOR FINANCIAL SERV-**
3 **ICES HOLDING COMPANIES**

4 **SEC. 201. EXEMPTION OF FINANCIAL SERVICES HOLDING**
5 **COMPANIES FROM THE BANK HOLDING COM-**
6 **PANY ACT OF 1956.**

7 Section 2(c)(2) of the Bank Holding Company Act
8 of 1956 (12 U.S.C. 1841(c)(2)) is amended by adding at
9 the end the following new subparagraphs:

10 “(K) An insured bank, as defined in sec-
11 tion 3 of the Federal Deposit Insurance Act,
12 that is controlled by a financial services holding
13 company, as defined in section 102(a) of the
14 Financial Services Holding Company Act.

15 “(L) A wholesale financial institution, as
16 defined in section 102(i) of the Financial Serv-
17 ices Holding Company Act, that is controlled by
18 a financial services holding company, as defined
19 in section 102(a) of such Act.”.

20 **SEC. 202. AMENDMENTS TO THE FEDERAL RESERVE ACT.**

21 (a) IN GENERAL.—Section 23B(b)(1)(B) of the Fed-
22 eral Reserve Act (12 U.S.C. 371c–1(b)(1)(B)) is amended
23 by inserting “and for 30 days thereafter” after “during
24 the existence of any underwriting or selling syndicate”.

1 (b) AFFILIATES OF MEMBER BANKS.—The 22d un-
2 designated paragraph of section 9 of the Federal Reserve
3 Act (12 U.S.C. 338) is amended by adding at the end the
4 following new sentence: “No provision of this paragraph
5 shall be construed as authorizing an examination of an
6 affiliate of a member bank if the member bank is an affili-
7 ate of a financial services holding company (as defined in
8 section 102 of the Financial Services Holding Company
9 Act).”.

10 **SEC. 203. AMENDMENTS TO THE BANKING ACT OF 1933.**

11 (a) SECTION 20.—Section 20 of the Banking Act of
12 1933 (12 U.S.C. 377) is amended by inserting after the
13 first undesignated paragraph the following: “The provi-
14 sions of this section shall not apply to a financial services
15 holding company or any of its affiliates, as such terms
16 are defined in section 102 of the Financial Services Hold-
17 ing Company Act.”

18 (b) SECTION 32.—Section 32 of the Banking Act of
19 1933 (12 U.S.C. 78) is amended by adding at the end
20 the following: “This section shall not apply so as to pro-
21 hibit an officer, director, or employee of a securities affili-
22 ate (as defined in section 102(r) of the Financial Services
23 Holding Company Act) from serving at the same time as
24 an officer, director, or employee of a member bank affili-
25 ated with the securities affiliate pursuant to such Act.

1 This section shall not apply so as to prohibit an officer,
2 director, or employee of an investment company registered
3 under the Investment Company Act of 1940 or an invest-
4 ment adviser registered under the Investment Advisers
5 Act of 1940 from serving at the same time as an officer,
6 director, or employee of a member bank that is affiliated
7 with a financial services holding company (as defined in
8 section 102(a) of the Financial Services Holding Company
9 Act).”.

10 **SEC. 204. AMENDMENTS TO THE FEDERAL DEPOSIT INSUR-**
11 **ANCE ACT.**

12 (a) SECTION 7.—Section 7(j) of the Federal Deposit
13 Insurance Act (12 U.S.C. 1817(j)) is amended—

14 (1) in paragraph (8), by striking subparagraph
15 (B) and inserting the following:

16 “(B) the term ‘control’ means the power,
17 directly or indirectly, to direct the management
18 or policies of a company, or to vote 25 percent
19 or more of any class of voting securities of a
20 company, except that no company shall be
21 deemed to control or to have acquired control of
22 any other company by virtue of its ownership of
23 the voting securities of such other company—

24 “(i) acquired or held in an agency,
25 trust, or other fiduciary capacity;

1 “(ii) acquired or held in connection
2 with or incidental to—

3 “(I) the underwriting of securi-
4 ties if such securities are held only for
5 such person of time as will permit the
6 sale thereof on a reasonable basis; or

7 “(II) market making, dealing,
8 trading, brokerage, or other securities-
9 related activities and not with a view
10 to acquiring, exercising, or transfer-
11 ring any control over the management
12 or policies of such company; or

13 “(iii) acquired in securing or collect-
14 ing a debt previously contracted in good
15 faith, until 2 years after the date of acqui-
16 sition, except that no company formed for
17 the sole purpose of participating in a proxy
18 solicitation is in control of a company by
19 virtue of its acquisition of voting rights
20 with respect to shares of such company ac-
21 quired in the course of such solicitation.”;

22 and

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

1 “(19) DEFINITION.—For purposes of this sub-
2 section, the term ‘insured depository institution’
3 shall include—

4 “(A) any ‘bank holding company’, as that
5 term is defined in section 2 of the Bank Hold-
6 ing Company Act of 1956, which has control of
7 any insured bank (as defined in that section 2),
8 and the appropriate Federal banking agency in
9 the case of a bank holding company shall be the
10 Board of Governors of the Federal Reserve Sys-
11 tem; and

12 “(B) any ‘financial services holding com-
13 pany’, as that term is defined in section 102(a)
14 of the Financial Services Holding Company
15 Act, which has control of any such insured
16 bank, and the appropriate Federal banking
17 agency in the case of a financial services hold-
18 ing company shall be the appropriate Federal
19 banking agency of the lead depository institu-
20 tion (as defined in section 102(h) of the Finan-
21 cial Services Holding Company Act) of the fi-
22 nancial services holding company.

23 (b) SECTION 18.—Section 18(j)(1)(A) of the Federal
24 Deposit Insurance Act (12 U.S.C. 1828(j)(1)(A)) is
25 amended by striking “Sections” and inserting “Subject to

1 section 104(a)(2) of the Financial Services Holding Com-
2 pany Act, sections”.

3 (c) APPROPRIATE FEDERAL BANKING AGENCY.—

4 (1) STATE MEMBER WHOLESALE FINANCIAL IN-
5 STITUTIONS.—Section 3(g)(2)(A) of the Federal De-
6 posit Insurance Act (12 U.S.C. 1813 (q)(2)(A)) is
7 amended to read as follows:

8 “(A) any State member insured bank (ex-
9 cept a District bank) and State member whole-
10 sale financial institution as authorized pursuant
11 to section 9B of the Federal Reserve Act.”.

12 (2) NATIONAL WHOLESALE FINANCIAL INSTI-
13 TUTION.—Section 3(g)(1) of the Federal Deposit In-
14 surance Act (12 U.S.C. 1813(q)(1)) is amended by
15 inserting “(including any national wholesale finan-
16 cial institution and any national market funded lend-
17 ing institution, as authorized pursuant to sections
18 5136B and 5158 of the Revised Statutes of the
19 United States)”.

20 (d) SECURITIES COMPANY AFFILIATIONS OF FDIC-
21 INSURED BANKS.—Section 18 of the Federal Deposit In-
22 surance Act (12 U.S.C. 1828) is amended by adding at
23 the end thereof the following new subsection:

24 “(s) SECURITIES AFFILIATIONS OF BANKS.—

1 “(1) IN GENERAL.—A bank shall not be an af-
2 filiate of any company that, directly or indirectly,
3 acts as an underwriter or dealer of any security,
4 other than—

5 “(A) a bank;

6 “(B) a securities affiliate as defined in sec-
7 tion 102(r) of the Financial Services Holding
8 Company Act; or

9 “(C) a company that underwrites or deals
10 only in securities that are described in section
11 121 of the Depository Institution Affiliation
12 and Thrift Charter Conversion Act.

13 “(2) EXCEPTIONS.—

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

17 “(i) an insured bank described in sub-
18 paragraph (D), (F), or (H) of section
19 2(c)(2) of the Bank Holding Company Act
20 of 1956; and

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

24 “(B) AFFILIATIONS WITH EDGE ACT AND
25 AGREEMENT CORPORATIONS.—Paragraph (1)

1 shall not apply with respect to the affiliation of
2 a bank with a company held pursuant to section
3 25 or 25A of the Federal Reserve Act or section
4 4(c)(13) of the Bank Holding Company Act of
5 1956.

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

8 “(A) an affiliation between a bank and a
9 company that underwrites or deals in securities,
10 provided that—

11 “(i) the affiliation is authorized pur-
12 suant to an order issued by the Board of
13 Governors of the Federal Reserved System
14 under section 4(c)(8) of the Bank Holding
15 Company Act of 1956; and

16 “(ii) such company complies with the
17 limitations, restrictions, and conditions, in-
18 cluding the limitation on the revenue that
19 may be derived from underwriting or deal-
20 ing activities, that were generally applica-
21 ble to companies that, as of January 1,
22 1996, were subject to orders described in
23 clause (i);

24 “(B) any other lawful affiliation that ex-
25 isted on January 1, 1996; or

1 “(C) any new affiliation by an insured that
2 has an affiliation that would be prohibited if the
3 affiliation were not covered by subparagraph
4 (B).

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

7 “(A) DEALER.—The term ‘dealer’ has the
8 meaning given to such term in section 3(a)(5)
9 of the Securities Exchange Act of 1934.

10 “(B) SECURITY.—The term ‘security’ has
11 the meaning given to such term in section
12 121(c) of the Financial Services Holding Com-
13 pany Act.

14 “(C) UNDERWRITER.—The term ‘under-
15 writer’ has the meaning given to such term in
16 section 2(11) of the Securities Act of 1933.”.

17 (e) AFFILIATE OF AN INSURED DEPOSITORY INSTI-
18 TUTION.—Section 10(b)(4) of the Federal Deposit Insur-
19 ance Act (12 U.S.C. 1820(b)(4)) is amended by adding
20 at the end the following new subparagraph:

1 “(C) AFFILIATES OF FINANCIAL SERVICES
2 HOLDING COMPANY.—No provision of this para-
3 graph shall be construed as authorizing an ex-
4 amination of an affiliate of an insured deposi-
5 tory institution if the insured depository institu-
6 tion is an affiliate of a financial services holding
7 company (as defined in section 102 of the Fi-
8 nancial Services Holding Company Act).”.

9 **SEC. 205. AMENDMENT TO THE COMMUNITY REINVEST-**
10 **MENT ACT.**

11 Section 803(3) of the Community Reinvestment Act
12 of 1977 (12 U.S.C. 2902(3)) is amended—

13 (1) by inserting “or notice, as appropriate”
14 after “an application”;

15 (2) in subparagraph (E), by striking “or” at
16 the end;

17 (3) in subparagraph (F), by striking the period
18 at the end and inserting “; or”; and

19 (4) by adding at the end the following new sub-
20 paragraph:

21 “(G) the acquisition of an insured deposi-
22 tory institution requiring prior notice under sec-
23 tion 103 of the Financial Services Holding
24 Company Act.”.

1 **SEC. 206. AMENDMENT TO THE FEDERAL POWER ACT.**

2 Section 305(b) of the Federal Power Act shall not
3 apply to any person now holding, or proposing to hold,
4 at the same time the position of officer or director of a
5 public utility and the position of officer or director of a
6 bank, trust company, banking association, or firm per-
7 mitted by the Financial Services Holding Company Act
8 to underwrite or participate in the marketing of securities
9 of the public utility for which the person serves, or pro-
10 poses to serve, as an officer or director.

11 **SEC. 207. AMENDMENT TO THE RIGHT TO FINANCIAL PRI-**
12 **VACY ACT.**

13 Section 1112(e) of the Right to Financial Privacy Act
14 (12 U.S.C. 3412(e)) is amended as follows—

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

16 and

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

19 **SEC. 208. AMENDMENTS TO THE INTERNATIONAL BANKING**
20 **ACT.**

21 (a) EXEMPTION FROM PROVISIONS OF BANK HOLD-
22 ING COMPANY ACT FOR FOREIGN BANKS QUALIFYING AS
23 FINANCIAL SERVICES HOLDING COMPANIES.—Section
24 8(a) of the International Banking Act (12 U.S.C.
25 32016(a)) is amended by adding at the end by striking

1 “provisions.” and inserting the following: “provisions, ex-
2 cept that any such foreign bank or company that qualifies
3 and elects to be treated as a financial services holding
4 company, shall not be so subject to the provisions of the
5 Bank Holding Company Act of 1956.”.

6 (b) **AUTHORITY TO TERMINATE GRANDFATHER**
7 **RIGHTS.**—Section 8(c) of the International Banking Act
8 of 1978 (12 U.S.C. 3106(c)) is amended by adding at the
9 end the following new paragraph:

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

12 “(A) **IN GENERAL.**—Notwithstanding the
13 provisions of paragraph (1) or any other provi-
14 sion of law, any authority conferred under this
15 subsection on any foreign bank or company
16 with respect to securities activities authorized
17 for bank holding companies in the United
18 States shall terminate 30 days after such for-
19 eign bank or company becomes a financial serv-
20 ices holding company under the Financial Serv-
21 ices Holding Company Act.”.

22 **SEC. 209. AMENDMENT CONCERNING NATIONAL BANKS.**

23 The 1st undesignated paragraph of section 5240 of
24 the Revised Statutes of the United States (12 U.S.C. 481)

1 is amended by inserting after the 1st sentence the follow-
2 ing new sentence: “No provision of this paragraph shall
3 be construed as authorizing an examination of an affiliate
4 of a national bank if the national bank is an affiliate of
5 a financial services holding company (as defined in section
6 102 of the Financial Services Holding Company Act).”.

7 **TITLE III—FUNCTIONAL REGULATION**
8 **AMENDMENTS TO SECURITIES LAWS**
9 **FOR FINANCIAL SERVICES HOLDING**
10 **COMPANIES**

11 **Subtitle A—Broker Dealer Provisions**

12 **SEC. 301. DEFINITION OF BROKER.**

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

15 “(4) BROKER.—

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

20 “(B) EXCLUSION OF BANKS.—The term
21 ‘broker’ does not include a bank unless such
22 bank is affiliated with a financial services hold-
23 ing company, as defined in section 102(a) of
24 the Financial Services Holding Company Act
25 and—

1 “(i) publicly solicits the business of
2 effecting securities transactions for the ac-
3 count of others; or

4 “(ii) is compensated for such business
5 by the payment of commissions or similar
6 remuneration based on effecting trans-
7 actions in securities (other than fees cal-
8 culated as a percentage of assets under
9 management) in excess of the bank’s incre-
10 mental costs directly attributable to
11 effecting such transactions (hereafter re-
12 ferred to as ‘incentive compensation’).

13 “(C) EXEMPTION FOR CERTAIN BANK AC-
14 TIVITIES.—A bank shall not be considered to be
15 a broker because the bank engages in any of
16 the following activities under the conditions de-
17 scribed:

18 “(i) THIRD PARTY BROKERAGE AR-
19 RANGEMENTS.—The bank enters into a
20 contractual or other arrangement with a
21 broker or dealer registered under this title
22 under which the broker or dealer offers
23 brokerage services on or off the premises
24 of the bank if—

1 “(I) such broker or dealer is
2 clearly identified as the person per-
3 forming the brokerage services;

4 “(II) the broker or dealer per-
5 forms brokerage services in an area
6 that is clearly marked, and unless
7 made impossible by space or personnel
8 considerations, physically separate
9 from the routine deposit-taking activi-
10 ties of the bank;

11 “(III) any materials used by the
12 bank to advertise or promote generally
13 the availability of brokerage services
14 under the contractual or other ar-
15 rangement clearly indicate that the
16 brokerage services are being provided
17 by the broker or dealer and not by the
18 bank;

19 “(IV) any materials used by the
20 bank to advertise or promote generally
21 the availability of brokerage services
22 under the contractual or other ar-
23 rangement are in compliance with the
24 Federal securities laws before dis-
25 tribution;

1 “(V) bank employees perform
2 only clerical or ministerial functions in
3 connection with brokerage actions, in-
4 cluding scheduling appointments with
5 the associated persons of a broker or
6 dealer, and on behalf of a broker or
7 dealer, transmitting orders or han-
8 dling customers’ funds or securities,
9 except that bank employees who are
10 not so qualified may describe in gen-
11 eral terms investment vehicles under
12 the contractual or other arrangement
13 and accept customers’ orders on be-
14 half of the broker or dealer if such
15 employees have received training that
16 is substantially equivalent to the
17 training required for personnel quali-
18 fied to sell securities pursuant to the
19 requirements of a self-regulatory orga-
20 nization (as defined in section 3(a) of
21 the Securities Exchange Act of 1934);

22 “(VI) bank employees do not di-
23 rectly receive incentive compensation
24 for any brokerage transaction unless
25 such employees are associated persons

1 of a broker or dealer and are qualified
2 pursuant to the requirements of a
3 self-regulatory organization (as so de-
4 fined) except that the bank employees
5 may receive nominal cash and
6 noncash compensation for customer
7 referrals if the cash compensation is a
8 one-time fee of a fixed dollar amount
9 and the payment of the fee is not con-
10 tingent on whether the referral results
11 in a transaction;

12 “(VII) such services are provided
13 by the broker or dealer on a basis in
14 which all customers which receive any
15 services are fully disclosed to the
16 broker or dealer; and

17 “(VIII) the broker or dealer in-
18 forms each customer that the broker-
19 age services are provided by the
20 broker or dealer and not by the bank
21 and that the securities are not depos-
22 its or other obligations of the bank,
23 are not guaranteed by the bank, and
24 are not insured by the Federal De-
25 posit Insurance Corporation.

1 “(ii) TRUST ACTIVITIES.—The bank
2 engages in trust activities (including
3 effecting transactions in the course of such
4 trust activities) permissible for national
5 banks under the first section of the Act of
6 September 28, 1962, or for State banks
7 under relevant State trust statutes or law
8 (including securities safekeeping, self-di-
9 rected individual retirement accounts, or
10 managed agency accounts or other func-
11 tionally equivalent accounts of a bank) un-
12 less the bank—

13 “(I) publicly solicits brokerage
14 business, other than by advertising
15 that it effects transactions in securi-
16 ties in conjunction with advertising its
17 other activities; or

18 “(II) receives incentive com-
19 pensation for such brokerage activi-
20 ties.

21 “(iii) PERMISSIBLE SECURITIES
22 TRANSACTIONS.—The bank effects trans-
23 actions in exempted securities, other than
24 municipal securities, in commercial paper,
25 bankers acceptances, commercial bills,

1 qualified Canadian Government obligations
2 as defined in section 5136 of the Revised
3 Statutes, obligations of the Washington
4 Metropolitan Area Transit Authority which
5 are guaranteed by the Secretary of Trans-
6 portation under section 9 of the National
7 Capital Transportation Act of 1969, obli-
8 gations of the North American Develop-
9 ment Bank, and obligations of any local
10 public agency (as defined in section 110(h)
11 of the Housing Act of 1949) or any public
12 housing agency (as defined in the United
13 States Housing Act of 1937) that are ex-
14 pressly authorized by section 5136 of the
15 Revised Statutes of the United States as
16 permissible for a national bank to under-
17 write or deal in.

18 “(iv) MUNICIPAL SECURITIES.—The
19 bank effects transactions in municipal se-
20 curities.

21 “(v) EMPLOYEE AND SHAREHOLDER
22 BENEFIT PLANS.—The bank effects trans-
23 actions as part of any bonus, profit-shar-
24 ing, pension, retirement, thrift, savings, in-
25 centive, stock purchase, stock ownership,

1 stock appreciation, stock option, dividend
2 reinvestment, or similar plan for employees
3 or shareholders of an issuer or its subsidi-
4 aries.

5 “(vi) SWEEP ACCOUNTS.—The bank
6 effects transactions as part of a program
7 for the investment or reinvestment of bank
8 deposit funds into any no-load, open-end
9 management investment company reg-
10 istered under the Investment Company Act
11 of 1940 that holds itself out as a money
12 market fund.

13 “(vii) AFFILIATE TRANSACTIONS.—
14 The bank effects transactions for the ac-
15 count of any affiliate of the bank, as de-
16 fined in section 102(c) of the Financial
17 Services Holding Company Act.

18 “(viii) PRIVATE SECURITIES OFFER-
19 INGS.—The bank—

20 “(I) effects sales as part of pri-
21 mary offering of securities by an is-
22 suer, not involving a public offering,
23 pursuant to section 3(b), 4(2), or 4(6)
24 of the Securities Act of 1933 and the

1 rules and regulations issued there-
2 under; and

3 “(II) effects such sales exclu-
4 sively to an accredited investor, as de-
5 fined in section 3 of the Securities Act
6 of 1933.

7 “(ix) DE MINIMUS EXEMPTION.—If
8 the bank does not have a subsidiary or af-
9 filiate registered as a broker or dealer
10 under section 15, the bank effects, other
11 than in transactions referred to in clauses
12 (i) through (viii), not more than—

13 “(I) 800 transactions in any cal-
14 endar year in securities for which a
15 ready market exists, and

16 “(II) 200 other transactions in
17 securities in any calendar year.

18 “(x) SAFEKEEPING AND CUSTODY
19 SERVICES.—The bank, as part of cus-
20 tomary banking activities—

21 “(I) provides safekeeping or cus-
22 tody services with respect to securi-
23 ties, including the exercise of warrants
24 or other rights on behalf of customers;

1 “(II) clears or settles trans-
2 actions in securities;

3 “(III) effects securities lending
4 or borrowing transactions with or on
5 behalf of customers as part of services
6 provided to customers pursuant to
7 subclauses (I) and (II) or invests cash
8 collateral pledged in connection with
9 such transactions; or

10 “(IV) holds securities pledged by
11 one customer to another customer or
12 securities subject to resale agreements
13 between customers or facilitates the
14 pledging or transfer of such securities
15 by book entry.

16 “(xi) BANKING PRODUCTS.—The bank
17 effects transactions in products that—

18 “(I) are described in section
19 121(c)(2) of the Financial Services
20 Holding Company Act; or

21 “(II) have been exempted by the
22 appropriate Federal banking agency
23 pursuant to section 121(c)(3) of such
24 Act.

1 “(D) EXEMPTION FOR ENTITIES SUBJECT
2 TO SECTION 15(e).—The term ‘broker’ does not
3 include a bank that—

4 “(i) was, immediately prior to the en-
5 actment of the Depository Institution Af-
6 filiation Act, subject to section 15(e); and

7 “(ii) is subject to such restrictions
8 and requirements as the Commission con-
9 siders appropriate.”.

10 **SEC. 302. DEFINITION OF DEALER.**

11 Section 3(a)(5) of the Securities Exchange Act of
12 1934 (15 U.S.C. 78c(a)(5)) is amended to read as follows:

13 “(5) DEALER.—

14 “(A) IN GENERAL.—The term ‘dealer’
15 means any person engaged in the business of
16 buying and selling securities for such person’s
17 own account through a broker or otherwise.

18 “(B) EXCEPTION FOR PERSON NOT EN-
19 GAGED IN THE BUSINESS OF DEALING.—The
20 term ‘dealer’ does not include a person that
21 buys or sells securities for such person’s own
22 account, either individually or in a fiduciary ca-
23 pacity, but not as a part of a regular business.

24 “(C) EXCLUSION OF BANKS.—The term
25 ‘dealer’ does not include a bank unless such

1 bank is affiliated with a financial services hold-
2 ing company, as defined in section 102(a) of
3 the Financial Services Holding Company Act.

4 “(D) EXEMPTION FOR CERTAIN BANK AC-
5 TIVITIES.—A bank shall not be considered to be
6 a dealer because the bank engages in any of the
7 following activities under the conditions de-
8 scribed:

9 “(i) The bank buys and sells commer-
10 cial paper, bankers acceptances, exempted
11 securities (other than municipal securities),
12 qualified Canadian Government obligations
13 as defined in section 5136 of the Revised
14 Statutes, obligations of the Washington
15 Metropolitan Area Transit Authority which
16 are guaranteed by the Secretary of Trans-
17 portation under section 9 of the National
18 Capital Transportation Act of 1969, obli-
19 gations of the North American Develop-
20 ment Bank, and obligations of any local
21 public agency (as defined in section 110(h)
22 of the Housing Act of 1949) or any public
23 agency (as defined in the United States
24 Housing Act of 1937) that are expressly
25 authorized by section 5136 of the Revised

1 Statutes of the United States as permis-
2 sible for a national bank to underwrite or
3 deal in.

4 “(ii) The bank buys and sells munici-
5 pal securities that are expressly authorized
6 by section 5136 of the Revised Statutes of
7 the United States as permissible for a na-
8 tional bank to underwrite or deal in.

9 “(iii) The bank buys and sells securi-
10 ties for investment purposes for the bank
11 or for accounts for which the bank acts as
12 a trustee or fiduciary.

13 “(iv) The bank—

14 “(I) has not been affiliated with
15 a securities affiliate for purposes of
16 the Financial Services Holding Com-
17 pany Act for more than 1 year; and

18 “(II) engages in the issuance or
19 sale, through a grantor trust or other-
20 wise, of securities backed by or rep-
21 resenting an interest in notes, drafts,
22 acceptances, loans, leases, receivables,
23 other obligations, or pools of any such
24 obligations originated or purchased by
25 the bank or any affiliate of the bank.

1 “(v) The bank buys and sells products
2 that—

3 “(I) are described in section
4 121(c)(2) of the Financial Services
5 Holding Company Act; or

6 “(II) have been exempted by the
7 appropriate Federal banking agency
8 pursuant to section 121(c)(3) of such
9 Act.”.

10 **SEC. 303. POWER TO EXEMPT FROM THE DEFINITIONS OF**
11 **BROKER AND DEALER.**

12 Section 3 of the Securities Exchange Act of 1934 (15
13 U.S.C. 78c) is amended by adding at the end the follow-
14 ing:

15 “(e) EXEMPTION FROM THE DEFINITION OF
16 BROKER AND DEALER.—The Commission, by regulation
17 or order, upon its own motion or upon application, may
18 conditionally or unconditionally exclude any person or
19 class of persons from the definitions of ‘broker’ or ‘dealer’,
20 if the Commission finds that such exclusion is consistent
21 with the public interest, the protection of investors, and
22 the purposes of this title.”.

23 **SEC. 304. MARGIN REQUIREMENTS.**

24 (a) Section 7(d) of the Securities Exchange Act of
25 1934 (15 U.S.C. 15g(d)) is amended by striking “or (E)”

1 and inserting “(E) to a loan to a broker or dealer by a
2 member bank or any other person that has entered into
3 an agreement pursuant to section 8(a) if the proceeds of
4 the loan are to be used in the ordinary course of the bro-
5 ker’s or dealer’s business other than for the purpose of
6 funding the purchase of securities for the account of such
7 broker or dealer, or (F)”.

8 (b) Section 8(a) of the Securities and Exchange Act
9 of 1934 is amended—

10 (1) by striking “nonmember bank” and insert-
11 ing “person other than a member bank”; and

12 (2) by striking “such bank” in the second sen-
13 tence and inserting “such person”.

14 **Subtitle B—Investment Company Provisions**

15 **SEC. 311. CUSTODY OF INVESTMENT COMPANY ASSETS BY**

16 **AFFILIATED BANK.**

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

20 (1) by redesignating paragraphs (1), (2), and
21 (3) as subparagraphs (A), (B), and (A), (B), and
22 (C), respectively;

23 (2) by striking “(f) Every, registered” and in-
24 serting “(f) **CUSTODY OF SECURITIES.**—

25 (1) Every registered”;

1 (C) by designating the second, third,
2 fourth, and fifth sentences of such subsection
3 as paragraphs (2) through (5), respectively, and
4 indenting the left margin of such paragraphs
5 appropriately; and

6 (D) by adding at the end the following new
7 paragraph:

8 “(6) Notwithstanding any provision of this sub-
9 section, if a bank described in paragraph (1) and af-
10 filiated with a financial services company, as defined
11 in section 102(a) of the Financial Services Holding
12 Company Act, or an affiliated person of such bank,
13 is an affiliated person, promoter, organizer, or spon-
14 sor of, or principal underwriter for the registered
15 company, such bank may serve as custodian under
16 this subsection in accordance with such rules, regu-
17 lations, or orders as the Commission may prescribe,
18 consistent with the protection of investors, after con-
19 sulting in writing with the appropriate Federal
20 banking agency, as defined in section 3 of the Fed-
21 eral Deposit Insurance Act.”.

22 (b) UNIT INVESTMENT TRUSTS.—Section 26(a)(1) of
23 the Investment Company Act of 1940 (15 U.S.C. 80a-
24 26(a)(1)) is amended by inserting before the semicolon at

1 the end the following: “, except that, if the trustee or cus-
2 todian described in this subsection is an affiliated person
3 of such underwriter or depositor and of a financial services
4 holding company, as defined in section 102(a) of the Fi-
5 nancial Services Holding Company Act, the Commission
6 may adopt rules and regulations or issue orders, consistent
7 with the protection of investors, prescribing the conditions
8 under which such trustee or custodian may serve, after
9 consulting in writing with the appropriate Federal bank-
10 ing agency (as defined in section 3 of the Federal Deposit
11 Insurance Act)”.

12 (c) FIDUCIARY DUTY OF CUSTODIAN.—Section 36(a)
13 of the Investment Company Act of 1940 (15 U.S.C. 80a-
14 35(a)) is amended—

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

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

19 (3) by inserting after paragraph (2) the follow-
20 ing:

21 “(3) if affiliated with a financial services hold-
22 ing company, as defined section 102(a) of the Fi-
23 nancial Services Holding Company Act, as custo-
24 dian.”.

1 **SEC. 312. LENDING TO AN AFFILIATED INVESTMENT COM-**
2 **PANY.**

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

6 “(l) Notwithstanding any provision of this section, it
7 shall be unlawful for any affiliated person of a registered
8 investment company that is affiliated with a financial serv-
9 ices holding company, as defined in section 102(a) of the
10 Financial Services Holding Company Act, or any affiliated
11 person of such a person, to loan money to such investment
12 company in contravention of such rules, regulations, or or-
13 ders as the Commission may prescribe in the public inter-
14 est and consistent with the protection of investors.”.

15 **SEC. 313. INDEPENDENT DIRECTORS.**

16 (a) IN GENERAL.—Section 2(a)(19)(A) of the Invest-
17 ment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)(A))
18 is amended—

19 (1) by striking clause (v) and inserting the fol-
20 lowing new clause:

21 “(v) any person affiliated with a fi-
22 nancial services holding company (other
23 than a registered investment company)
24 that, at any time during the preceding 6

1 months, has executed any portfolio trans-
2 actions for, engaged in any principal trans-
3 actions with, or distributed shares for—

4 “(I) the investment company,

5 “(II) any other investment com-
6 pany having the same investment ad-
7 viser as such investment company or
8 holding itself out to investors as a re-
9 lated company for purposes of invest-
10 ment or investor services, or

11 “(III) any account over which the
12 investment company’s investment ad-
13 viser has brokerage placement discre-
14 tion,

15 or any affiliated person of such a person,”;

16 (2) by redesignating clause (vi) as clause (vii)

17 and

18 (3) by inserting after clause (v) the following
19 new clause:

20 “(vi) any person affiliated with a fi-
21 nancial services holding company (other
22 than a registered investment company)
23 that, at any time during the preceding 6
24 months, has loaned money to—

25 “(I) the investment company,

1 “(II) any other investment com-
2 pany having the same investment ad-
3 viser as such investment company or
4 holding itself out to investors as a re-
5 lated company for purposes of invest-
6 ment or investor services, or

7 “(III) any account for which the
8 investment company’s investment ad-
9 viser has borrowing authority,

10 or any affiliated person of such a person,
11 or”.

12 (b) AFFILIATION OF DIRECTORS.—Section 10(c) of
13 the Investment Company Act of 1940 (15 U.S.C. 80a-
14 10(c)) is amended by striking, “bank, except” and insert-
15 ing “bank affiliated with a financial services holding com-
16 pany (and its subsidiaries) or any single financial services
17 holding company (and its affiliates and subsidiaries), as
18 those terms are defined in the Financial Services Holding
19 Company Act, except”.

20 (c) EFFECTIVE DATE.—The provisions of subsection
21 (a) of this section shall become effective 1 year after the
22 effective date of this subtitle.

1 **SEC. 314. ADDITIONAL SEC DISCLOSURE AUTHORITY.**

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

5 “(a) MISREPRESENTATION OF GUARANTEES.—

6 “(1) IN GENERAL.—It shall be unlawful for any
7 person, issuing or selling any security of which a
8 registered investment company is the issuer, to rep-
9 resent or imply in any manner whatsoever that such
10 security or company—

11 “(A) has been guaranteed, sponsored, rec-
12 ommended, or approved by the United States,
13 or any agency, instrumentality or officer of the
14 United States;

15 “(B) has been insured by the Federal De-
16 posit Insurance Corporation;

17 “(C) is guaranteed by or is otherwise an
18 obligation of any bank or insured depository in-
19 stitution.

20 “(2) DISCLOSURES.—Any person that is affili-
21 ated with an insured depository institution and is-
22 sues or sells the securities of a registered investment
23 company shall prominently disclose that the invest-
24 ment company or any security issued by the invest-
25 ment company—

1 “(A) is not insured by the Federal Deposit
2 Insurance Corporation;

3 “(B) is not guaranteed by an affiliated in-
4 sured depository institution; and

5 “(C) is not otherwise an obligation of any
6 bank or insured depository institution,
7 in accordance with such rules, regulations, or orders
8 as the Commission may prescribe as reasonably nec-
9 essary or appropriate in the public interest for the
10 protection of investors, after consulting in writing
11 with the appropriate Federal banking agencies.

12 “(3) DEFINITIONS.—The terms ‘insured depository
13 institution’ and ‘appropriate Federal banking
14 agency’ have the meanings given to such terms in
15 section 3 of the Federal Deposit Insurance Act.”.

16 (b) DECEPTIVE USE OF NAMES.—Section 35(d) of
17 the Investment Company Act of 1940 (15 U.S.C. 80a–
18 34(d)) is amended to read as follows:

19 “(d)(1) It shall be unlawful for any registered invest-
20 ment company to adopt as part of the name or title of
21 such company, or any securities of which it is the issuer,
22 any word or words that the Commission finds are materi-
23 ally deceptive or misleading. The Commission may adopt

1 such rules or regulations or issue such orders as are nec-
2 essary or appropriate to prevent the use of deceptive or
3 misleading names or titles by investment companies.

4 “(2) It shall be deceptive and misleading for any reg-
5 istered investment company—

6 “(A) that is an affiliated person of a bank that
7 is affiliated with a financial service holding company,
8 as defined in section 102(a) of the Financial Serv-
9 ices Holding Company Act, or an affiliated person of
10 such person, or

11 “(B) for which a bank that is affiliated with a
12 financial service holding company, as defined in sec-
13 tion 102(a) of the Financial Services Holding Com-
14 pany Act, or an affiliated person of such a bank,
15 acts as investment adviser, sponsor, promoter, or
16 principal underwriter,

17 to adopt, as part of the name or title such company, or
18 of any security of which it is an issuer, any word that
19 is the same or similar to, or a variation of, the name or
20 title of such bank, in contravention of such rules, regula-
21 tions, or orders as the Commission may, prescribe as nec-
22 essary or appropriate in the public interest or for the pro-
23 tection of investors.”.

1 **SEC. 315. DEFINITION OF BROKER UNDER THE INVEST-**
2 **MENT COMPANY ACT OF 1940.**

3 Section 2(a)(6) of the Investment Company Act of
4 1940 (15 U.S.C. 89a-2(a)(6)) is amended to read as fol-
5 lows:

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

11 **SEC. 316. DEFINITION OF DEALER UNDER THE INVEST-**
12 **MENT COMPANY ACT OF 1940.**

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

16 “(11) The term ‘dealer’ has the same meaning
17 as in the Securities Exchange Act of 1934, but does
18 not include an insurance company or investment
19 company.”.

20 **SEC. 317. REMOVAL OF THE EXCLUSION FROM THE DEFINI-**
21 **TION OF INVESTMENT ADVISER FOR BANKS**
22 **THAT ADVISE INVESTMENT COMPANIES.**

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

1 “investment company” and inserting “investment com-
2 pany, except that the term ‘investment adviser’ includes
3 any financial services holding company, as defined in sec-
4 tion 102(a) of the Financial Services Holding Company
5 Act, or any bank affiliated with such company, to the ex-
6 tent that such financial services holding company or bank
7 acts as an investment adviser to a registered investment
8 company, or if, in the case of such a bank, such services
9 are performed through a separately identifiable depart-
10 ment or division, the department or division, and not the
11 bank itself, shall be deemed to be the investment adviser”.

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

16 “(25) The term ‘separately identifiable depart-
17 ment or division’ of a bank means a unit—

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

1 “(B) for which all of the records relating
2 to its investment adviser activities are sepa-
3 rately maintained in or extractable from such
4 unit’s own facilities or the facilities of the bank,
5 and such records are so maintained or other-
6 wise accessible as to permit independent exam-
7 ination and enforcement of this Act or the In-
8 vestment Company Act of 1940 and rules and
9 regulations promulgated under this Act or the
10 Investment Company Act of 1940.”.

11 **SEC. 318. DEFINITION OF BROKER UNDER THE INVEST-**
12 **MENT ADVISERS ACT OF 1940.**

13 Section 202(a)(3) of the Investment Advisers Act of
14 1940 (15 U.S.C. 80b–2(a)(3)) is amended to read as fol-
15 lows:

16 “(3) The term ‘broker’ has the same meaning
17 as in the Securities Exchange Act of 1934.”.

18 **SEC. 319. DEFINITION OF DEALER UNDER THE INVEST-**
19 **MENT ADVISERS ACT OF 1940.**

20 Section 202(a)(7) of the Investment Advisers Act of
21 1940 (15 U.S.C. 80b–2(a)(7)) is amended to read as fol-
22 lows:

23 “(7) The term ‘dealer’ has the same meaning as
24 in the Securities Exchange Act of 1934, but does

1 not include an insurance company or investment
2 company.”.

3 **SEC. 320. INTERAGENCY CONSULTATION.**

4 The Investment Advisers Act of 1940 (15 U.S.C.
5 80b–1 et seq.) is amended by inserting after section 210
6 the following new section:

7 **“SEC. 210A. CONSULTATION.**

8 “(a) EXAMINATION RESULTS AND OTHER INFORMA-
9 TION.—

10 “(1) The appropriate Federal banking agency
11 shall provide the Commission upon request the re-
12 sults of any examination, reports, records, or other
13 information as each may have access to with respect
14 to the investment advisory activities of any financial
15 services holding company, as defined in section
16 102(a) of the Financial Services Holding Company
17 Act, bank that is affiliated with a financial services
18 holding company, or separately identifiable depart-
19 ment or division of a bank, that is registered under
20 section 203 of this title, or, in the case of a financial
21 services holding company or affiliated bank, that has
22 a subsidiary or a separately identifiable department
23 or division registered under that section, to the ex-
24 tent necessary for the Commission to carry out its
25 statutory responsibilities.

1 “(2) The Commission shall provide to the ap-
2 propriate Federal banking agency upon request the
3 results of any examination, reports, records, or other
4 information with respect to the investment advisory
5 activities of any financial services holding company,
6 bank that is affiliated with a financial services hold-
7 ing company, or separately identifiable department
8 or division of a bank, any of which is registered
9 under section 203 of this title, to the extent nec-
10 essary for the agency to carry out its statutory re-
11 sponsibilities.

12 “(b) EFFECT ON OTHER AUTHORITY.—Nothing
13 herein shall limit in any respect the authority of the appro-
14 priate Federal banking agency with respect to such finan-
15 cial services holding company, bank that is affiliated with
16 a financial services holding company, or department or di-
17 vision under any provision of law.

18 “(c) DEFINITION.—For purposes of this section, the
19 term ‘appropriate Federal banking agency’ shall have the
20 same meaning as in section 3 of the Federal Deposit in-
21 surance Act.”

22 **SEC. 321. TREATMENT OF BANK COMMON TRUST FUNDS.**

23 (a) SECURITIES ACT OF 1933.—Section 3(a)(2) of
24 the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is
25 amended by striking “or any interest or participation in

1 any common trust fund or similar fund maintained by a
2 bank exclusively for the collective investment and reinvest-
3 ment of assets contributed thereto by such bank in its ca-
4 pacity as trustee, executor, administrator, or guardian”
5 and inserting “or any interest or participation in any com-
6 mon trust fund or similar fund that is excluded from the
7 definition of the term ‘investment company’ under section
8 3(c)(3) of the Investment Company Act of 1940”.

9 (b) SECURITIES EXCHANGE ACT OF 1934.—Section
10 3(a)(12)(A)(iii) of the Securities Exchange Act of 1934
11 (15 U.S.C. 78c(a)(12)(A)(iii) is amended to read as fol-
12 lows:

13 “(iii) any interest or participation in
14 any common trust fund or similar fund
15 that is excluded from the definition of the
16 term ‘investment company’ under section
17 3(c)(3) of the Investment Company Act of
18 1940;”.

19 (c) INVESTMENT COMPANY ACT OF 1940.—Section
20 3(c)(3) of the Investment Company Act of 1940 (15
21 U.S.C. 80a-3(c)(3)) is amended by inserting before the
22 period the following: ”, if—

23 “(A) such fund is employed by the bank
24 solely as an aid to the administration of trusts,

1 estates, or other accounts created and main-
2 tained for a fiduciary purpose;

3 “(B) except if the bank is not affiliated
4 with a financial services holding company, as
5 defined in section 102(a) of the Financial Serv-
6 ices Holding Company Act, or in connection
7 with the ordinary advertising of the bank’s fidu-
8 ciary services, interests in such fund are not—

9 “(i) advertised; or

10 “(ii) offered for sale to the general
11 public, and

12 “(C) fees and expenses charged by such
13 fund are not in contravention of fiduciary prin-
14 ciples established under applicable Federal or
15 State law.”

16 **SEC. 322. INVESTMENT ADVISERS PROHIBITED FROM HAV-**
17 **ING CONTROLLING INTEREST IN REG-**
18 **ISTERED INVESTMENT COMPANY.**

19 Section 15 of the Investment Company Act of 1940
20 (15 U.S.C. 80a–15) is amended by adding at the end the
21 following new subsection:

22 “(g) **CONTROLLING INTEREST IN INVESTMENT COM-**
23 **PANY PROHIBITED.**—

24 “(1) **IN GENERAL.**—If any investment adviser
25 to a registered investment company, or an affiliated

1 person of that investment adviser, holds a control-
2 ling interest in that registered investment company
3 in a trustee or fiduciary capacity, such person
4 shall—

5 “(A) if it holds the shares in a trustee or
6 fiduciary capacity with respect to any employee
7 benefit plan subject to the Employee Retirement
8 Income Security Act of 1974, transfer the
9 power to vote the shares of the investment com-
10 pany through to another person acting in a fi-
11 duciary capacity with respect to the plan who is
12 not an affiliated person of that investment ad-
13 viser or any affiliated person thereof; or

14 “(B) if it holds the shares in a trustee or
15 fiduciary capacity with respect to any other per-
16 son or entity other than an employee benefit
17 plan subject to the Employee Retirement In-
18 come Security Act of 1974—

19 “(i) transfer the power to vote the
20 shares of the investment company through
21 to—

22 “(I) the beneficial owners of the
23 shares;

1 “(II) another person acting in a
2 fiduciary capacity who is not an affili-
3 ated person of that investment adviser
4 or any affiliated person thereof; or

5 “(III) any person authorized to
6 receive statements and information
7 with respect to the trust who is not an
8 affiliated person of that investment
9 adviser or any affiliated person there-
10 of;

11 “(ii) vote the shares of the investment
12 company held by it in the same proportion
13 as shares held by all other shareholders of
14 the company; or

15 “(iii) vote the shares of the invest-
16 ment company as otherwise permitted
17 under such rules, regulations, or orders as
18 the Commission may prescribe for the pro-
19 tection of investors.

20 “(2) EXEMPTION.—Paragraph (1) shall not
21 apply to any investment adviser to a registered in-
22 vestment company, or an affiliated person of that in-
23 vestment adviser, if such investment adviser or affili-
24 ated person—

1 “(A) is not affiliated with a financial serv-
2 ices holding company, as defined in section
3 102(a) of the Financial Services Holding Com-
4 pany Act; or

5 “(B) holds shares of the investment com-
6 pany in a trustee or fiduciary capacity if that
7 registered investment company consists solely of
8 assets held in such capacities.

9 “(3) SAFE HARBOR.—No investment adviser to
10 a registered investment company or any affiliated
11 person of such investment adviser shall be deemed to
12 have acted unlawfully or to have breached a fidu-
13 ciary duty under State or Federal law solely by rea-
14 son of acting in accordance with clause (i), (ii), or
15 (iii) of paragraph (1)(B).

16 “(4) CHURCH PLAN EXEMPTION.—Paragraph
17 (1) shall not apply to any investment adviser to a
18 registered investment company, or an affiliated per-
19 son of that investment adviser, holding shares in
20 such a capacity, if such investment adviser or such
21 affiliated person is an organization described in sec-
22 tion 414(e)(3)(A) of the Internal Revenue Code of
23 1986.”.

1 **SEC. 323. CONFORMING CHANGE IN DEFINITION.**

2 Section 2(a)(5) of the Investment Company Act of
3 1940 (15 U.S.C. 80a–2(a)(5)) is amended by striking
4 “(A) a banking institution under the laws of the United
5 States” and inserting “(A) a depository institution (as de-
6 fined in section 3 of the Federal Deposit Insurance Act)
7 or a branch or agency of a foreign bank (as such terms
8 are defined in section 101(b) of the International Banking
9 Act of 1978)”.

10 **SEC. 324. EFFECTIVE DATE.**

11 This subtitle shall take effect 270 days after the ef-
12 fective date of this Title.

13 **TITLE IV—WHOLESALE FINANCIAL INSTI-**
14 **TUTIONS OWNED BY FINANCIAL SERV-**
15 **ICES HOLDING COMPANIES**

16 **SEC. 401. NATIONAL WHOLESALE FINANCIAL INSTITU-**
17 **TIONS.**

18 Chapter 1 of Title LXII of the Revised Statutes of
19 the United States (12 U.S.C. 21 et seq.) is amended by
20 inserting after section 5136A the following new section:

21 **“SEC. 5136B. NATIONAL WHOLESALE FINANCIAL INSTITU-**
22 **TIONS.**

23 “(a) NATIONAL WHOLESALE FINANCIAL INSTITU-
24 TIONS.—Any financial services holding company (as de-
25 fined in Section 102(a) of the Financial Services Holding

1 Company Act) may apply to the Comptroller of the Cur-
2 rency on such forms and in accordance with such proce-
3 dures as the Comptroller may prescribe by regulation, for
4 permission to organize a national wholesale financial insti-
5 tution. Upon approval of the application, such national
6 wholesale financial institution shall be a body corporate,
7 chartered under the laws of the United States by the
8 Comptroller. A national wholesale financial institution
9 shall operate pursuant to the requirements of this section
10 at the direction of a board of directors elected at an orga-
11 nizational meeting, to be held as soon as practicable after
12 issuance by the Comptroller of a charter, by such financial
13 services holding company for the purpose of electing such
14 board of directors and taking such other action necessary,
15 pursuant to the charter and the regulations issued by the
16 Comptroller, to complete the corporate organization of the
17 national wholesale financial institution. Immediately fol-
18 lowing its election, the board of directors shall meet to
19 elect the officers of the national wholesale financial insti-
20 tution and to take such other action, as prescribed by the
21 Comptroller, to complete the corporate organization of
22 such national wholesale financial institution.

23 “(b) UNAUTHORIZED ORGANIZATION PROHIBITED.—

24 “(1) IN GENERAL.—No person may organize a
25 national wholesale financial institution, collect

1 money from others for such purpose, or represent
2 himself or herself as authorized to do so and no na-
3 tional wholesale financial institution shall transact
4 any business prior to completion of its organization
5 except as provided in this section and in implement-
6 ing regulations of the Comptroller.

7 “(2) INSURANCE TERMINATION.—No bank that
8 is insured under the Federal Deposit Insurance Act
9 may become a national wholesale financial institu-
10 tion unless—

11 “(A) it has met all the requirements under
12 that Act for voluntary termination of deposit in-
13 surance; and

14 “(B) it is affiliated with a financial service
15 holding company, as defined in section 102(a)
16 of the Financial Services Holding Company
17 Act.

18 “(c) AUTHORIZED ACTIVITIES FOR NATIONAL
19 WHOLESale FINANCIAL INSTITUTION.—Except as other-
20 wise provided in this section, a national wholesale financial
21 institution—

1 “(1) may exercise, in accordance with its arti-
2 cles of organization and such regulations as are is-
3 sued by the Comptroller, all of the powers and privi-
4 leges of a national banking association formed in ac-
5 cordance with section 5133 of the Revised Statutes
6 of the United States; and

7 “(2) shall be subject to any provision of title
8 LXII of the Revised Statutes of the United States
9 that is applicable to a national banking association
10 that is not a national wholesale financial institution.

11 “(d) TERMINATION.—A national wholesale financial
12 institution may terminate its status as a national banking
13 association only with the prior written approval of the
14 Comptroller and on terms and conditions that the Comp-
15 troller determines are appropriate to carry out the pur-
16 poses of this section.

17 “(e) PROMPT CORRECTIVE ACTION.—A national
18 wholesale financial institution shall be deemed to be an
19 insured depository institution for purposes of section 38
20 of the Federal Deposit Insurance Act except that—

21 “(1) the relevant capital levels and capital
22 measures for each capital category shall be the levels
23 specified by the Comptroller for national wholesale
24 financial institutions in accordance with subsection
25 (i)(2);

1 “(2) the provisions applicable to well capitalized
2 insured depository institutions shall be inapplicable
3 to national wholesale financial institutions;

4 “(3) the provisions authorizing or requiring an
5 institution to be placed into receivership shall not
6 apply to a national wholesale financial institution,
7 and, instead, the Comptroller is authorized or re-
8 quired to place the national wholesale financial insti-
9 tution into conservatorship; and

10 “(4) for purposes of applying the provisions of
11 section 38 of the Federal Deposit Insurance Act to
12 national wholesale financial institutions, all ref-
13 erences to the appropriate Federal banking agency
14 or to the Corporation in that section shall be deemed
15 to be references to the Comptroller.

16 “(f) ENFORCEMENT AUTHORITY.—Subsections (j)
17 and (k) of section 7, subsections (b) through (n), (s), (u),
18 and (v) of section 8, and section 19 of the Federal Deposit
19 Insurance Act shall apply to a national wholesale financial
20 institution in the same manner and to the same extent
21 as such provisions apply to insured national banks and
22 any references in such sections to an insured depository
23 institution shall be deemed, for purposes of this para-
24 graph, to be a reference to a national wholesale financial
25 institution.

1 “(g) CERTAIN OTHER STATUTES APPLICABLE.—A
 2 national wholesale financial institution shall be deemed to
 3 be a banking institution, and the Comptroller shall be the
 4 appropriate Federal banking agency for such bank and all
 5 such bank’s affiliates, for purposes of the International
 6 Lending Supervision Act.

7 “(h) BANK MERGER ACT.—A national wholesale fi-
 8 nancial institution shall be subject to the provisions of sec-
 9 tions 18(c) and 44 of the Federal Deposit Insurance Act
 10 in the same manner and to the same extent the national
 11 wholesale financial institution would be subject to such
 12 sections if the institution were an insured national bank.

13 “(i) SPECIFIC REQUIREMENTS APPLICABLE TO NA-
 14 TIONAL WHOLESALE FINANCIAL INSTITUTIONS.—

15 “(1) LIMITATIONS ON DEPOSITS.—

16 “(A) MINIMUM AMOUNT.—

17 “(i) IN GENERAL.—Pursuant to such
 18 regulations as the Comptroller may pre-
 19 scribe, no national wholesale financial in-
 20 stitution may receive initial deposits of
 21 \$100,000 or less, other than on an inciden-
 22 tal or occasional basis.

23 “(ii) LIMITATION ON DEPOSITS OF
 24 LESS THAN \$100,000.—No bank may be
 25 treated as a national wholesale financial

1 institution if the total amount of the initial
2 deposits of \$100,000 or less at such bank
3 constitutes more than 5 percent of the
4 bank's total deposits.

5 “(B) NO DEPOSIT INSURANCE.—No depos-
6 its held by a national wholesale financial insti-
7 tution shall be insured deposits under the Fed-
8 eral Deposit Insurance Act.

9 “(C) ADVERTISING AND DISCLOSURE.—
10 The Comptroller shall prescribe regulations per-
11 taining to advertising and disclosure by national
12 wholesale financial institutions to ensure that
13 each depositor is notified that deposits at such
14 wholesale financial institution are not federally
15 insured or otherwise guaranteed by the United
16 States Government.

17 “(2) SPECIFIC CAPITAL REQUIREMENTS APPLI-
18 CABLE TO NATIONAL WHOLESALE FINANCIAL INSTI-
19 TUTIONS.—

20 “(A) MINIMUM CAPITAL LEVELS.—

21 “(i) IN GENERAL.—The Comptroller
22 shall, by regulation, adopt capital require-
23 ments for national wholesale financial in-
24 stitutions to—

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

5 “(B) provide for the safe and sound oper-
6 ation of the national wholesale financial institu-
7 tion without undue risk to creditors or other
8 persons engaged in transactions with such insti-
9 tution.

10 “(2) MINIMUM TIER 1 CAPITAL RATIO.—The
11 minimum ratio of tier 1 capital to total risk-weight-
12 ed assets of national wholesale financial institutions
13 shall be not less than the level required for an in-
14 sured national bank to be well capitalized unless the
15 Comptroller determines otherwise, consistent with
16 safety and soundness.

17 “(3) CAPITAL CATEGORIES FOR PROMPT COR-
18 RECTIVE ACTION.—For purposes of applying section
19 38 of the Federal Deposit Insurance Act with re-
20 spect to any national wholesale financial institution,
21 the Comptroller shall, by regulation, establish, for
22 each relevant capital measure specified by the Comp-
23 troller under this subsection, the levels at which a

1 national wholesale financial institution is well cap-
2 italized, adequately capitalized, undercapitalized, sig-
3 nificantly undercapitalized, and critically under-
4 capitalized.

5 “(4) ADDITIONAL REQUIREMENTS APPLICABLE
6 TO NATIONAL WHOLESALE FINANCIAL INSTITU-
7 TIONS.—In addition to any requirement otherwise
8 applicable to State member banks or applicable,
9 under this section, to national wholesale financial in-
10 stitutions, the Comptroller may prescribe, by regula-
11 tion or order, for national wholesale financial institu-
12 tions—

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

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

20 “(C) any additional requirements that the
21 Comptroller determines to be appropriate or
22 necessary to—

23 “(i) promote the safety and soundness
24 of the national wholesale financial institu-
25 tion, or

1 “(ii) protect creditors and other per-
2 sons engaged in transactions with the na-
3 tional wholesale financial institution.

4 “(5) EXEMPTIONS FOR NATIONAL WHOLESAL
5 FINANCIAL INSTITUTIONS.—The Comptroller may,
6 by regulation or order, exempt any national whole-
7 sale financial institution from any provision applica-
8 ble to a national bank that is not a national whole-
9 sale financial institution, if the Comptroller finds
10 that such exemption is not inconsistent with—

11 “(A) the promotion of the safety and
12 soundness of the national wholesale financial in-
13 stitution; and

14 “(B) the protection of creditors and other
15 persons engaged in transactions with the na-
16 tional wholesale financial institution.

17 “(6) NO EFFECT ON OTHER PROVISIONS.—This
18 section shall not be construed as limiting the Comp-
19 troller’s authority over national banks under any
20 other provision of law, or to create any obligation for
21 any Federal reserve bank to make, increase, review,
22 or extend any advances or discount under the Fed-
23 eral Reserve Act to any member bank or other de-
24 pository institution.

1 “(d) CONSERVATORSHIP AUTHORITY.—The Comp-
2 troller may appoint a conservator to take possession and
3 control of a national wholesale financial institution to the
4 same extent and in the same manner as the Comptroller
5 may appoint a conservator for a national bank under sec-
6 tion 203 of the Bank Conservation Act, and the conserva-
7 tor shall exercise the same powers, functions, and duties,
8 subject to the same limitations, as are provided under such
9 Act for conservators of national banks.

10 “(e) DEFINITIONS.—For purposes of this section, the
11 following definitions shall apply:

12 “(1) NATIONAL WHOLESALE FINANCIAL INSTI-
13 TUTION.—The term ‘national wholesale financial in-
14 stitution’ means a bank that has been approved to
15 become a national wholesale financial institution by
16 the Comptroller under this section pursuant to an
17 application filed under subsection (a).

18 “(2) DEPOSIT.—The term ‘deposit’ has the
19 meaning given to such term by the Comptroller
20 under this section.

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

1 **SEC. 402. STATE MEMBER WHOLESALE FINANCIAL INSTITU-**
2 **TIONS.**

3 (a) IN GENERAL.—The Federal Reserve Act (12
4 U.S.C. 221 et seq.) is amended by inserting after section
5 9A the following new section:

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

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

9 **“(1) APPLICATION REQUIRED.—**

10 **“(A) IN GENERAL.—**Any bank incor-
11 porated by special law of any State, or orga-
12 nized under the general laws of any State, may
13 apply to the Board of Governors of the Federal
14 Reserve System to become a State member
15 wholesale financial institution and to subscribe
16 to the stock of the Federal reserve bank orga-
17 nized within the district where the applying
18 bank is located.

19 **“(B) TREATMENT AS STATE MEMBER**
20 **BANK.—**Any application under subparagraph
21 (A) shall be treated as an application to become
22 a State member bank under, and shall be sub-
23 ject to the provisions of, section 9.

24 **“(2) INSURANCE TERMINATION.—**No bank that
25 is insured under the Federal Deposit Insurance Act

1 may become a State member wholesale financial in-
2 stitution unless—

3 “(A) it has met all requirements under
4 that Act for voluntary termination of deposit in-
5 surance; and

6 “(B) is affiliated with a financial services
7 holding company, as defined in section 102(a)
8 of the Financial Services Holding Company
9 Act.

10 “(b) GENERAL REQUIREMENTS APPLICABLE TO
11 STATE MEMBER WHOLESALE FINANCIAL INSTITU-
12 TIONS.—

13 “(1) FEDERAL RESERVE ACT.—Except as oth-
14 erwise provided in this section, State member whole-
15 sale financial institutions shall be member banks
16 and shall be subject to the provisions of this Act
17 that apply to member banks to the same extent and
18 in the same manner as State member insured banks,
19 except that a State member wholesale financial insti-
20 tution may terminate membership under this Act
21 only with the prior written approval of the Board
22 and on terms and conditions that the Board deter-
23 mines are appropriate to carry out the purposes of
24 this Act.

1 “(2) PROMPT CORRECTIVE ACTION.—A State
2 member wholesale financial institution shall be
3 deemed to be an insured depository institution for
4 purposes of section 38 of the Federal Deposit Insur-
5 ance Act except that—

6 “(A) the relevant capital levels and capital
7 measures for each capital category shall be the
8 levels specified by the Board for State member
9 wholesale financial institutions in accordance
10 with subsection (c);

11 “(B) the provisions applicable to well cap-
12 italized insured depository institutions shall be
13 inapplicable to wholesale financial institutions;

14 “(C) the provisions authorizing or requir-
15 ing an institution to be placed into receivership
16 shall not apply to a State member wholesale fi-
17 nancial institution, and, instead, the Board is
18 authorized or required, as the case may be, to
19 terminate the State member wholesale financial
20 institution’s membership in the Federal Reserve
21 System or place the bank into conservatorship;
22 and

1 “(D) for purposes of applying the provi-
2 sions of section 38 of the Federal Deposit In-
3 surance Act to State member wholesale finan-
4 cial institutions, all references to the appro-
5 priate Federal banking agency or to the Cor-
6 poration in that section shall be deemed to be
7 references to the Board.

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

19 “(4) CERTAIN OTHER STATUTES APPLICA-
20 BLE.—A State member wholesale financial institu-
21 tion shall be deemed to be a banking institution, and
22 the Board shall be the appropriate Federal banking
23 agency for such bank and all such bank’s affiliates
24 for purposes of the International Lending Super-
25 vision Act.

1 “(5) BANK MERGER ACT.—A State member
2 wholesale financial institution shall be subject to the
3 provisions of sections 18(c) and 44 of the Federal
4 Deposit Insurance Act in the same manner and to
5 the same extent as the State member wholesale fi-
6 nancial institution would be subject to such sections
7 if the institution were a State member insured bank.

8 “(c) SPECIFIC REQUIREMENTS APPLICABLE TO
9 STATE MEMBER WHOLESAL FINANCIAL INSTITU-
10 TIONS.—

11 “(1) LIMITATIONS ON DEPOSITS.—

12 “(A) MINIMUM AMOUNT.—

13 “(i) IN GENERAL.—Pursuant to such
14 regulations as the Board may prescribe, no
15 State member wholesale financial institu-
16 tion may receive initial deposits of
17 \$100,000 or less, other than on an inciden-
18 tal or occasional basis.

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

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

5 “(C) ADVERTISING AND DISCLOSURE.—
6 The Board shall prescribe regulations pertain-
7 ing to advertising and disclosure by State mem-
8 ber wholesale financial institutions to ensure
9 that each depositor is notified that deposits at
10 such wholesale financial institution are not fed-
11 erally insured or otherwise guaranteed by the
12 United States Government.

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

16 “(A) MINIMUM CAPITAL LEVELS.—

17 “(i) IN GENERAL.—The Board shall,
18 by regulation, adopt capital requirements
19 for State member wholesale financial insti-
20 tutions—

21 “(I) to account for the status of
22 State member wholesale financial in-
23 stitutions as institutions that accept
24 deposits that are not insured under

1 the Federal Deposit Insurance Act;
2 and

3 “(II) to provide for the safe and
4 sound operation of the State member
5 wholesale financial institution without
6 undue risk to creditors or other per-
7 sons, including Federal reserve banks,
8 engaged in transactions with such in-
9 stitution.

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

19 “(B) CAPITAL CATEGORIES FOR PROMPT
20 CORRECTIVE ACTION.—For purposes of apply-
21 ing section 38 of the Federal Deposit Insurance
22 Act with respect to any wholesale financial in-
23 stitution, the Board shall, by regulation, estab-
24 lish, for each relevant capital measure specified

1 by the Board under subparagraph (A), the lev-
2 els at which a State member wholesale financial
3 institution is well capitalized, adequately cap-
4 italized, undercapitalized, significantly under-
5 capitalized, and critically undercapitalized.

6 “(3) ADDITIONAL REQUIREMENTS APPLICABLE
7 TO STATE MEMBER WHOLESale FINANCIAL INSTI-
8 TUTIONS.—In addition to any requirement otherwise
9 applicable to State member banks or applicable,
10 under this section, to State member wholesale finan-
11 cial institutions, the Board may prescribe, by regula-
12 tion or order, for State member wholesale financial
13 institutions—

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

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

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

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

1 “(ii) protect creditors and other per-
2 sons, including Federal reserve banks, en-
3 gaged in transactions with the State mem-
4 ber wholesale financial institution.

5 “(4) EXEMPTIONS FOR STATE MEMBER WHOLE-
6 SALE FINANCIAL INSTITUTIONS.—The Board may,
7 by regulation or order, exempt any State member
8 wholesale financial institution from any provision ap-
9 plicable to a State member bank that is not a State
10 member wholesale financial institution, if the Board
11 finds that such exemption is not inconsistent with—

12 “(A) the promotion of the safety and
13 soundness of the State member wholesale finan-
14 cial institution; and

15 “(B) the protection of creditors and other
16 persons, including Federal reserve banks, en-
17 gaged in transactions with the State member
18 wholesale financial institution.

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

1 “(d) CONSERVATORSHIP AUTHORITY.—

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

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

21 “(e) DEFINITIONS.—For purposes of this section, the
22 following definitions shall apply:

23 “(1) STATE MEMBER WHOLESALE FINANCIAL
24 INSTITUTION.—The term ‘State member wholesale
25 financial institution’ means a bank whose application

1 to become a State member wholesale financial insti-
2 tution and a State member bank has been approved
3 by the Board under this section.

4 “(2) DEPOSIT.—The term ‘deposit’ has the
5 meaning given to such term by the Board under this
6 Act.

7 “(3) STATE MEMBER INSURED BANK.—The
8 term ‘State member insured bank’ means a State
9 member bank which is an insured bank (as defined
10 in section 3(h) of the Federal Deposit Insurance
11 Act).

12 “(f) EXCLUSIVE JURISDICTION.—Subsections (c) and
13 (e) of section 43 of the Federal Deposit Insurance Act
14 shall not apply to any State member wholesale financial
15 institution.”.

16 **SEC. 403. AMENDMENTS TO THE FEDERAL DEPOSIT INSUR-**
17 **ANCE ACT.**

18 (a) VOLUNTARY TERMINATION OF INSURED STATUS
19 BY CERTAIN INSTITUTIONS.—

20 (1) SECTION 8 DESIGNATIONS.—Section 8(a) of
21 the Federal Deposit Insurance Act (12 U.S.C.
22 1818(a)) is amended—

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

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

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

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

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

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

17 “(A) to the Corporation and either the
18 Board of Governors of the Federal Reserve Sys-
19 tem (in the case of a State member bank) or
20 the Comptroller of the Currency (in the case of
21 a national bank) not less than 6 months before
22 the effective date of such termination; and

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

1 “(2) either—

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

11 “(B) the Corporation and the Board of
12 Governors of the Federal Reserve System (in
13 the case of a State member bank) or the Comp-
14 troller of the Currency (in the case of a na-
15 tional bank) approve the termination of the
16 bank’s insured status and the bank pays an exit
17 fee in accordance with subsection (e).

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

20 “(1) an insured savings association;

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

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

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

7 “(d) INSTITUTION MUST BECOME WHOLESALE FI-
8 NANCIAL INSTITUTION OR TERMINATE DEPOSIT-TAKING
9 ACTIVITIES.—Any depository institution which voluntarily
10 terminates such institution’s status as an insured deposi-
11 tory institution under this section may not, upon termi-
12 nation of insurance, accept any deposits unless the institu-
13 tion is either a State member wholesale financial institu-
14 tion under section 9B of the Federal Reserve Act, or a
15 national wholesale financial institution under section
16 5136B of the Revised Statutes of the United States.

17 “(e) EXIT FEES.—

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

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

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

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

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

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

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

9 “(g) ADVERTISEMENTS.—

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

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

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

5 “(h) NOTICE REQUIREMENTS.—

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

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

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

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

16 (b) DEFINITION.—Section 19(b)(1)(A)(i) of the Fed-
17 eral Reserve Act (12 U.S.C. 461(b)(1)(A)(i)) is amended
18 after “such Act” by inserting “, or any State member
19 wholesale financial institution as defined in section 9B of
20 this Act or any national wholesale financial institution as
21 defined in section 5136B of the Revised Statutes of the
22 United States”.

23 (c) REPORTS ON DISCOUNTS AND ADVANCES TO
24 WHOLESALE FINANCIAL INSTITUTIONS.—Section 10B of

1 the Federal Reserve Act (12 U.S.C. 347(b)) is amended
2 by adding at the end the following new subsection:

3 “(c) REPORTS ON DISCOUNTS AND ADVANCES TO
4 WHOLESALE FINANCIAL INSTITUTIONS.—

5 “(1) IN GENERAL.—The Board shall submit a
6 report to the Congress at the end of any year in
7 which any State member wholesale financial institu-
8 tion or national wholesale financial institution (as
9 defined in section 5136B of the Revised Statutes of
10 the United States) has obtained a discount, advance,
11 or other extension of credit from a Federal reserve
12 bank.

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

1 **TITLE V—MERGER OF BANK AND THRIFT**
2 **CHARTERS, REGULATORS, AND INSUR-**
3 **ANCE FUNDS**

4 **Subtitle A—Conversion of Thrift Charters**

5 **SEC. 501. SHORT TITLE.**

6 This title may be cited as the Thrift Charter Conver-
7 sion Act of 1997.

8 **SEC. 502. TERMINATION OF FEDERAL SAVINGS ASSOCIA-**
9 **TIONS; TREATMENT OF STATE SAVINGS ASSO-**
10 **CIATIONS AS BANKS FOR PURPOSES OF FED-**
11 **ERAL BANKING LAW.**

12 (a) **TERMINATION OF FEDERAL SAVINGS ASSOCIA-**
13 **TION CHARTERS.—**

14 (1) **IN GENERAL.—**No later than June 30,
15 1998, each Federal savings association shall—

16 (A) convert to a national bank charter;

17 (B) convert to a State depository institu-
18 tion; or

19 (C) surrender the charter of such savings
20 association and liquidate the institution.

21 (2) **CONVERSION TO NATIONAL BANK BY OPER-**
22 **ATION OF LAW.—**

23 (A) **IN GENERAL.—**Except as provided in
24 paragraph (1), the requirement under para-
25 graph (1)(A) for a Federal savings association

1 to convert shall be deemed to have been satis-
2 fied by operation of law effective 15 days after
3 such association has delivered a conversion reg-
4 istration statement to the Comptroller of the
5 Currency.

6 (B) POWERS, PRIVILEGES, DUTIES, AND
7 LIABILITIES.—After the conversion of a Federal
8 savings association to a national bank by oper-
9 ation of law, such national bank shall, except as
10 otherwise specified by law, have the same pow-
11 ers and privileges and shall be subject to the
12 same duties, liabilities, and regulation as an in-
13 stitution originally organized as a national bank
14 under Federal law.

15 (3) CONVERSION REGISTRATION STATEMENT.—

16 A conversion registration statement shall include the
17 following:

18 (A) A copy of the resolution approved by
19 a majority of the full board of directors of the
20 Federal savings association resolving to convert
21 the association into a national bank.

1 (B) A certification by the secretary of a
2 Federal savings association attesting to the re-
3 ceipt of any required affirmative vote of share-
4 holders necessary to convert the Federal sav-
5 ings association into a national bank.

6 (C) A copy of the most recent charter and
7 bylaws of the Federal savings association cer-
8 tified by the Office of Thrift Supervision.

9 (D) Articles of association and an organi-
10 zational certificate in accordance with sections
11 5133, 5134, and 5135 of the Revised Statutes
12 of the United States, except that—

13 (i) a Federal savings association may
14 include in such articles any provisions in
15 the most recent Federal charter under
16 which it operated as a Federal savings as-
17 sociation; and

18 (ii) references to capital stock, shares,
19 shareholders, and related terms in such
20 sections of the Revised Statutes of the
21 United States shall not apply to a mutual
22 savings association converting to a national
23 bank organized in mutual form.

24 (4) EFFECTIVE DATE OF CONVERSION TO NA-
25 TIONAL BANK.—

1 (A) If the Comptroller of the Currency de-
2 termines that a conversion registration state-
3 ment includes all of the documents described in
4 subsection (a)(3) (A) through (D), the Comp-
5 troller of the Currency shall issue a certificate,
6 under the Comptroller's hand and official seal,
7 that such association has complied with all the
8 provisions required herein to be complied with,
9 and that such association is authorized to com-
10 mence the business of banking effective 15 days
11 after the date of delivery of the conversion reg-
12 istration statement. Such converted association
13 may include in its bylaws as a national bank
14 any provisions in the most recent bylaws under
15 which it operated as a Federal savings associa-
16 tion.

17 (B) If the Comptroller of the Currency de-
18 termines that a conversion registration state-
19 ment does not include all of the documents de-
20 scribed in subsection (a)(3) (A) through (D),
21 the Comptroller shall advise the Federal savings
22 association, before the end of the 15-day period
23 beginning on the date of delivery, to resubmit
24 a new statement with the required documents

1 to initiate a new 15-day period. A Federal sav-
2 ings association shall not otherwise be required
3 to take any additional action beyond those spec-
4 ified in subsection (a) (2) and (3) in order to
5 satisfy the requirement of subsection (a)(1)(A).

6 (5) TERMINATION OF SAVINGS ASSOCIATION
7 CHARTER.—Upon conversion of a Federal savings
8 association to a national bank or State bank pursu-
9 ant to the requirements of paragraph (1), the asso-
10 ciation’s charter as a savings association shall auto-
11 matically terminate and be canceled.

12 (6) NO FEES OR CHARGES.—A Federal savings
13 association that converts to a national bank or State
14 bank pursuant to the requirements of paragraph (1)
15 shall not be required to pay any application fee, ex-
16 amination fee, assessment, or other charge to any
17 Federal agency in connection with such conversion.

18 (7) SHARE CONVERSION.—Notwithstanding any
19 other provision of law, upon conversion of a Federal
20 savings association organized in stock form to a na-
21 tional bank or State bank pursuant to the require-
22 ments of paragraph (1), the shares of such stock
23 savings association shall automatically convert into
24 shares of such national bank or State bank, each for
25 the same value as they were and with the same

1 terms and conditions as they contained immediately
2 before the conversion.

3 (8) DIRECTORS AND OFFICERS.—

4 (A) IN GENERAL.—Notwithstanding any
5 other provision of law, upon conversion of a
6 Federal savings association to a national bank
7 or State bank pursuant to the requirements of
8 paragraph (1), each person who was a director
9 or officer of such association before such con-
10 version may continue to serve as and be elected
11 a director or officer of such national bank or
12 State bank.

13 (B) TREATMENT FOR CERTAIN PUR-
14 POSES.—For purposes of section 32 of the Fed-
15 eral Deposit Insurance Act, a national bank or
16 State bank which converted from a savings as-
17 sociation pursuant to the requirements of para-
18 graph (1) shall not be treated as having been
19 chartered less than 2 years or having undergone
20 a change in control within the preceding 2
21 years solely because of its conversion into a na-
22 tional bank or State bank.

23 (9) FAILURE TO OBTAIN A CHARTER.—

1 (A) IN GENERAL.—Any Federal savings
2 association that has not complied with para-
3 graph (1) by June 30, 1998, shall as of that
4 date be subject to all laws, regulations, and or-
5 ders applicable to a national bank, and the
6 Comptroller of the Currency may determine the
7 terms and conditions upon which the savings
8 association converts into a national bank.

9 (B) CONTINUING FAILURE TO COMPLY.—A
10 Federal savings association's continuing failure
11 to comply with paragraph (1) may, in the dis-
12 cretion of the Comptroller of the Currency, be
13 considered an unsafe or unsound condition to
14 transact business, or a violation of law under
15 section 11 of the Federal Deposit Insurance
16 Act.

17 (10) ASSOCIATION CONVERTING IN UNSAFE
18 AND UNSOUND CONDITION.—If the Comptroller of
19 the Currency determines that a Federal savings as-
20 sociation is operating in an unsafe and unsound con-
21 dition, the Comptroller may determine the terms and
22 conditions upon which such association converts into
23 a national bank.

24 (b) TREATMENT OF STATE SAVINGS ASSOCIATIONS
25 AS BANKS FOR PURPOSES OF FEDERAL BANKING LAW.—

1 (1) AMENDMENTS TO FEDERAL DEPOSIT IN-
2 SURANCE ACT.—Section 3 of the Federal Deposit
3 Insurance Act (12 U.S.C. 1813) is amended—

4 (A) by striking paragraph (2) of subsection
5 (a) and inserting the following new paragraph:
6 “(2) STATE BANK.—

7 “(A) IN GENERAL.—The term ‘State bank’
8 means any bank, banking association, trust
9 company, savings bank, industrial bank (or
10 similar depository institution which the Board
11 of Directors finds to be operating substantially
12 in the same manner as an industrial bank),
13 building and loan association, savings and loan
14 association, homestead association, cooperative
15 bank, or other banking institution—

16 “(i) which is engaged in the business
17 of receiving deposits, other than trust
18 funds (as defined in this section); and

19 “(ii) which—

20 “(I) is incorporated under the
21 laws of any State;

22 “(II) is organized and operating
23 according to the laws of the State in
24 which such institution is chartered or
25 organized; or

1 “(III) is operating under the
2 Code of Law for the District of Co-
3 lumbia (except a national bank).

4 “(B) CERTAIN INSURED BANKS IN-
5 CLUDED.—The term ‘State bank’ includes a co-
6 operative bank or other unincorporated bank
7 the deposits of which were insured by the Cor-
8 poration on the day before the date of the en-
9 actment of the Financial Institutions Reform
10 Recovery, and Enforcement Act of 1989.

11 “(C) CERTAIN UNINSURED BANKS EX-
12 CLUDED.—The term ‘State bank’ does not in-
13 clude any cooperative bank or other unincor-
14 porated bank the deposits of which were not in-
15 sured by the Corporation on the day before the
16 date of the enactment of the Financial Institu-
17 tions Reform, Recovery, and Enforcement Act
18 of 1989.”; and

19 (B) in subsection (q)—

20 (i) by inserting “and” after the semi-
21 colon at the end of paragraph (2);

22 (ii) by striking “; and” at the end of
23 paragraph (3) and inserting a period; and

24 (iii) by striking paragraph (4).

1 (2) AMENDMENTS TO THE BANK HOLDING
2 COMPANY ACT OF 1956.—Section 2 of the Bank
3 Holding Company Act of 1956 (12 U.S.C. 1841) is
4 amended—

5 (A) by striking subparagraph (E) of sub-
6 section (a)(5); and

7 (B) by striking subparagraphs (B) and (J)
8 of subsection (c)(2).

9 (3) AMENDMENTS TO THE FEDERAL RESERVE
10 ACT.—The 2d and 3d paragraphs of the 1st section
11 of the Federal Reserve Act (12 U.S.C. 221) are each
12 amended by inserting “(as defined in section 3(a)(2)
13 of the Federal Deposit Insurance Act)” after “State
14 bank”.

15 (c) COMPARABILITY OF REGULATION FOR STATE-
16 CHARTERED DEPOSITORY INSTITUTIONS.—

17 (1) REVIEW OF STATE SUPERVISION.—The
18 Corporation shall maintain procedures for reviewing,
19 under standards the Board of Directors shall pre-
20 scribe in regulations, the manner in which State de-
21 pository institutions are regulated by a State for the
22 purpose of ensuring that State savings associations
23 are no less rigorously regulated by a State than
24 State banks.

1 (2) INADEQUATE STATE REGULATIONS.—If, in
2 connection with a review of State regulation of State
3 depository institutions pursuant to paragraph (2),
4 the Corporation determines that a State regulates
5 savings associations chartered by such State less rig-
6 orously than the State regulates banks chartered by
7 such State, the Corporation may take such action
8 under section 8(a) of the Federal Deposit Insurance
9 Act as the Corporation determines to be appropriate
10 which shall be effective no later than the end of the
11 1-year period beginning on the date of such deter-
12 mination.

13 (3) DEFINITIONS.—The following definitions
14 shall apply for purposes of this subsection:

15 (A) STATE BANK.—The term “State
16 bank” has the same meaning as in section
17 3(a)(2) of the Federal Deposit Insurance Act
18 (as in effect on the date of the enactment of the
19 Thrift Charter Conversion Act of 1997).

20 (B) STATE SAVINGS ASSOCIATION.—The
21 term “State savings association” has the same
22 meaning as in section 3(b)(2) of the Federal
23 Deposit Insurance Act (as in effect on the date
24 of the enactment of the Thrift Charter Conver-
25 sion Act of 1997).

1 (C) STATE DEPOSITORY INSTITUTION.—

2 The term “State depository institution” has the
3 same meaning as in section 3(c)(5) of the Fed-
4 eral Deposit Insurance Act.

5 **SEC. 503. TREATMENT OF CERTAIN ACTIVITIES AND AFFILI-**
6 **ATIONS OF BANK HOLDING COMPANIES RE-**
7 **SULTING FROM THIS ACT.**

8 Section 4 of the Bank Holding Company Act of 1956
9 (12 U.S.C. 1843) is amended by adding at the end the
10 following new subsection:

11 “(k) TREATMENT OF COMPANIES RESULTING FROM
12 SAVINGS AND LOAN HOLDING COMPANIES.—

13 “(1) IN GENERAL.—Notwithstanding any other
14 provision of this section (other than paragraph (5))
15 or any other provision of Federal law including sec-
16 tions 20 and 32 of the Banking Act of 1933, a
17 qualified bank holding company may, after such
18 company becomes a bank holding company—

19 “(A) maintain or enter into any non-bank-
20 ing affiliation which such company was author-
21 ized to maintain or enter into as of the date of
22 the enactment of the Depository Institution Af-
23 filiation and Thrift Charter Conversion Act or
24 was authorized to maintain following a merger
25 of insured depository institution subsidiaries

1 pursuant to an application filed no later than
2 such date; and

3 “(B) engage, directly or through any affili-
4 ate described in subparagraph (A) which is not
5 a bank, in any activity in which such company
6 or any affiliate described in subparagraph (A)
7 was authorized to engage as of such date of en-
8 actment, or in which such company was author-
9 ized to engage following a merger of insured de-
10 pository institution subsidiaries pursuant to an
11 application filed no later than such date, if the
12 requirements of paragraph (4) are met.

13 “(2) QUALIFIED BANK HOLDING COMPANY DE-
14 FINED.—For purposes of this subsection, the term
15 ‘qualified bank holding company’ means—

16 “(A) any company—

17 “(i) which—

18 “(I) as of the date of the enact-
19 ment of the Depository Institution Af-
20 filiation and Thrift Charter Conver-
21 sion Act, is a savings and loan holding
22 company; or

1 “(II) as of such date of enact-
2 ment, has filed an application to char-
3 ter a de novo Federal savings associa-
4 tion and thereafter becomes a savings
5 and loan holding company by virtue of
6 the establishment of such savings as-
7 sociation; and

8 “(ii) which as of the dates referred to
9 in subclause (I) or (II), as the case may
10 be, is not a bank holding company and be-
11 comes a bank holding company after such
12 date, or any subsidiary of such company;
13 and

14 “(B) any bank holding company which as
15 of the date of the enactment of the Depository
16 Institution Affiliation and Thrift Charter Con-
17 version Act—

18 “(i) is a savings and loan holding
19 company; and

20 “(ii) is exempt from this section pur-
21 suant to an order issued by the Board
22 under subsection (d).

23 “(3) NO LOSS OF SUBSECTION (d) EXEMP-
24 TION.—No qualified bank holding company de-
25 scribed in paragraph (2)(B) shall lose the grounds

1 for the exemption under subsection (d) because a
2 savings association which such company controlled,
3 directly or indirectly, as of the date of the enactment
4 of the Depository Institution Affiliation and Thrift
5 Charter Conversion Act, becomes a bank after such
6 date so long as such bank continues to meet the re-
7 quirements of subparagraphs (A) and (B) of para-
8 graph (4).

9 “(4) PREREQUISITES FOR CONTINUATION OF
10 GRANDFATHERED ACTIVITIES AND AFFILIATIONS.—

11 “(A) IN GENERAL.—This subsection shall
12 cease to apply with respect to a qualified bank
13 holding company if, at any time after such com-
14 pany first meets the definition of a qualified
15 bank holding company—

16 “(i) any insured depository institution
17 controlled by such company which, as of
18 the day before the company first meets the
19 definition of a qualified bank holding com-
20 pany—

21 “(I) was subject to the require-
22 ments contained in section 10(m) of
23 the Home Owners’ Loan Act, as in ef-
24 fect on such date, (and regulations in

1 effect on such date under such sec-
2 tion) for treatment as a qualified
3 thrift lender under such section; and

4 “(II) was not a savings associa-
5 tion described in section 10(m)(3)(F)
6 of such Act, as in effect on such date,
7 fails to meet any requirement of such sec-
8 tion;

9 “(ii) any insured depository institu-
10 tion controlled by such company fails to
11 comply with any limitation or restriction
12 on the type of amounts of loans or invest-
13 ments of the institution to which such in-
14 stitution was subject as of the date of the
15 enactment of the Thrift Charter Conver-
16 sion Act of 1997, other than any limitation
17 relating to qualified thrift investments
18 under section 10(m) of the Home Owners’
19 Loan Act, as in effect on such date, unless
20 such failure to comply is the 1st such fail-
21 ure and the institution returns to compli-
22 ance within 60 days of having learned or
23 been notified of such noncompliance;

1 “(iii) the company or any subsidiary
2 of the company acquires more than 5 per-
3 cent of the shares or assets of any bank or
4 any savings association (as such term is
5 defined in section 3 of the Federal Deposit
6 Insurance Act, as in effect on the date of
7 the enactment of the Depository Institu-
8 tion Affiliation and Thrift Charter Conver-
9 sion Act) after such date of enactment.

10 “(B) REQUALIFICATION AS QUALIFIED
11 THRIFT LENDER.—

12 “(i) NOTIFICATION OF INTENTION TO
13 REQUALIFY.—If an institution referred to
14 in subparagraph (A)(i) notifies—

15 “(I) the Board; or

16 “(II) in the case of an institution
17 which is controlled by a financial serv-
18 ices holding company, the appropriate
19 Federal banking agency for such com-
20 pany’s lead depository institution (as
21 defined by the Financial Services
22 Holding Company Act),
23 within 15 days of having learned of such
24 institution’s failure to meet such require-
25 ments, of the intention of the institution to

1 requalify as a qualified thrift lender pursu-
2 ant to the requirements of such section,
3 the institution shall be deemed not to have
4 failed to meet the requirements for treat-
5 ment as a qualified thrift lender for pur-
6 poses of this paragraph.

7 “(ii) FAILURE TO REQUALIFY.—If an
8 institution referred to in clause (i) notifies
9 an agency described in subclause (I) or
10 (II) of clause (i) in accordance with such
11 clause and thereafter fails to requalify as
12 a qualified thrift lender within 1 year from
13 the date of the institution’s initial failure
14 to meet such requirements, the institution
15 shall be deemed to have failed to meet such
16 requirements at the end of such 1-year pe-
17 riod.

18 “(iii) 1 ELECTION TO REQUALIFY.—
19 An institution referred to in clause (i) may
20 elect to requalify as a qualified thrift lend-
21 er under this subparagraph only once.

22 “(5) NONTRANSFERABLE.—This subsection
23 shall not apply with respect to any qualified bank
24 holding company if, after the date of the enactment

1 of the Depository Institution Affiliation and Thrift
2 Charter Conversion Act—

3 “(A) any person not under common control
4 with such company acquires, directly or indi-
5 rectly, control of the company; or

6 “(B) the company is the subject of any
7 merger, consolidation, or other similar trans-
8 action as a result of which a person not under
9 common control with such company acquires,
10 directly or indirectly, control of such company.

11 “(6) PROHIBITION ON CERTAIN INSURED DE-
12 POSITORY INSTITUTIONS IDENTIFYING THEMSELVES
13 AS NATIONAL BANKS.—

14 “(A) IN GENERAL.—Notwithstanding the
15 requirement of section 5134 of the Revised
16 Statutes of the United States—

17 “(i) the name of an insured depository
18 institution subsidiary of a qualified bank
19 holding company which—

20 “(I) as of the date of the enact-
21 ment of the Thrift Charter Conversion
22 Act of 1997, is a savings and loan
23 holding company described in section
24 10(c)(3) of the Home Owners’ Loan
25 Act (as in effect on such date); and

1 “(II) is subject to the restrictions
2 contained in paragraph (4),
3 may not include the term “national”; and
4 “(ii) such insured depository institu-
5 tion may not be identified as a national
6 bank on any sign displayed by the institu-
7 tion or in any advertisement or other pub-
8 lication of the institution.

9 “(B) DEPOSITORY INSTITUTION NOT LIA-
10 BLE FOR FRAUDULENT MISREPRESENTATION
11 FOR NOT REPRESENTING ITSELF AS A NA-
12 TIONAL BANK.—An insured depository institu-
13 tion which is subject to subparagraph (A) shall
14 not be liable for any civil or criminal penalty
15 under any Federal or State consumer protection
16 law, or in any criminal or civil action, for fraud-
17 ulently misrepresenting the nature of the char-
18 ter of the institution, for falsely advertising the
19 status of the institution, for making a false
20 statement with respect to the status of the in-
21 stitution, or for any similar offense by reason of
22 the institution’s compliance with such subpara-
23 graph.

1 “(7) ENFORCEMENT.—In addition to any other
2 power of the Board, the Board may enforce compli-
3 ance with the provisions of this subsection with re-
4 spect to any qualified bank holding company and
5 any bank controlled by such company under section
6 8 of the Federal Deposit Insurance Act.”.

7 **SEC. 504. TRANSITION PROVISIONS FOR ACTIVITIES OF**
8 **SAVINGS ASSOCIATIONS WHICH CONVERT**
9 **INTO OR BECOME TREATED AS BANKS.**

10 (a) IN GENERAL.—Notwithstanding any other provi-
11 sion of Federal law, any insured depository institution
12 which, as of the date of the enactment of the Depository
13 Institution Affiliation and Thrift Charter Conversion Act,
14 is a savings association (as defined in section 3(b) of the
15 Federal Depository Insurance Act (as in effect on such
16 date)) and after such date converts to a national or State
17 bank charter or becomes treated as a State bank pursuant
18 to the amendment made by section 502(b), may continue
19 to engage, directly or indirectly, in any activity in which
20 such institution was lawfully engaged as of such date dur-
21 ing the 2-year period beginning on the effective date of
22 such conversion or the effective date of such amendments,
23 as the case may be.

24 (b) TWO 1-YEAR EXTENSIONS AUTHORIZED.—The
25 2-year period described in subsection (a) with respect to

1 any insured depository institution may be extended for
2 such institution not to exceed two additional times for not
3 more than 1 year each time if the appropriate Federal
4 banking agency determines that such extension is nec-
5 essary to avert substantial loss to the institution and is
6 otherwise consistent with the safety and soundness of the
7 institution.

8 **SEC. 505. REGISTRATION OF BANK HOLDING COMPANIES**
9 **RESULTING FROM CONVERSIONS OF SAV-**
10 **INGS ASSOCIATIONS TO BANKS OR TREAT-**
11 **MENT OF SAVINGS ASSOCIATIONS AS BANKS.**

12 Section 3 of the Bank Holding Company Act of 1956
13 (12 U.S.C. 1842) is amended by adding at the end the
14 following new subsections:

15 “(h) REGISTRATION OF CERTAIN BANK HOLDING
16 COMPANIES.—A company which, as of September 13,
17 1995, is a savings and loan holding company (as defined
18 in section 10(a)(1)(D) of the Home Owners’ Loan Act,
19 as in effect on such date) and is not a bank holding com-
20 pany shall not be required to obtain the approval of the
21 Board under subsection (a) to become a bank holding com-
22 pany after September 13, 1995, as a result of the conver-
23 sion of any insured depository institution subsidiary of
24 such company into a bank or by virtue of the treatment
25 of any insured depository institution subsidiary of such

1 company as a bank pursuant to the amendments made
2 by the Thrift Charter Conversion Act of 1997, if such
3 company—

4 “(1) registers as a bank holding company with
5 the Board in accordance with section 5(a); and

6 “(2) does not acquire, directly or indirectly,
7 ownership or control of any additional insured de-
8 pository institution or other company in connection
9 with such conversion or treatment.

10 “(i) REGULATION OF QUALIFIED BANK HOLDING
11 COMPANIES.—The Board shall regulate qualified bank
12 holding companies (as defined in section 4(k)(2)) in a
13 manner consistent with—

14 “(1) the regulation of such companies by the
15 Director of the Office of Thrift Supervision before
16 the date of the enactment of the Depository Institu-
17 tion Affiliation and Thrift Charter Conversion Act;
18 and

19 “(2) the safety and soundness of insured depos-
20 itory institution subsidiaries of such companies.

21 “(j) OPPORTUNITY TO BECOME A BANK HOLDING
22 COMPANY OR A FINANCIAL SERVICES HOLDING COM-
23 PANY.—

24 “(1) ELECTION.—A company described in sub-
25 section (h) may elect to conform the activities of the

1 company to those activities permitted for a bank
2 holding company or a financial services holding com-
3 pany.

4 “(2) TRANSITION PERIOD.—A company which
5 makes an election under paragraph (1) shall have a
6 6-month period beginning on the date of the enact-
7 ment of the Depository Institution Affiliation and
8 Thrift Charter Conversion Act to conform the activi-
9 ties of the company to those permitted for a bank
10 holding company or a financial services holding com-
11 pany, as the case may be.

12 “(3) EXEMPTION DURING TRANSITION PE-
13 RIOD.—During the 6-month period described in
14 paragraph (2), a company which makes an election
15 under paragraph (1) shall be exempt from the re-
16 quirements imposed on a qualified bank holding
17 company.”.

18 **SEC. 506. ADDITIONAL TRANSITION PROVISIONS AND SPE-**
19 **CIAL RULES.**

20 (a) MUTUAL NATIONAL BANKS AUTHORIZED; CON-
21 VERSION OF MUTUAL SAVINGS ASSOCIATIONS INTO NA-
22 TIONAL BANKS.—

23 (1) IN GENERAL.—Chapter one of title LXII of
24 the Revised Statutes of the United States (12

1 U.S.C. 21 et seq.) is amended by inserting after sec-
2 tion 5133 the following new section:

3 **“SEC. 5133A. MUTUAL NATIONAL BANKS.**

4 “(a) IN GENERAL.—Notwithstanding the paragraph
5 designated the “Third” of section 5134, the Comptroller
6 of the Currency may charter national banks organized in
7 the mutual form either de novo or through a conversion
8 of any stock national or State bank (as defined in section
9 3 of the Federal Deposit Insurance Act) or any State mu-
10 tual bank or credit union, subject to regulations prescribed
11 by the Comptroller of the Currency in accordance with this
12 section.

13 “(b) REGULATIONS.—

14 “(1) TRANSITION RULES.—National banks or-
15 ganized in the mutual form shall be subject to the
16 regulations of the Director of the Office of Thrift
17 Supervision governing corporate organization, gov-
18 ernance, and conversion of mutual institutions, as in
19 effect on September 13, 1995, including parts 543,
20 544, 546, 563b, and 563c) of chapter V of title 12
21 of the Code of Federal Regulations (as in effect on
22 such date), during the 3-year period beginning on
23 the date of the enactment of the Thrift Charter Con-
24 version Act of 1997.

1 “(2) REGULATIONS OF THE COMPTROLLER.—

2 The Comptroller of the Currency shall prescribe ap-
3 propriate regulations for national banks organized in
4 the mutual form, effective as of the end of the 3-
5 year period referred to in paragraph (1).

6 “(3) APPLICABILITY OF CAPITAL STOCK RE-

7 QUIREMENTS.—The Comptroller of the Currency
8 shall prescribe regulations regarding the manner in
9 which requirements of title LXII of the Revised
10 Statutes of the United States with respect to capital
11 stock, and limitations imposed on national banks
12 under such title based on capital stock, shall apply
13 to national banks organized in mutual form pursu-
14 ant to subsection (a).

15 “(c) CONVERSIONS.—

16 “(1) CONVERSION TO STOCK NATIONAL

17 BANK.—Subject to such regulations as the Comp-
18 troller of the Currency may prescribe for the protec-
19 tion of depositors’ rights and for any other purpose
20 the Comptroller of the Currency may consider ap-
21 propriate, any national bank which is organized in
22 mutual form pursuant to paragraph (1) may reorga-
23 nize as a stock national bank.

24 “(2) CONVERSIONS TO STATE BANKS.—Any na-

25 tional mutual bank may convert to a State bank

1 charter in accordance with regulations prescribed by
2 the Comptroller of the Currency and applicable
3 State law.”.

4 (2) MUTUAL BANK HOLDING COMPANIES.—
5 Subsection (g) of section 3 of the Bank Holding
6 Company Act of 1956 (12 U.S.C. 1842(g)) is
7 amended to read as follows:

8 “(g) MUTUAL BANK HOLDING COMPANIES.—

9 “(1) IN GENERAL.—A national mutual bank
10 may reorganize so as to become a holding company
11 by—

12 “(A) chartering an interim national bank,
13 the stock of which is to be wholly owned, except
14 as otherwise provided in this section by the na-
15 tional mutual bank; and

16 “(B) transferring the substantial part of
17 the national mutual bank’s assets and liabil-
18 ities, including all of the bank’s insured liabil-
19 ities, to the interim national bank.

20 “(2) DIRECTORS AND CERTAIN ACCOUNT HOLD-
21 ERS” APPROVAL OF PLAN REQUIRED.—A reorga-
22 nization is not authorized under this subsection un-
23 less—

24 “(A) a plan providing for such reorganiza-
25 tion has been approved by a majority of the

1 board of directors of the national mutual bank;
2 and

3 “(B) in the case of a national mutual bank
4 in which holders of accounts and obligers exer-
5 cise voting rights, such plan has been submitted
6 to an approved by a majority of such individ-
7 uals at a meeting held at the call of the direc-
8 tors in accordance with the procedures pre-
9 scribed by the bank’s charter and bylaws.

10 “(3) NOTICE TO THE BOARD; DISAPPROVAL PE-
11 RIOD.—

12 “(A) NOTICE REQUIRED.—

13 “(i) IN GENERAL.—At least 60 days
14 before taking any action described in para-
15 graph (1), a national mutual bank seeking
16 to establish a mutual holding company
17 shall provide written notice to the Board.

18 “(ii) CONTENTS OF NOTICE.—The no-
19 tice shall contain such relevant information
20 as the Board shall require by regulation or
21 by specific request in connection with any
22 particular notice.

23 “(B) TRANSACTION ALLOWED IF NOT DIS-
24 APPROVED.—Unless the Board within such 60-
25 day notice period disapproves the proposed

1 holding company formation, or extends for an-
2 other 30 days the period during which such dis-
3 approval may be issued, the national mutual
4 bank providing such notice may proceed with
5 the transaction, if the requirements of para-
6 graph (2) have been met.

7 “(C) GROUNDS FOR DISAPPROVAL.—The
8 Board may disapprove any proposed holding
9 company formation only if—

10 “(i) such disapproval is necessary to
11 prevent unsafe or unsound practices;

12 “(ii) the financial or management re-
13 sources of the national mutual bank in-
14 volved warrant disapproval;

15 “(iii) the national mutual bank fails
16 to furnish the information required under
17 subparagraph (A); or

18 “(iv) the national mutual bank fails to
19 comply with the requirement of paragraph
20 (2).

21 “(D) RETENTION OF CAPITAL ASSETS.—In
22 connection with the transaction described in
23 paragraph (1), a national mutual bank may,
24 subject to the approval of the Board, retain
25 capital assets at the holding company level to

1 the extent that the capital retained at the hold-
2 ing company is in excess of the amount of cap-
3 ital required in order for the interim national
4 bank to meet all relevant capital standards es-
5 tablished by the Comptroller of the Currency
6 for national banks.

7 “(4) OWNERSHIP.—

8 “(A) IN GENERAL.—Persons having own-
9 ership rights in the national mutual bank under
10 section 5133A of the Revised Statutes of the
11 United States (including paragraph 575.5 of
12 chapter V of title 12 of the Code of Federal
13 Regulations, as in effect on September 13,
14 1995, and applicable to national mutual banks
15 pursuant to such section) or State law shall
16 have the same ownership rights with respect to
17 the mutual holding company.

18 “(B) HOLDERS OF CERTAIN ACCOUNTS.—
19 Holders of savings, demand, or other accounts
20 of—

21 “(i) a national bank chartered as part
22 of a transaction described in paragraph
23 (1); or

24 “(ii) a mutual bank acquired pursuant
25 to paragraph (5)(B),

1 shall have the same ownership rights with re-
2 spect to the mutual holding company as persons
3 described in subparagraph (A) of this para-
4 graph.

5 “(5) PERMITTED ACTIVITIES.—A mutual hold-
6 ing company may engage only in the following activi-
7 ties:

8 “(A) Investing in the stock of a national or
9 State bank.

10 “(B) Acquiring a mutual bank through the
11 merger of such bank into a national bank sub-
12 sidiary of such holding company or an interim
13 national bank subsidiary of such holding com-
14 pany.

15 “(C) Subject to paragraph (6), merging
16 with or acquiring another holding company, one
17 of whose subsidiaries is a national mutual bank.

18 “(D) Investing in a corporation the capital
19 stock of which is available for purchase by a na-
20 tional mutual bank under Federal law or under
21 the law of any State where the home office of
22 any subsidiary bank is located.

23 “(E) Engaging in the activities permitted
24 under section 4(c).

1 “(F) Engaging in the activities permitted
2 for financial services holding companies under
3 the Financial Services Holding Company Act, if
4 such company elects to be a financial services
5 holding company.

6 “(6) LIMITATIONS ON CERTAIN ACTIVITIES OF
7 ACQUIRED HOLDING COMPANIES.—

8 “(A) NEW ACTIVITIES.—If a mutual hold-
9 ing company acquires or merges with another
10 holding company under paragraph (5)(C), the
11 holding company acquired or the holding com-
12 pany resulting from such merger or acquisition
13 may only invest in assets and engage in activi-
14 ties which are authorized under paragraph (5).

15 “(B) GRACE PERIOD FOR DIVESTING PRO-
16 HIBITED OR DISCONTINUING PROHIBITED AC-
17 TIVITIES.—Not later than 2 years following a
18 merger or acquisition described in paragraph
19 (5)(C), the acquired holding company or the
20 holding company resulting from such merger or
21 acquisition shall—

22 “(i) dispose of any asset which is an
23 asset in which a mutual holding company
24 may not invest under paragraph (5); and

1 “(ii) cease any activity which is an ac-
2 tivity in which a mutual holding company
3 may not engage under paragraph (5).

4 “(7) CHARTERING AND OTHER REQUIRE-
5 MENTS.—

6 “(A) IN GENERAL.—A mutual holding
7 company shall be chartered by the Board and
8 shall be subject to such regulations as the
9 Board may prescribe.

10 “(B) OTHER REQUIREMENTS.—Unless the
11 context otherwise required, a mutual holding
12 company shall be subject to the other require-
13 ments of this Act regarding regulation of hold-
14 ing companies.

15 “(8) CAPITAL IMPROVEMENT.—

16 “(A) PLEDGE OF STOCK OF SAVINGS ASSO-
17 CIATION SUBSIDIARY.—This section shall not
18 prohibit a mutual holding company from pledg-
19 ing all or a portion of the stock of a national
20 bank chartered as part of a transaction de-
21 scribed in paragraph (1) to raise capital for
22 such bank.

23 “(B) ISSUANCE OF NONVOTING SHARES.—
24 No provision of this Act shall be construed as
25 prohibiting a national bank chartered as part of

1 a transaction described in paragraph (1) from
2 issuing any nonvoting shares or less than 50
3 percent of the voting shares of such bank to
4 any person other than the mutual holding com-
5 pany.

6 “(9) INSOLVENCY AND LIQUIDATION.—

7 “(A) IN GENERAL.—Notwithstanding any
8 provision of law, upon—

9 “(i) the default of any national
10 bank—

11 “(I) the stock of which is owned
12 by any mutual holding company; and

13 “(II) which was chartered in a
14 transaction described in paragraph
15 (1);

16 “(ii) the default of a mutual holding
17 company; or

18 “(iii) a foreclosure on a pledge by a
19 mutual holding company described in para-
20 graph (8)(A),

21 A trustee shall be appointed receiver of such
22 mutual holding company and such trustee shall
23 have the authority to liquidate the assets of,

1 and satisfy the liabilities of, such mutual hold-
2 ing company pursuant to title 11, United States
3 Code.

4 “(B) DISTRIBUTION OF NET PROCEEDS.—
5 Except as provided in subparagraph (C), the
6 net proceeds of any liquidation of any mutual
7 holding company pursuant to subparagraph (A)
8 shall be transferred to persons who hold owner-
9 ship interests in such mutual holding company.

10 “(C) RECOVERY BY FEDERAL DEPOSIT IN-
11 SURANCE CORPORATION.—If the Federal De-
12 posit Insurance Corporation incurs a loss as a
13 result of the default of any depository institu-
14 tion subsidiary of a mutual holding company
15 which is liquidated pursuant to subparagraph
16 (A), the Federal Deposit Insurance Corporation
17 shall succeed to the ownership interest of the
18 depositors of such depository institution in the
19 mutual holding company, to the extent of the
20 Federal Deposit Insurance Corporation’s loss.

21 “(10) STATE MUTUAL BANK HOLDING COM-
22 PANY.—

1 “(A) IN GENERAL.—Notwithstanding any
2 provision of Federal law, a State bank operat-
3 ing in mutual form may reorganize so as to
4 form a holding company under State law.

5 “(B) REGULATION OF STATE MUTUAL
6 HOLDING COMPANY.—A corporation organized
7 as a holding company in accordance with sub-
8 paragraph (A) shall be regulated on the same
9 terms and be subject to the same limitations as
10 any other holding company which controls a
11 bank.

12 “(11) REGULATIONS.—

13 “(A) TRANSITION RULES.—Mutual bank
14 holding companies organized under this sub-
15 section shall be subject to the regulations of the
16 Director of the Office of Thrift Supervision gov-
17 erning corporate organization, governance, and
18 conversion of mutual institutions, as in effect
19 on September 13, 1995, including part 575 of
20 chapter V of title 12 of the Code of Federal
21 Regulations (as in effect on such date), during
22 the 3-year period beginning on the date of the
23 enactment of the Thrift Charter Conversion Act
24 of 1997.

1 “(B) REGULATIONS OF THE BOARD.—The
2 Board shall prescribe appropriate regulations
3 for mutual holding companies, effective at the
4 end of the 3-year period referred to in subpara-
5 graph (A).

6 “(12) NO CHANGE OF CONTROL.—Any second
7 stage conversion of a mutual holding company to full
8 stock form shall not be deemed to be a change of
9 control if, in connection with such conversion, no
10 company, directly or indirectly, acquires control of
11 such mutual holding company or any successor to
12 such company.

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

15 “(A) MUTUAL HOLDING COMPANY.—The
16 term ‘mutual holding company’ means a cor-
17 poration organized as a holding company under
18 this subsection.

19 “(B) DEFAULT.—The term ‘default’
20 means an adjudication or other official deter-
21 mination of a court of competent jurisdiction or
22 other public authority pursuant to which a con-
23 servator, receiver, or other legal custodian is
24 appointed.

1 “(C) NATIONAL MUTUAL BANK.—The term
2 ‘national mutual bank’ means a national bank
3 organized in mutual form under section 5133A
4 of the Revised Statutes of the United States.”.

5 (3) LIMITATION ON FEDERAL REGULATION OF
6 STATE BANKS.—Except as otherwise provide in Fed-
7 eral law, the Comptroller of the Currency, Board of
8 Governors of the Federal Reserve System, and Fed-
9 eral Deposit Insurance Corporation may not adopt
10 or enforce any regulation which contravenes the cor-
11 poration governance rules prescribed by State law or
12 regulation for State banks unless the Comptroller,
13 Board, or Corporation finds that such Federal regu-
14 lation is necessary to assure the safety and sound-
15 ness of such State banks.

16 (4) CONVERSIONS OF MUTUAL SAVINGS ASSO-
17 CIATION TO MUTUAL NATIONAL BANKS BY OPER-
18 ATION OF LAW.—Notwithstanding any other provi-
19 sion of Federal or State law, any savings association
20 (as defined in section 3 of the Federal Deposit In-
21 surance Act (as in effect on September 13, 1995))
22 which is organized in mutual form as of the date of
23 the enactment of this Act may become a national
24 mutual bank by operation of law if the association—

1 (A) files the articles of association and or-
2 ganization certificate with the Comptroller of
3 the Currency before January 1, 1998, in ac-
4 cordance with chapter one of the LXII of the
5 Revised Statutes of the United States; and

6 (B) provides such other document or infor-
7 mation as the Comptroller of the Currency may
8 prescribe in regulations consistent with this sec-
9 tion and section 5133A of the Revised Statutes
10 of the United States (as added by paragraph
11 (1) of this subsection).

12 (b) MEMBERSHIP IN FEDERAL HOME LOAN
13 BANKS.—Any insured depository institution which—

14 (1) as of the date of the enactment of this Act,
15 is a Federal savings association which, pursuant to
16 section 6(e) of the Federal Home Loan Bank Act,
17 may not voluntarily withdraw from membership in a
18 federal home loan bank; and

19 (2) after such date converts from a Federal
20 savings association to a national bank, shall continue
21 to be subject to the prohibition under such section
22 on voluntary withdrawal from such membership as
23 though such bank were still a Federal savings asso-
24 ciation until the bank ceases to be a national bank.

25 (c) BRANCHES.—

1 (1) IN GENERAL.—Notwithstanding any provi-
2 sion of the Federal Deposit Insurance Act, the Bank
3 Holding Company Act of 1956, or any other Federal
4 or State law, any depository institution which—

5 (A) as of the date of the enactment of this
6 Act, is a savings association; and

7 (B) becomes a bank before January 1,
8 1998, or, pursuant to the amendments made by
9 this subsection, is treated as a bank as of such
10 date under the Federal Deposit Insurance Act,
11 and any depository institution or bank holding com-
12 pany which acquires such depository institution, may
13 continue, after the depository institution becomes or
14 commences to be treated as a bank, to operate any
15 branch or agency which the savings association was
16 operating as a branch or agency or was in the proc-
17 ess of establishing as a branch or agency on January
18 7, 1997.

19 (2) NO ADDITIONAL BRANCHES.—Paragraph
20 (1) shall not be construed as authorizing the estab-
21 lishment, acquisition, or operation of any additional
22 branch of a depository institution, or the conversion
23 of any agency to a branch, in any State by virtue
24 of the operation by such institution of a branch or

1 agency in such State pursuant to such paragraph ex-
2 cept to the extent such establishment, acquisition,
3 operation, or conversion is permitted under the Fed-
4 eral Deposit Insurance Act, Bank Holding Company
5 Act of 1956, and any other applicable Federal or
6 State law.

7 (3) ESTABLISHING A BRANCH OF AGENCY.—
8 For purposes of paragraph (1), a savings association
9 shall be treated as having been in the process of es-
10 tablishing a branch or agency as of January 7,
11 1997, if, as of such date, the savings association—

12 (A) had received approval from the Direc-
13 tor of the Office of Thrift Supervision to estab-
14 lish such branch or agency;

15 (B) had pending with the Director of the
16 Office of Thrift Supervision an application or
17 notice to establish such branch or agency;

18 (C) had a legal and contractual obligation
19 to establish such branch or agency;

20 (D) had received authority from the appro-
21 priate Federal banking agency to establish such
22 branch in connection with the assumption of li-
23 abilities or an acquisition of an insured deposi-
24 tory institution pursuant to subsection (f) or

1 (k) of section 13 of the Federal Deposit Insur-
2 ance Act or section 408(m) of the National
3 Housing Act (as in effect before the date of the
4 enactment of the Financial Institutions Reform,
5 Recovery, and Enforcement Act of 1989); or

6 (E) in the case of a well capitalized deposi-
7 tory institution, is able to demonstrate to the
8 appropriate Federal banking agency that the
9 savings association—

10 (i) had made a significant financial
11 commitment; and

12 (ii) had taken legally binding action or
13 incurred a contractual obligation, in fur-
14 therance of the establishment of such
15 branch or agency.

16 (d) TRANSITION PROVISION RELATING TO LIMITA-
17 TIONS ON LOANS TO ONE BORROWER.—Section 5200 of
18 the Revised Statutes of the United States (12 U.S.C. 84)
19 is amended by adding at the end the following new sub-
20 section:

21 “(e) TRANSITION PROVISIONS FOR SAVINGS ASSO-
22 CIATIONS CONVERTING TO NATIONAL BANKS.—In the
23 case of any depository institution which, as of the date
24 of the enactment of the Depository Institution Affiliation

1 and Thrift Charter Conversion Act, is a savings associa-
2 tion (as defined in section 3(b) of the Federal Deposit In-
3 surance Act (as in effect on such date)) and becomes a
4 national bank on or before January 1, 1998, any loan,
5 or legally binding commitment to make a loan, made or
6 entered into by such institution becomes a national bank
7 may continue to be held without regard to any limitation
8 contained in this section and any such loan may be re-
9 newed, modified or extended after the savings association
10 becomes a national bank except that any increase in the
11 aggregate amount of funds disbursed under such loan
12 shall be subject to prior approval by the Comptroller of
13 the Currency.”.

14 (e) RIGHTS AND AUTHORITY OF BANKS RESULTING
15 FROM CONVERSIONS OF SAVINGS ASSOCIATIONS.—

16 (1) IN GENERAL.—Upon conversion of a sav-
17 ings association to a national or State bank in ac-
18 cordance with this Act and the amendments made
19 by this title or other provisions of law—

20 (A) the national or State bank shall suc-
21 ceed to all rights, benefits, privileges, powers
22 and franchises, and be subject to all the obliga-
23 tions, duties, restrictions, and disabilities, of
24 such savings association under any contract,
25 agreement, document, or instrument in effect at

1 the time of such conversion to which such sav-
2 ings association was a party; and

3 (B) any reference to the savings associa-
4 tion in any such contract, agreement, docu-
5 ment, or instrument shall be deemed to be a
6 reference to such national or State bank.

7 (2) TREATMENT OF BANK OR SAVINGS ASSOCIA-
8 TION.—If the application of paragraph (1) with re-
9 spect to any national or State bank referred to in
10 such paragraph would—

11 (A) be inconsistent or in conflict with any
12 contract, agreement, document, or instrument
13 described in such paragraph;

14 (B) constitute a default under the con-
15 tract, agreement, document, or instrument;

16 (C) cause such national or State bank to
17 be in default or breach under any provision of
18 the contract, agreement, document, or instru-
19 ment, the national or State bank shall be
20 deemed to be, and treated as, a savings associa-
21 tion for purposes of the contract, agreement,
22 document, or instrument.

23 (f) TRANSFER AND GRANDFATHER OF MUTUAL
24 HOLDINGS COMPANIES.—

1 (1) SUPERVISION AND REGULATION OF MUTUAL
2 HOLDINGS COMPANIES.—

3 (A) IN GENERAL.—The supervision and
4 regulation of any mutual holding company in
5 existence as of the date of the enactment of this
6 Act is hereby transferred to the Board of Gov-
7 ernors of the Federal Reserve System.

8 (B) TRANSITION RULES.—Mutual bank
9 holding companies described in subparagraph
10 (A) shall be subject to the regulations of the
11 Director of the Office of Thrift Supervision, as
12 in effect on September 13, 1995, including part
13 575 of chapter V of title 12 of the Code of Fed-
14 eral Regulations (as in effect on such date),
15 during the 3-year period beginning on the date
16 of the enactment of the Thrift Charter Conver-
17 sion Act of 1997.

18 (2) GRANDFATHER OF EXISTING FEDERAL MU-
19 TUAL HOLDING COMPANIES.—

20 (A) IN GENERAL.—Any Federal mutual
21 holding company in existence as of the date of
22 the enactment of this Act shall be subject to
23 section 4(k) of the Bank Holding Company Act
24 of 1956 (as added by section 2222 of this title).

1 (B) TREATMENT UNDER 4(K).—Any treat-
2 ment of a Federal mutual holding company
3 under section 4(k) shall not be construed as a
4 change in control unless, as a result of the
5 transaction, the holding company no longer con-
6 trols the entity.

7 (g) TREATMENT OF INSTITUTIONS SPECIALIZING IN
8 HOUSING FINANCE.—Section 18(o)(2) of the Federal De-
9 posit Insurance Act (12 U.S.C. 1828(o)(2)) is amended
10 by adding at the end the following new subparagraph:

11 “(C) TREATMENT OF INSTITUTIONS SPE-
12 CIALIZING IN HOUSING FINANCE.—No deposi-
13 tory institution shall be subject to regulatory
14 criticism, enforcement action of any type, or in-
15 creased capital requirements by the appropriate
16 Federal banking agency based on credit con-
17 centration concerns resulting from maintaining
18 a portfolio that reflects the institution’s spe-
19 cialization in residential housing finance.”.

20 **SEC. 507. TECHNICAL AND CONFORMING AMENDMENTS.**

21 (a) AMENDMENTS TO THE FEDERAL DEPOSIT IN-
22 SURANCE ACT.—

1 (1) Section 3(z) of the Federal Deposit Insur-
2 ance Act (12 U.S.C. 1813(z)) is amended by strik-
3 ing “, the Director of the Office of Thrift Super-
4 vision”.

5 (2) Section 8(b) of the Federal Deposit Insur-
6 ance Act (12 U.S.C. 1818(b)) is amended by strik-
7 ing paragraph (9).

8 (3) Section 13 of the Federal Deposit Insurance
9 Act (12 U.S.C. 1823) is amended by striking sub-
10 section (k).

11 (4) Subsections (c)(2) and (i)(2) of section 18
12 of the Federal Deposit Insurance Act (12 U.S.C.
13 1828) are each amended—

14 (A) in the subparagraph (B), by inserting
15 “and” after the semicolon;

16 (B) in subparagraph (C), by striking “;
17 and” and inserting a period; and

18 (C) by striking subparagraph (D).

19 (5) Section 18 of the Federal Deposit Insurance
20 Act (12 U.S.C. 1828) is amended by striking sub-
21 section (m).

22 (6) The Federal Deposit Insurance Act (12
23 U.S.C. 1811 et seq.) is amended by striking 28.

24 (b) AMENDMENTS TO THE BANK HOLDING COMPANY
25 ACT OF 1956.—

1 (1) Section 2 of the Bank Holding Company
2 Act of 1956 (12 U.S.C. 1841) is amended by strik-
3 ing subsections (i) and (j).

4 (2) Section 4(e)(8) of the Bank Holding Com-
5 pany Act of 1956 (12 U.S.C. 1843(e)(8)) is amend-
6 ed by striking the sentence preceding the penul-
7 timate sentence.

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

10 (A) in paragraph (2)(A)(i), by striking “or
11 an insured institution” and all that follows
12 through “of this subsection”;

13 (B) in paragraph (2)(A)(ii)—

14 (i) by striking “or a savings associa-
15 tion” where such term appears in the por-
16 tion of such paragraph which precedes sub-
17 clause (I));

18 (ii) by inserting “and” at the end of
19 subclause (VI);

20 (iii) by striking subclauses (VIII),
21 (IX), and (X); and

22 (iv) by striking “(V), and (VIII)”,
23 where such term appears in the portion of
24 such paragraph which appears after the

1 end of subclause (VII), and inserting “and
2 (V)”;

3 (C) by striking paragraphs (10), (11),
4 (12), and (13).

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

7 (A) by striking paragraphs (1) and (2);
8 and

9 (B) in paragraph (3)(A), by striking “any
10 Federal savings association” and all that fol-
11 lows through the period at the end of such
12 paragraph and inserting “such association was
13 authorized to engage under this section as of
14 September 15, 1995.”

15 (c) OTHER TECHNICAL AND CONFORMING AMEND-
16 MENTS.—

17 (1) Section 804(a) of the Alternative Mortgage
18 Transaction Parity Act of 1982 (12 U.S.C. 3803) is
19 amended.—

20 (A) in the portion of such subsection which
21 precedes paragraph (1)—

22 (i) by striking “, and other nonfeder-
23 ally chartered housing creditors,”; and

24 (ii) by inserting “and in order to per-
25 mit other nonfederally chartered housing

1 creditors to make, purchase, and enforce
2 alternative mortgage transactions,” after
3 “enforcing alternative mortgage trans-
4 actions,”; and

5 (B) in paragraph (1), by inserting “(as
6 such term is defined in section 3(a) of the Fed-
7 eral Deposit Insurance Act)” after “with re-
8 spect to banks”.

9 (2) Section 205 of the Depository Institution
10 Management Interlock Act (12 U.S.C. 3204) is
11 amended.—

12 (A) in the portion of paragraph (8)(A)
13 which precedes clause (i), by striking “diversi-
14 fied savings” and all that follows through “with
15 respect to” and inserting “depository institution
16 holding company which, as of September 13,
17 1995, and at all times thereafter, satisfies the
18 consolidated net worth and consolidated net
19 earnings requirements for a diversified savings
20 and loan holding company (as set forth in sec-
21 tion 10(1)(F) of Home Owners’ Loan Act, as
22 such section is in effect on such date, which

1 shall be applicable for purposes of this para-
2 graph without regard to the fact that a deposi-
3 tory institution subsidiary of such holding com-
4 pany has ceased to be a savings association
5 after September 13, 1995) with respect to”;
6 and

7 (B) by striking paragraph (9).

8 (3) Section 19(b)(1)(A) of the Federal Reserve
9 Act (12 U.S.C. 461(b)(1)(A)) is amended—

10 (A) by inserting “and” after the semicolon
11 at the end of clause (v); and

12 (B) by striking clause (vi).

13 (4) Subparagraphs (A), (B), and (C) of section
14 10(e)(5) of the Federal Home Loan Bank Act (12
15 U.S.C. 1430(e)(5)) are each amended by inserting
16 before the period at the end “(as such section is in
17 effect on September 13, 1995)”.

18 **SEC. 508. REFERENCES TO SAVINGS ASSOCIATIONS AND**

19 **STATE BANKS IN FEDERAL LAW.**

20 Effective January 1, 1998, any reference in any Fed-
21 eral banking law to—

22 (1) the term “savings association” shall be
23 deemed to be a reference to a bank as defined in
24 section 3(a) of the Federal Deposit Insurance Act;
25 and

1 (2) the term “State bank” shall be deemed to
2 include any depository institution included in the
3 definition of such term in section 3(a)(2) of such
4 Act.

5 **SEC. 509. REPEAL OF HOME OWNERS’ LOAN ACT.**

6 The Home Owners’ Loan Act (12 U.S.C. 1461 et
7 seq.) is hereby repealed.

8 **SEC. 510. DEFINITIONS.**

9 For purposes of this subtitle, the terms “appropriate
10 Federal banking agency”, “bank holding company”, “de-
11 pository institution”, “Federal savings association”, “in-
12 sured depository institution”, “savings association”, and
13 “State bank” have the same meanings as in section 3 of
14 the Federal Deposit Insurance Act (as in effect on the
15 date of the enactment of this Act).

16 **Subtitle B—Elimination of Office of The**
17 **Thrift Supervision**

18 **SEC. 511. OFFICE OF THRIFT SUPERVISION ABOLISHED.**

19 Effective January 1, 1998, the Office of Thrift Su-
20 pervision and the position of Director of the Office of
21 Thrift Supervision are hereby abolished.

1 **SEC. 512. DETERMINATION OF TRANSFERRED FUNCTIONS**
2 **AND EMPLOYEES.**

3 (a) ALL OFFICE OF THRIFT SUPERVISION EMPLOY-
4 EES SHALL BE TRANSFERRED.—All employees of the Of-
5 fice of Thrift Supervision shall be identified for transfer
6 under subsection (b) to the Office of the Comptroller of
7 the Currency, the Federal Deposit Insurance Corporation,
8 or the Board of Governors of the Federal Reserve System.

9 (b) FUNCTIONS AND EMPLOYEES TRANSFERRED.—

10 (1) IN GENERAL.—The Director of the Office of
11 Thrift Supervision, the Comptroller of the Currency,
12 the Chairperson of the Federal Deposit Insurance
13 Corporation, and the Chairman of the Board of Gov-
14 ernors of the Federal Reserve System shall jointly
15 determine the functions or activities of the Office of
16 Thrift Supervision, and the number of employees of
17 such Office necessary to perform or support such
18 functions or activities, which are transferred from
19 the Office to the Office of the Comptroller of the
20 Currency, the Federal Deposit Insurance Corpora-
21 tion, or the Board of Governors of the Federal Re-
22 serve System, as the case may be.

1 (2) ALLOCATION OF EMPLOYEES.—The Comp-
2 troller of the Currency, the Chairperson of the Fed-
3 eral Deposit Insurance Corporation, and the Chair-
4 man of the Board of Governors of the Federal Re-
5 serve System shall allocate the employees of the Of-
6 fice of Thrift Supervision consistent with the num-
7 ber determined pursuant to paragraph (1) in a man-
8 ner which such Comptroller, Chairperson, and Chair-
9 man, in their sole discretion, deem equitable except
10 that, within work units, the agency preferences of
11 individual employees shall be accommodated as far
12 as possible.

13 (c) RIGHTS OF EMPLOYEES OF THE OFFICE OF
14 THRIFT SUPERVISION.—All employees of the Office of
15 Thrift Supervision who are identified for transfer under
16 subsection (b) shall be entitled to the following rights:

17 (1) Each employee so identified shall be trans-
18 ferred to the appropriate agency or entity for em-
19 ployment no later than the earlier of the end of the
20 60-day period beginning on the date such employees
21 are identified for transfer under subsection (b) or
22 January 1, 1998, and such transfer shall be deemed
23 a transfer of function for the purpose of section
24 3503 of title 5, United States Code.

1 (2) Each transferred employee holding a perma-
2 nent position shall not be involuntarily separated or
3 reduced in grade or compensation for 1 year after
4 the date of transfer, except for cause or, if the em-
5 ployee is a temporary employee, separated in accord-
6 ance with the terms of the appointment.

7 (3) If any agency or entity to which employees
8 are transferred determines, after the end of the 1-
9 year period beginning on the date the transfer of
10 functions to such agency or entity is completed, that
11 a reorganization of the combined work force is re-
12 quired, that reorganization shall be deemed a “major
13 reorganization” for purposes of affording affected
14 employees retirement under section 833(d)(2) or
15 8414(b)(1)(B) of title 5, United States Code.

16 (d) DISPOSITION OF AFFAIRS.—

17 (1) IN GENERAL.—In winding up the affairs of
18 the Office of Thrift Supervision, the Director of the
19 Office of Thrift Supervision shall consult and co-
20 operate with the Comptroller of the Currency, the
21 Federal Deposit Insurance Corporation, and the
22 Board of Governors of the Federal Reserve System,
23 as the case may be, to facilitate the orderly transfer
24 of the functions to such Comptroller, Corporation,
25 or Board.

1 (2) CONTINUING AUTHORITY OF DIRECTOR OF
2 THE OFFICE OF THRIFT SUPERVISION.—Except as
3 provided in paragraph (1), no provision of this sub-
4 title shall be construed as affecting the authority
5 vested in the Director of the Office of Thrift Super-
6 vision before the date of enactment of this Act which
7 is necessary to carry out the duties of the position
8 until the date upon which the position of Director of
9 the Office of Thrift Supervision is abolished.

10 (3) CONTINUATION OF AGENCY SERVICES.—
11 Any agency, department, or other instrumentality of
12 the United States, or any successor to any such
13 agency, department or instrumentality, which was
14 providing support services to the Director of the Of-
15 fice of Thrift Supervision on the day before the date
16 such position is abolished shall—

17 (A) continue to provide such services on a
18 reimbursable basis, in accordance with the
19 terms of the arrangement pursuant to which
20 such services were provided until the arrange-
21 ment is modified or terminated in accordance
22 with such terms, except that effective January
23 1, 1998, the Comptroller of the Currency, the
24 Federal Deposit Insurance Corporation, or the

1 Board of Governors of the Federal Reserve Sys-
2 tem, as the case may be, shall be substituted
3 for the Director of the Office of Thrift Super-
4 vision as a party to the arrangement; and

5 (B) consult with the Comptroller, the Cor-
6 poration, or the Board to coordinate and facili-
7 tate a prompt and reasonable transition.

8 (e) TRANSFER OF PROPERTY.—Effective January 1,
9 1998, all property of the Office of Thrift Supervision shall
10 be transferred to the Comptroller of the Currency, the
11 Federal Deposit Insurance Corporation, or the Board of
12 Governors of the Federal Reserve System, as determined
13 in accordance with subsections (a) and (b).

14 **SEC. 513. SAVINGS PROVISIONS.**

15 (a) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS
16 NOT AFFECTED.—No provision of this title shall be con-
17 strued as affecting the validity of any right, duty or obliga-
18 tion of the United States, the Director of the Office of
19 Thrift Supervision, or any person, which existed on the
20 day before the date upon which the position of Director
21 of the Office of Thrift Supervision and the Office of Thrift
22 Supervision are abolished.

23 (b) CONTINUATION OF SUITE.—No action or other
24 proceeding commenced by or against the Director of the

1 Office of Thrift Supervision shall abate by reason of enact-
2 ment of this title, except that, effective January 1, 1998,
3 the Comptroller of the Currency, the Federal Deposit In-
4 surance Corporation, or the Board of Governors of the
5 Federal Reserve System, as the case may be, shall be sub-
6 stituted as a party to any such action or proceeding.

7 (c) CONTINUATION OF ADMINISTRATIVE RULES.—
8 All orders, resolutions, determinations, regulations, inter-
9 pretative rules, other interpretations, guidelines, proce-
10 dures, supervisory and enforcement actions, and other ad-
11 visory material (other than any regulation implementing
12 or prescribed pursuant to section 3(f) of the Home Own-
13 ers' Loan Act (as in effect on September 13, 1995))
14 which—

15 (1) have been issued, made, prescribed, or per-
16 mitted to become effective by the Office of Thrift
17 Supervision, and

18 (2) are in effect on December 31, 1997 (or be-
19 come effective after such date pursuant to the terms
20 of the order, resolution, determination, rule, other
21 interpretation, guideline, procedure, supervisory or
22 enforcement action, and other advisory material, as
23 in effect on such date), shall—

1 (A) continue in effect according to the
2 terms of such orders, resolutions, determina-
3 tions, regulations, interpretative rules, other in-
4 terpretations, guidelines, procedures, super-
5 visory or enforcement actions, or other advisory
6 material;

7 (B) be administered by the Comptroller of
8 the Currency, the Federal Deposit Insurance
9 Corporation, or the Board of Governors of the
10 Federal Reserve System; and

11 (C) be enforceable by or against the Comp-
12 troller of the Currency, the Federal Deposit In-
13 surance Corporation, or the Board of Governors
14 of the Federal Reserve System until modified,
15 terminated, set aside, or superseded in accord-
16 ance with applicable law by the Comptroller,
17 Corporation, or Board, by any court of com-
18 petent jurisdiction, or by operation of law.

19 (d) TREATMENT OF REFERENCES IN ADJUSTABLE
20 RATE MORTGAGES ISSUED BEFORE FIRREA.—

21 (1) REFERENCES IN PRIOR LAW.—For purposes
22 of section 402(e) of Financial Institutions Reform,
23 Recovery, and Enactment Act of 1989 (12 U.S.C.
24 1437 note), any reference in such section to—

1 (A) the Director of the Office of Thrift Su-
2 pervision shall be deemed to be a reference to
3 the Secretary of the Treasury; and

4 (B) a Savings Association Insurance Fund
5 member shall be deemed to be a reference to an
6 insured depository institution (as defined in sec-
7 tion 3 of the Federal Deposit Insurance Act).

8 (e) TREATMENT OF REFERENCES IN ADJUSTABLE
9 RATE MORTGAGES INSTRUMENTS ISSUED AFTER
10 FIRREA.—

11 (1) IN GENERAL.—For purposes of adjustable
12 rate mortgage instruments that are in effect as of
13 the date of enactment of this Act, any reference in
14 the instrument to the Director of the Office of
15 Thrift Supervision or Savings Association Insurance
16 Fund members shall be treated as a reference to the
17 Secretary of the Treasury or insured depository in-
18 stitutions (as defined in section 3 of the Federal De-
19 posit Insurance Act), as appropriate.

20 (2) SUBSTITUTION FOR INDEXES.—If any index
21 used to calculate the applicable interest rate on any
22 adjustable rate mortgage instrument is no longer
23 calculated and made available as a direct or indirect
24 result of the enactment of this title, any index—

1 (A) made available by the Secretary of the
2 Treasury; or

3 (B) determined by the Secretary of the
4 Treasury, pursuant to paragraph (4), to be sub-
5 stantially similar to the index which is no
6 longer calculated or made available,
7 may be substituted by the holder of any such adjust-
8 able rate mortgage instrument upon notice to the
9 borrower.

10 (3) AGENCY ACTION REQUIRED TO PROVIDE
11 CONTINUED AVAILABILITY OF INDEXES.—Promptly
12 after the enactment of this subsection, the Secretary
13 of the Treasury, the Chairperson of the Federal De-
14 posit Insurance Corporation, and the Comptroller of
15 the Currency shall take such action as may be nec-
16 essary to assure that the indexes prepared by the
17 Director of the Office of Thrift Supervision imme-
18 diately before the enactment of this subsection and
19 used to calculate the interest rate on adjustable rate
20 mortgage instruments continue to be available.

21 (4) REQUIREMENTS RELATING TO SUBSTITUTE
22 INDEXES.—If any agency can no longer make avail-
23 able an index pursuant to paragraph (3), an index
24 that is substantially similar to such index may be
25 substituted for such index for purposes of paragraph

1 (2) if the Secretary of the Treasury determines,
2 after notice and opportunity for comment, that—

3 (A) the new index is based upon data sub-
4 stantially similar to that of the original index;
5 and

6 (B) the substitution of the new index will
7 result in an interest rate substantially similar to
8 the rate in effect at the time the original index
9 became unavailable.

10 **SEC. 514. COST OF FUNDS INDEXES.**

11 (a) **COST OF FUNDS INDEX DEFINED.**—The term
12 “cost of funds indexed” means any index that is published
13 by a Federal home loan bank and is based, in whole or
14 in part, upon the cost of funds of such bank’s members.

15 (b) **CALCULATIONS BASED ON TYPE OF CHARTER**
16 **AND INSURANCE FUND MEMBERSHIP OF MEMBERS.**— If
17 any cost of funds index includes data based on charter
18 type, insurance fund membership, or other similar charac-
19 teristics of members of a Federal home loan ban, such
20 index shall be calculated after the date of the enactment
21 of this Act using data only from insured depository insti-
22 tutions which were bank members and whose data was in-
23 cluded in such index on or before such date of enactment.

24 (c) **ACQUISITION OF DATA.**—

1 (1) IN GENERAL.—Each insured depository in-
2 stitution the data from which is required to compile
3 a cost of funds index in accordance with subsection
4 (b) shall provide to the Federal home loan bank
5 which maintains the index such information as may
6 be necessary, and in such form as may be appro-
7 priate, for the bank to calculate and publish the
8 index.

9 (2) ENFORCEMENT BY BANKING AGENCIES.—
10 Each appropriate Federal banking agency shall take
11 such action as may be necessary to ensure that in-
12 sured depository institutions which are required to
13 provide information to any Federal home loan bank
14 under paragraph (1) furnish such information on a
15 timely basis and in the form required by the bank.

16 (3) TREATMENT OF INSTITUTIONS.—Notwith-
17 standing any other provision of law, an insured de-
18 pository institution which furnishes information to a
19 Federal home loan bank pursuant to this section for
20 use in compiling a cost of funds index shall not be
21 deemed to control, directly, or indirectly, such index.

22 (d) CERTAIN DATA EXCLUDED.—Notwithstanding
23 subsections (b) and (c), no cost of funds index shall in-
24 clude any data from any insured depository institution
25 which results from the merger, consolidation, or other

1 combination of a member of a Federal home loan bank
2 with a nonmember of any such bank if—

3 (1) the total assets of the nonmember exceed
4 the total assets of the bank member at the time of
5 such merger, consolidation, or other combination; or

6 (2) in the case of a merger, consolidation, or
7 other merger in which a member of a Federal home
8 loan bank is the resulting insured depository institu-
9 tion, combined ratio of the average amount of sin-
10 gles-family loan balances to average total assets of all
11 insured depository institutions involved in such
12 merger, consolidation, or other combination for the
13 12-months period ending on the date of such trans-
14 action is less than 70 percent.

15 (e) OTHER DEFINITIONS.—For purposes of this sec-
16 tion, the terms “appropriate Federal banking agency” and
17 “insured depository institution” shall have the same
18 meanings as in section 3 of the Federal Deposit Insurance
19 Act.

20 **SEC. 515. REFERENCES IN FEDERAL LAW TO DIRECTOR OF**
21 **THE OFFICE OF THRIFT SUPERVISION.**

22 Effective January 1, 1998, any reference in any Fed-
23 eral law to the Director of the office of Thrift Supervision
24 or the Office of Thrift supervision shall be deemed to be
25 a reference to the appropriate Federal banking agency (as

1 defined in section 3(q) of the Federal Deposit insurance
2 Act).

3 **SEC. 516. RECONFIGURATION OF BOARD OF DIRECTORS OF**
4 **FDIC AS A RESULT OF REMOVAL OF DIREC-**
5 **TOR OF THE OFFICE OF THRIFT SUPER-**
6 **VISION.**

7 (a) IN GENERAL.—Section 2(a)(1) of the Federal
8 Deposit Insurance Act (12 U.S.C. 1812(a)(1)) is amended
9 to read as follows:

10 “(1) IN GENERAL.—The management of the
11 Corporation shall be vested in a Board of Directors
12 consisting of 5 members—

13 (A) 1 of whom shall be the Comptroller of
14 the Currency; and

15 (B) 4 of whom shall be appointed by the
16 President, and with the advice and consent of
17 the Senate, from among individuals who are
18 citizens of the United States, 1 of whom shall
19 have State bank supervisory experience”.

20 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

21 (1) Section 2(d)(2) of the Federal Deposit In-
22 surance Act (12 U.S.C. 1812(d)(2)) is amended—

23 (A) by striking “or the Office of Director
24 of the Office of Thrift Supervision”;

25 (B) by striking “or such Director”;

1 (C) by striking “or the acting Director of
2 the Office of Thrift Supervision, as the case
3 may be”; and

4 (D) by striking “or Director”.

5 (2) Section 2(f)(2) of the Federal Deposit In-
6 surance Act (12 U.S.C. 1812(f)(2)) is amended by
7 striking “or of the Office of Thrift Supervision”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 subsections (a) and (b) shall take effect on January 1,
10 1998.

11 **Subtitle C—Merger of BIF and SAIF**

12 **SEC. 521. AMENDMENT TO ECONOMIC GROWTH AND REGU-** 13 **LATORY PAPERWORK REDUCTION ACT OF** 14 **1996.**

15 Section 2704(c) of the Economic Growth and Regu-
16 latory Paperwork Reduction Act of 1996 is amended to
17 read as follows:

18 “(c) EFFECTIVE DATE.—This section and the
19 amendments made by this section shall become effective
20 on the date of the enactment of the Depository Institution
21 Affiliation and Thrift Charter Conversion Act.”.

1 **TITLE VI—NATIONAL MARKET FUNDING**
2 **LENDING INSTITUTIONS**

3 **SEC. 601. NATIONAL MARKET FUNDED LENDING INSTITU-**
4 **TIONS.**

5 Chapter 1 of title LXII of the Revised Statutes of
6 the United States is amended by adding the following sec-
7 tion:

8 **“SEC. 5158. NATIONAL MARKET FUNDED LENDING INSTITU-**
9 **TIONS.**

10 “(a) NATIONAL MARKET FUNDED LENDING INSTI-
11 TUTIONS.—

12 “(1) ORGANIZATION OF NATIONAL MARKET
13 FUNDED LENDING INSTITUTIONS.—Any company
14 (as defined in section 2(b) of the Bank Holding
15 Company Act of 1956 (12 U.S.C. 1841(b)) or any
16 number of natural persons, not less in any case than
17 five, may apply to the Comptroller of the Currency
18 on such forms and in accordance with such proce-
19 dures as the Comptroller may prescribe by regula-
20 tion, for permission to organize a national market
21 funded lending institution. Upon approval of the ap-
22 plication, such national market funded lending insti-
23 tution shall be a body corporate, chartered under the
24 laws of the United States by the Comptroller. All

1 national market funded lending institutions shall op-
2 erate pursuant to the requirements of this section at
3 the direction of a board of directors elected at an or-
4 ganizational meeting to be held as soon as prac-
5 ticable after issuance by the Comptroller of a charter
6 by such company or such natural persons for the
7 purpose of electing such board of directors and tak-
8 ing such other action necessary, pursuant to the
9 charter and the regulations issued by the Comptrol-
10 ler, to complete the corporate organization of the na-
11 tional market funded lending institution. Imme-
12 diately following their election, the board of directors
13 shall meet to elect officers of the national market
14 funded lending institution and to take such other ac-
15 tion, as prescribed by the Comptroller, to complete
16 the corporate organization of such national market
17 funded lending institution.

18 “(2) UNAUTHORIZED ORGANIZATION PROHIB-
19 ITED.—No company or person may organize a na-
20 tional market funded lending institution, collect
21 money from others for such purpose, or represent it-
22 self, himself, or herself as authorized to do so and
23 no national market funded lending institution shall

1 transact any business prior to completion of its or-
2 ganization except as provided in this Act and in im-
3 plementing regulations of the Comptroller.

4 “(3) AUTHORIZED ACTIVITIES FOR NATIONAL
5 MARKET-FUNDED LENDING INSTITUTION.—Subject
6 to the provisions of paragraphs (4) and (5) of this
7 subsection, and subsections (b) and (c) of this sec-
8 tion, a national market funded lending institution
9 may exercise, in accordance with its articles of orga-
10 nization and such regulations as are issued by the
11 Comptroller, all of the powers and privileges of a na-
12 tional banking association formed in accordance with
13 section 5133 of the Revised Statutes (12 U.S.C. 21).

14 “(4) PROHIBITION OF TAKING DEPOSITS OR
15 RECEIVING FEDERAL DEPOSIT INSURANCE.—No na-
16 tional market funded lending institution may—

17 (A) become an “insured depository institu-
18 tion” within the meaning of section 3(c)(2) of
19 the Federal Deposit Insurance Act (12 U.S.C.
20 1813(c)(2)) or acquire, directly or indirectly
21 through a subsidiary, control of such an insured
22 depository institution;

23 (B) accept any deposits as defined in sec-
24 tion (3)(l)(1) of the Federal Deposit Insurance
25 Act (12 U.S.C. 1813(l)(1));

1 (C) advertise or hold itself out as having
2 deposits insured by the Federal Deposit Insur-
3 ance Corporation.

4 “(5) PROHIBITION ON ACCESS TO DISCOUNT
5 WINDOW.—No national market funded lending insti-
6 tution may exercise discount borrowing privileges
7 pursuant to section 19(b)(7) of the Federal Reserve
8 Act.

9 “(6) PROHIBITION ON ACCESS TO PAYMENTS
10 SYSTEM.—No national market funded lending insti-
11 tution may obtain payment or payment related serv-
12 ices from any Federal Reserve bank, including any
13 service referred to in section 11A of the Federal Re-
14 serve Act.

15 “(7) CAPITAL.—The capital of national market
16 funded lending institution shall be maintained at all
17 times at such level and in such manner as may be
18 prescribed by the Comptroller by regulation.

19 “(8) PROHIBITION ON IDENTIFICATION AS A
20 BANK.—

21 “(A) In general.—Notwithstanding the re-
22 quirement of section 5134 of the Revised Stat-
23 utes of the United States—

1 “(i) the name of a national market
2 lending institution may not include the
3 term “bank”; and

4 “(ii) such institution may not be iden-
5 tified as a bank on any sign displayed by
6 the institution or in any advertisement or
7 other publication of the institution.

8 “(B) DEPOSITORY INSTITUTION NOT LIA-
9 BLE FOR FRAUDULENT MISREPRESENTATION
10 FOR NOT REPRESENTING ITSELF AS A BANK.—
11 A national market lending institution shall not
12 be liable for any civil or criminal penalty under
13 any Federal or State consumer protection law,
14 or in any criminal or civil action, for falsely ad-
15 vertising the status of the institution, for mak-
16 ing a false statement with respect to the status
17 of the institution, or for any similar offense by
18 reason of the institution’s compliance with this
19 paragraph.

20 “(9) IMPLEMENTING REGULATIONS.—The
21 Comptroller shall promulgate such regulations as
22 may be necessary to implement the provisions of this
23 section.

24 “(b) REGULATION AND SUPERVISION OF NATIONAL
25 MARKET FUNDED LENDING INSTITUTION.—

1 “(1) AUTHORITY VESTED IN COMPTROLLER OF
2 THE CURRENCY.—Notwithstanding any other provi-
3 sion of law, the authority to regulate and supervise
4 the activities of national market funding lending in-
5 stitutions shall be vested exclusively in the Comptrol-
6 ler of the Currency.

7 “(2) EXAMINATION.—Each national market
8 funded lending institution and each subsidiary there-
9 of shall be subject to such examinations and to such
10 reporting and recordkeeping requirements as the
11 Comptroller may prescribe. The cost of examinations
12 shall be assessed against and paid by such national
13 market funded lending institution. Examiners ap-
14 pointed by the Comptroller for the purposes of this
15 Act shall be subject to the same requirements, re-
16 sponsibilities, and penalties as are applicable to ex-
17 aminers under the Federal Reserve Act and title
18 LXII of the Revised Statutes and shall have, in the
19 exercise of functions under this Act, the same pow-
20 ers and privileges as are vested in such examiners
21 by law. If any national market funded lending insti-
22 tution fails to pay any assessment required under
23 this subsection within 60 days of such assessment,
24 or refuses to permit any examiner appointed by the
25 Comptroller to make an examination, or refuses to

1 provide any information required to be disclosed by
2 regulation or in the course of any examination, or
3 submits or publishes any false or misleading report
4 or information, the Comptroller may assess against
5 such national market funded lending institution civil
6 penalty of not more than \$5,000 for each day any
7 such failure or refusal continues. And such civil pen-
8 alty shall be assessed by the Comptroller in a man-
9 ner prescribed in subparagraphs (E), (F), (G), (I)
10 and (J) of section 8(i)(2) of the Federal Deposit In-
11 surance Act, for penalties imposed by such section,
12 and such assessment shall also be subject to the pro-
13 visions of subparagraph (H) of that section and of
14 section 8(h) of that Act.

15 “(3) ENFORCEMENT.—

16 “(A) CAPITAL.—If any national market
17 funded lending institution fails to maintain cap-
18 ital at or above the minimum level prescribed
19 by the Comptroller’s regulations, the Comptrol-
20 ler may issue a directive requiring the national
21 market funded lending institution to submit
22 and adhere to a plan for increasing capital
23 which is acceptable to the Comptroller. Any
24 such directive, and such plan when approved by

1 the Comptroller, shall be enforceable as pro-
2 vided in this paragraph.

3 “(B) CEASE-AND-DESIST AUTHORITY.—If
4 a national market funded lending institution
5 subject to a capital directive issued pursuant to
6 subparagraph (A) fails to submit or adhere to
7 a plan for increasing capital which is acceptable
8 to the Comptroller, or if the Comptroller has
9 reasonable cause to believe that any national
10 market funded lending institution has accepted
11 any deposit or has taken action which has
12 caused it to become an “insured depository in-
13 stitution” within the meaning of section 3(e)(2)
14 of the Federal Deposit Insurance Act or has
15 represented to any person that any amount ac-
16 cepted by such national market funded lending
17 institution is an “insured deposit” within the
18 meaning of section 3(m) of the Federal Deposit
19 Insurance Act, the Comptroller may issue and
20 serve upon such national market funded lending
21 institution a notice of charges which shall con-
22 tain a statement of the facts constituting the
23 alleged violation or violations of this Act and
24 shall fix a time and a place at which a hearing
25 will be held to determine whether an order to

1 cease-and-desist therefrom should be issued
2 against the national market funded lending in-
3 stitution. Such hearing shall be fixed for a date
4 not earlier than 30 days nor later than 60 days
5 after service of such notice unless an earlier or
6 later date is set by the Comptroller at the re-
7 quest of the national market funded lending in-
8 stitution. Unless the institution so served shall
9 appear at the hearing, it shall be deemed to
10 have consented to the issuance of the cease-and-
11 desist order. In the event of such consent, or
12 if upon the record made at any such hearing
13 the Comptroller shall find that any violation or
14 violations specified in the notice of charges has
15 or have been established, the Comptroller may
16 issue an order to cease-and-desist from any
17 such violation or violations and, in an appro-
18 priate case as determined by the Comptroller in
19 his or her discretion, to take affirmative action
20 to correct the conditions resulting from any
21 such violation or violations. Such order shall be-
22 come effective at the expiration of 30 days after
23 service thereof upon the national market funded
24 lending institution (except in the case of a
25 cease-and-desist order issued upon consent,

1 which shall become effective at the time speci-
2 fied therein), and shall remain effective and en-
3 forceable, as provided therein except as stayed,
4 modified, terminated or set aside by action of
5 the Comptroller or reviewing court. Any hearing
6 provided for in this subsection and judicial re-
7 view of any final cease-and-desist order (other
8 than a cease-and-desist order issued upon con-
9 sent, which shall be unreviewable) shall be in
10 accordance with the provisions of section 8(h)
11 of the Federal Deposit Insurance Act.

12 “(C) CIVIL MONEY PENALTY.—Any person
13 who violates, or has caused a national market
14 funded lending institution to violate any cease-
15 and-desist order issued pursuant to subpara-
16 graph (B) shall forfeit and pay a civil penalty
17 of not more than \$100,000 for each day during
18 which such violation continues. Any such civil
19 penalty shall be assessed and collected by the
20 Comptroller in the manner provided in subpara-
21 graphs (E), (F), (G), (I), and (J) of section
22 8(i)(2) of the Federal Deposit Insurance Act,
23 and any such assessment shall be subject to the
24 provisions of subparagraph (H) of that section
25 and of section 8(h) of that Act.

1 “(D) CHARTER REVOCATION.—If the
2 Comptroller determines that any national mar-
3 ket funded lending institution has violated any
4 cease-and-desist order which was issued under
5 subparagraph (B) of this paragraph and which
6 has become final, the Comptroller may, in addi-
7 tion to or in lieu of any other remedies provided
8 by law, issue an order revoking the charter of
9 such national market funded lending institu-
10 tion. Any order revoking the charter of a na-
11 tional market funded lending institution shall
12 be effected within 20 days of service upon such
13 national market funded lending institution un-
14 less stayed, modified, terminated or set aside by
15 a court in proceedings authorized in this sub-
16 paragraph. The national market funded lending
17 institution shall give notice of such revocation
18 order to each of its depositors in such manner
19 and at such times as the Comptroller may deem
20 necessary and may order for the protection of
21 the depositors. Any national market funded
22 lending institution served with an order revok-
23 ing its charter, may, within 10 days of the date
24 of service of such order, apply to the United

1 States District Court for the District of Colum-
2 bia or the United States District Court for the
3 judicial district in which the home office of such
4 national market funded lending institution is lo-
5 cated for an injunction setting aside, limiting,
6 modifying, or suspending the enforcement, oper-
7 ation, or effectiveness of such order, and such
8 court shall have jurisdiction to issue such in-
9 junction. Failure to seek judicial review within
10 such 10-day period shall constitute a waiver
11 thereof and shall constitute consent by the na-
12 tional market funded lending institution or any
13 company which controls such national market
14 funded lending institution to the issuance of a
15 final order of revocation of its charter.

16 “(c) CRIMINAL PENALTIES.—

17 “(1) UNAUTHORIZED ORGANIZATION.—Any
18 person who violates the provisions of this title or any
19 regulation or order issued by the Comptroller pursu-
20 ant hereto by knowingly organizing a national mar-
21 ket funded lending institution, collecting money from
22 others for such purpose, or representing himself or
23 herself as authorized to do so, or transacting busi-
24 ness as a national market lending institution, with-
25 out a validly issued and unrevoked charter from the

1 Comptroller of the Currency, or, in the case of a na-
2 tional market funded lending institution which has
3 had its charter revoked, by failing to give notice to
4 depositors of charter revocation when and as di-
5 rected by the Comptroller under this section, shall
6 be imprisoned not more than one year, fined not
7 more than \$100,000 for each day during which such
8 violation continues, or both.

9 “(2) VIOLATION OF ACTIVITIES LIMITATION.—
10 Whoever violates this section by knowingly causing
11 a national market funded lending institution to ac-
12 cept any deposit or by representing to any person
13 that any deposit accepted by such national market
14 funded lending institution is an “insured deposit”
15 within the meaning of section 3(m) of Federal De-
16 posit Insurance Act (12 U.S.C. 1813(m)) shall be
17 imprisoned not more than 5 years, fined not more
18 than \$500,000 per day for each day during which
19 such violation continues, or both.

20 “(3) VIOLATION DEFINED.—For purposes of
21 this section, the term “violation” includes any action
22 (alone or with another or others) for or toward caus-
23 ing, bringing about, participating in, counseling or
24 aiding or abetting a violation.

1 “(d) VOLUNTARY LIQUIDATION.—A national market
2 funded lending institution may go into voluntary liquida-
3 tion and be closed by a vote of its shareholders owning
4 two-thirds of its stock, pursuant to sections 5220 and
5 5221 of the Revised States (12 U.S.C. 181, 182).

6 “(e) CONSERVATORSHIP.—The Comptroller may ap-
7 point a conservator to take possession and control of a
8 national market funded lending institution pursuant to the
9 Bank Conservation Act (12 U.S.C. 201 et seq.).

10 “(f) CONVERSIONS OF DEPOSITORY INSTITUTIONS
11 INTO NATIONAL MARKET FUNDED LENDING INSTITU-
12 TIONS.—Any depository institution (as defined in section
13 3(c)(1) of the Federal Deposit Insurance Act) may, by the
14 vote of its shareholders owning not less than two-thirds
15 of the stock of such depository institution, and with the
16 approval of the Comptroller upon such terms as he or she
17 shall determine are necessary to further the purposes of
18 this section, be converted into a national market funded
19 lending institution, provided, however that said conversion
20 shall not be in contravention of any applicable State law.
21 Such national market funded lending institution shall have
22 the same powers and privileges and shall be subject to the
23 same duties, liabilities and regulations in all respects, as
24 national market funded lending institutions originally or-
25 ganized under this section.”.

1 **TITLE VII—EFFECTIVE DATE**

2 **SEC. 701. EFFECTIVE DATE.**

3 Except as otherwise provided, this Act shall take ef-
4 fect on January 1, 1998.

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